

CYPRUS FIDUCIARY ASSOCIATION

CYFA 2022 Seminar # : International Sanctions & Professional Services in Cyprus: Overview, Impact and Concerns



Tuesday, 28th June, 2022
Speakers: Mr Stavros Pavlou,
Mrs Stella Strati

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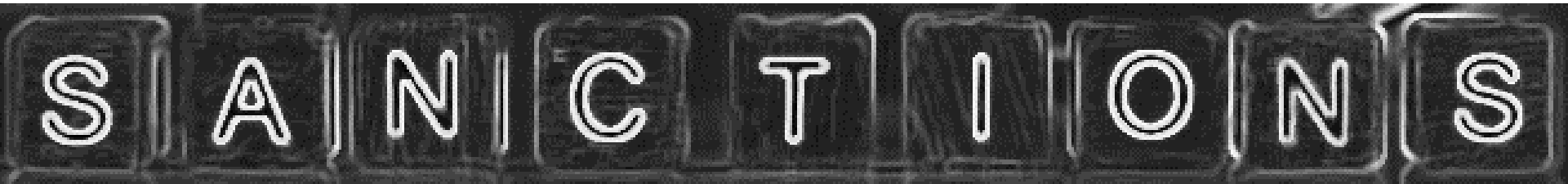
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Applicable European Regulations:

- Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine.
- Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine.



Council Regulation (EU) No 269/2014

BASIC PROHIBITION – Article 2:

- All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex I shall be frozen.
- No funds or economic resources shall be made available, directly or indirectly, to or for the benefit of natural persons or natural or legal persons, entities or bodies associated with them listed in Annex I.

Council Regulation (EU) No 269/2014

For the purposes of this Regulation, the following definitions apply – Article 1:

- 'economic resources' means assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but may be used to obtain funds, goods or services;
- 'freezing of economic resources' means preventing the use of economic resources to obtain funds, goods or services in any way, including, but not limited to, by selling, hiring or mortgaging them;
- 'freezing of funds' means preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination or any other change that would enable the funds to be used, including portfolio management;



Council Regulation (EU) No 269/2014

- 'funds' means financial assets and benefits of every kind, including, but not limited to:
 - i. cash, cheques, claims on money, drafts, money orders and other payment instruments;
 - ii. deposits with financial institutions or other entities, balances on accounts, debts and debt obligations;
 - iii. publicly- and privately-traded securities and debt instruments, including stocks and shares, certificates representing securities, bonds, notes, warrants, debentures and derivatives contracts;
 - iv. interest, dividends or other income on or value accruing from or generated by assets;
 - v. credit, right of set-off, guarantees, performance bonds or other financial commitments;
 - vi. letters of credit, bills of lading, bills of sale; and
 - vii. documents showing evidence of an interest in funds or financial resources;

Council Regulation (EU) No 269/2014

BASIC POINTS RELATING TO THE PROHIBITION OF ARTICLE 2:

- **A Natural Person** is considered to be subject to the restrictive measures if his/her name is included in Annex I of Regulation 269.
- The criterion in relation to the ownership of a **legal person** is the holding of more than 50% of proprietary rights.
- **Control of a legal person** – various criteria in accordance with the guidelines issued by the EU from time to time. This concept includes every form of indirect control from the listed person, even as a result of an agreement with third parties.

Council Regulation (EU) No 269/2014

BASIC POINTS RELATING TO THE PROHIBITION OF ARTICLE 2 :

- Legal persons, entities or bodies **associated** with them - Usually included in the “Reasons” column in Annex I of Regulation 269.
- **Family members** – They are not directly subject to the prohibitions if their name is not expressly included in Annex I of Regulation 269. However, according to the available EU guidance, any assets that were transferred to a non-listed third person (or a family member) but are still controlled by the person subject to the sanctions, will be considered as frozen. Persons under the age of 18 cannot be included in the sanctions.



Council Regulation (EU) No 269/2014

A company under your administration (or the shareholder or UBO of such company) has been included in Annex I of Regulation 269.

What services can you continue to offer?



CORPORATE/ADMINISTRATIVE SERVICES

- All corporate and administrative services to persons or entities listed in Annex I of Regulation 269 must be suspended.
- **Question:** What actions should an ASP take to ensure that the assets and economic resources of a company under administration are frozen?
- Only services that are strictly limited to what is absolutely necessary for the entity to continue to exist and to the essential activities without which the entity would not be able to function legally, can be provided.



CORPORATE/ADMINISTRATIVE SERVICES

- The necessary services include:
 - Accounting, bookkeeping and audit;
 - Submission of tax returns;
 - Administrative services that are strictly limited for the existence of the Company (i.e. submission of Annual Return).
- Payments to public authorities are deemed as authorised and include the payment of:
 - Taxes;
 - Social Insurance;
 - Fees of the Registrar of Companies;
 - Public utilities charges.



QUESTION:

- A Company under your administration has been listed in Annex I of Regulation 269. You provide director, secretary and registered office services. As a result the funds and economic resources of this entity have been frozen and you have suspended all services.
 - In the meantime you are informed that legal proceedings are initiated against this Company abroad and that it needs to engage a legal counsel to represent it.
- **What actions are you allowed to take in relation such proceedings?**



Professional Expenses

ARTICLE 4.1 (b) of REGULATION (EU) No 269:

- By way of derogation from Article 2, the competent authorities of the Member States may authorise the release of certain frozen funds or economic resources, or the making available of certain funds or economic resources, under such conditions as they deem appropriate, after having determined that the funds or economic resources concerned are:

(b) intended exclusively for payment of reasonable professional fees or reimbursement of incurred expenses associated with the provision of legal services;

- It is required to submit an application to the Unit for the Implementation of Sanctions in the Financial Sector of the Ministry of Finance.



COUNCIL REGULATION (EU) No 833/2014

- Regulation 833 introduces specific prohibitions that are applicable to the persons included in the Annexes to this Regulation.
- However more **general prohibitions** are also provided for in Regulation 833, in relation to any Russian nationals or natural persons residing in the Russian Federation or legal persons, entities or bodies established in Russia.
- **Article 5f** provides that:
 - It shall be prohibited to sell transferable securities denominated in any official currency of a Member State issued after 12 April 2022 or units in collective investment undertakings providing exposure to such securities, to any Russian national or natural person residing in Russia or any legal person, entity or body established in Russia.
- **Question:** One of your clients, a Russian national residing in Russia (who is not subject to any sanctions) wants to establish a Cypriot company with him as the sole shareholder. Can you offer this service to him?

COUNCIL REGULATION (EU) No 833/2014

Article 5m:

- It shall be prohibited to register, provide a registered office, business or administrative address as well as management services to, a trust or any similar legal arrangement having as a trustor or a beneficiary (a) Russian nationals or natural persons residing in Russia; (b) legal persons, entities or bodies established in Russia; (c) legal persons, entities or bodies whose proprietary rights are directly or indirectly owned for more than 50 % by a natural or legal person, entity or body referred to in points (a) or (b); (d) legal persons, entities or bodies controlled by a natural or legal person, entity or body referred to in points (a), (b) or (c); (e) a natural or legal person, entity or body acting on behalf or at the direction of a natural or legal person, entity or body referred to in points (a), (b), (c) or (d).
- It is prohibited as of 5 July 2022 to act as, or arrange for another person to act as, a trustee, nominee shareholder, director, secretary or a similar position, for a trust or similar legal arrangement as above.
- The relevant structures should be terminated by 5 July 2022.
- The prohibition shall not apply when the trustor or beneficiary is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State.

➤ **QUESTION:** How does the above exception apply?

COUNCIL REGULATION (EU) No 833/2014

Article 5n:

- It shall be prohibited to provide, directly or indirectly, accounting, auditing, including statutory audit, bookkeeping or tax consulting services, or business and management consulting or public relations services to:
 - (a) the Government of Russia; or
 - (b) legal persons, entities or bodies established in Russia.

- The expression 'legal persons, entities or bodies established in Russia' seems to mean legal entities that have their registered office or business address in the Russian Federation. The prohibition does not extend to companies based in an EU member state and owned or controlled by Russian nationals or residents in Russia.

COUNCIL REGULATION (EU) No 833/2014

Therefore:

- ASPs are prohibited by Regulation 833 to offer specific services to Russian nationals or Russian residents or legal persons established in Russia.
- ASPs should conduct thorough and careful checks prior to accepting new work, to ensure that the specific structure, transaction or service is not caught by the prohibitions of Regulation 833.

Criminal Offences

- The restrictive measures imposed by the Regulation do not themselves create criminal offences, but it is for the member states to introduce criminal offences while implementing the relevant sanctions in their domestic legal systems. Pursuant to the applicable Regulations, member states shall lay down the rules on penalties applicable to infringements of the provisions of these Regulations and shall take all measures necessary to ensure that they are implemented.
- The Republic of Cyprus has in April 2016 enacted Law 58(I)/2016 concerning the Application of the Provisions of the Resolutions or the Decisions of the UN Security Council (Sanctions) and the Decisions and Regulations of the Council of the European Union (Restrictive Measures) (the “Sanctions’ Law”) under which Cyprus has introduced specific measures and penalties for the breach and/or non-compliance with the Regulation and any sanctions approved by the executive or legislative bodies of the EU.



Criminal Offences

In relation to breaches of both Regulations, the Sanctions' Law states:

4 (1) Any person breaching any of the provisions of the Resolutions or Decisions of the Security Council (sanctions) or/and the Decisions and Regulations of the Council of the European Union (Restrictive Measures), is guilty of an offence, and with prejudice to any greater penalties provided for under any other legislation, in the event of his/her conviction the penalty will be:

- a) In the event of a natural person, imprisonment not exceeding two (2) years or to a fine not exceeding one hundred thousand Euro (€100.000) or to both penalties;
- b) In the event of a legal entity, to a monetary fine not exceeding three hundred thousand Euro (€300.000).

4. (2) Criminal prosecution of any person in violation of this Section is carried out only with the approval of the Attorney General of the Republic.



COMMON CONCERNS

- INTERNATIONAL SANCTIONS:
 - It is recommended to be taken into consideration.
 - Are service providers obliged not to offer any services to persons subject to international (but not EU) sanctions?

- REPUTATIONAL MATTERS:
 - Professionals are being targeted due to the fact that their clients are listed in international and EU sanctions.
 - Is bad publicity something to consider when you onboard a client?

- INCREASED COMPLIANCE OBLIGATIONS:
 - Need to harmonize internal procedures and update manuals.
 - Ongoing monitoring of updated laws and regulations.
 - Reporting obligations.

COMMON CONCERNS

- **EU GUIDANCE:**
 - The introduction and implementation of restrictive measures must always be in accordance with international law. They must respect human rights and fundamental freedoms, in particular due process and the right to an effective remedy. The measures imposed must always be proportionate to their objective.
 - The restrictive measures should, in particular, be drafted in light of the obligation under Article 6(3) of the Treaty of the EU, for the EU to respect fundamental rights, as guaranteed by the European Convention on Human Rights and as they result from the constitutional traditions common to the Member States, as general principles of Union law.
 - The measures taken should target those identified as responsible for the policies or actions that have prompted the EU decisions to impose restrictive measures and those benefiting from and supporting such policies and actions. Such targeted measures are more effective than indiscriminate measures and minimise adverse consequences for those not responsible for such policies and actions.

COMMON CONCERNS

- POSSIBLE UNCONSTITUTIONALITY OF GENERAL PROHIBITIONS INCLUDED IN THE EU RESTRICTIVE MEASURES. POSSIBLE VIOLATION OF HUMAN RIGHTS.
- POSSIBLE CRIMINAL OFFENCES.
- INFLEXIBILITY OF CYPRIOT BANKING INSTITUTIONS.
- PAYMENTS:
 - Difficulties in relation to the payment of professional fees from Russian clients, the assets of whom have not been frozen.
 - Difficulties in performing banking transactions even for clients that have not been included in the Annexes to the Regulations.

COMMON CONCERNS

- **DEPENDANCE OF PROFESSIONAL SERVICES ON THE RUSSIAN MARKET:**
 - Is it late to turn to new markets?
 - What will the future bring?

- **LACK OF SATISFACTORY GUIDANCE AND CASELAW:**
 - Lack of certainty as to how specific matters will be potentially judged by the court.

- **APPLICATIONS TO THE UNIT FOR THE IMPLEMENTATION OF SANCTIONS:**
 - Only relating to requests expressly provided for in the applicable EU Regulations. Not for obtaining an opinion or confirmation that a specific corporate structure is not included in the sanctions.
 - However the Unit can examine applications in relation to the mistaken freezing of funds in banking institutions.





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Thank you.



PATRIKIOS PAVLOU
& ASSOCIATES LLC



ADVOCATES - LEGAL CONSULTANTS

Patrician Chambers
Patrician Chambers, 332 Agiou Andreou
Str.,
3035 Limassol, Cyprus

T. +357 25871599 | F. +357 25344548

info@pavlaw.com

www.pavlaw.com

Follow us:  

CYPRUS FIDUCIARY ASSOCIATION

Business Address:

6 Emmanuel Roide Street,
Office 402, 1095 Nicosia, Cyprus

Tel.: +357 22 256263

Fax: +357 22 256364

E-mail: info@cyfa.org.cy

Website: www.cyfa.org.cy