

UPDATE

Russia Sanctions – New prohibitions on the provision of Trust Services

Update prepared by Abel Lyall (Partner) and Chris Lally (Associate)

This update covers the introduction of new sanctions prohibitions in Guernsey in relation to the provision of trust services to designated individuals and persons connected to Russia.

Background

On 16 December 2022 the Office of Financial Sanction Implementation (OFSI) in the UK announced the introduction of amendments to the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (the **Russia Regulations**), which have gone through regular amendments throughout the course of 2022.

The new amendments insert Regulation 18C into the existing regulations, targeting the provision of trust services to designated persons and persons connected to Russia.

The Russia Regulations and any amendments made to them by the UK Government automatically apply in Guernsey as a result of the Sanctions (Implementation of UK Regimes) (Bailiwick of Guernsey) (Brexit) Regulations, 2020 (the **Guernsey Regulations**) with the Policy and Resources Committee being charged with the oversight of the Guernsey regime and being the competent authority for the purpose of notifications and licence requests.

Regulation 18C

While the restrictions imposed by Regulation 18C are more measured than the EU equivalent there are still significant implications for trust service providers in Guernsey. The primary restrictions are at sections one and two of Regulation 18C and state:

"(1) A person must not provide trust services to or for the benefit of a designated person.

"(2) A person ("P") must not provide trust services to or for the benefit of a person connected with Russia ("C") unless pursuant to an ongoing arrangement pursuant to which P provided those trust services to or for the benefit of C immediately before 16th December 2022."

Regulation 18C prohibits the provision of trust services to a person who has been designated for sanctions. The prohibition applies irrespective of when the arrangements were put in place.

In respect of persons '*connected with Russia*' the prohibition is forward looking and includes a grandfathering provision to allow for the provision of trust services that are part of an '*ongoing arrangement*' by which trust services were provided to or for the benefit of the person immediately before 16th December 2022.

The contravention of either prohibition is a criminal offence.

What are 'trust services'?

Trust services are broadly defined in the Regulation to mean:

- (a) the creation of a trust or similar arrangement,
- (b) the provision of a registered office, business address, correspondence address or administrative address for a trust or similar arrangement,
- (c) the operation or management of a trust or similar arrangement, or
- (d) acting or arranging for another person to act as trustee of a trust or similar arrangement, where 'trustee', in relation to an arrangement similar to a trust, means a person who holds an equivalent or similar position to a trustee of a trust.

Accordingly, the regulations cover a broad range of fiduciary and corporate services related to trust structures. In addition, the reference to 'similar arrangements' seems intended to capture foundations and other similar structures not expressly referenced.

When is a person 'connected to Russia'?

A person 'connected to Russia' is defined in Regulation 19A(2) as:

- An individual who is **ordinarily resident in Russia**
- An individual who is **located in Russia**
- A person, other than an individual which is **incorporated or constituted under the law of Russia**
- A person, other than an individual which is **domiciled in Russia**

Accordingly, for individuals, the prohibition is based on their ongoing connection with Russia as opposed to nationality or citizenship.

When are trusts services provided 'for the benefit' of a person?

The amended Regulation defines providing trust services 'for the benefit' of a person connected to Russia, as when that person:

- (a) is a beneficiary of a trust or similar arrangement,
- (b) is referred to as a potential beneficiary in a document from the settlor relating to a trust or similar arrangement (such as a letter of wishes), or
- (c) having regard to all the circumstances, B might **reasonably be expected to obtain**, or to be able to obtain, a significant financial benefit from the trust or similar arrangement.

It is also noted that for these purposes, the terms 'beneficiary', 'potential beneficiary' and 'settlor', in relation to an arrangement that is similar to a trust, means those persons who hold equivalent or similar positions.

Exemptions to prohibition

The amendments also introduce a number of exemptions that may be helpful for fiduciaries dealing with Russia connected structures.

The prohibitions do not apply if the trust services are provided in relation to discharging or complying with obligations for purposes including:

- (a) the maintenance of an asset freeze
- (b) dealing with transferable securities or money market instruments where such dealing with is not prohibited by the regulations

In addition, the prohibitions are also not contravened if the services are not provided primarily to, or for the benefit of, a designated person or person connected with Russia, and are provided in respect of:

- (a) certain community amateur sports clubs
- (b) certain charities
- (c) registered pension schemes
- (d) certain activities relating to financial services and markets

It is noted that the exceptions are complex, and make heavy reference to UK legislation, some of which may not have a Guernsey equivalent. Guidance should be sought before relying on any exemptions.

Circumvention and Licenses

The offence of circumvention of sanctions in Regulation 19 has been extended to apply to 18C.

Accordingly, it will be an offence to intentionally participate in activities knowing that the object or effect of them (whether directly or indirectly) is to either (a) circumvent the prohibitions in 18C or (b) enable or facilitate the contravention of those prohibitions.

This has the potential to render it a criminal offence to alter a trust structure in order to avoid the application of 18C, such as excluding a beneficiary where they are a designated individual.

The amendment also sets out the grounds on which licenses can be sought as a derogation from the prohibitions. It is not possible to seek a licence on grounds other than those covered by the Russia Regulations and, as with other key areas of prohibition, the grounds on which a licence can be granted are narrow and limited.

Implications for trust service providers in Guernsey

These prohibitions have been in the pipeline for some time, and it would appear that lessons have been learned from the problems caused by the EU prohibition of trust and corporate services.

Nevertheless, the amendments bring with them an additional set of considerations for trust and corporate service providers in Guernsey. While there is, as of yet, limited guidance on the application of Regulation 18C, trust service providers will need to turn their minds to any impact these new provisions will have on their business.

For example, key questions arise around the navigation of the prohibitions, particularly as to the management of existing structures. Given the potential exposure, trustees should exercise significant caution before taking steps to make changes such as the exclusion affected beneficiaries.

Further, even where trust services were provided immediately before 16 December 2022, there is serious doubt as to whether new or additional services to an existing trust structure would be protected.

Should require any more information on this subject or have any queries on sanctions more generally then our team would be happy to assist.

Contacts



Abel Lyall
Partner I Advocate
Mourant Ozannes (Guernsey) LLP
+44 (0) 1481 739 364
Abel.Lyall@mourant.com



Chris Lally
Associate (England & Wales) (non-practising)
Mourant Ozannes (Guernsey) LLP
+44 (0) 1481 739 308
Chris.Lally@mourant.com

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