

CYPRUS FIDUCIARY ASSOCIATION

CYFA 2023 Seminar #11: “Sanctions Applied: Updates and Practical Considerations”



Wednesday, 29 November 2023
Speakers: Mr. Stavros Pavlou,
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Speakers



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Applicable European Regulations

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

REGULATION 269



Regulation 269

SCOPE OF APPLICATION

■ **Article 17:**

- a) Within the territory of the Union, including its airspace;
- b) On board any aircraft or any vessel under the jurisdiction of a member state;
- c) To any person inside or outside the territory of the Union who is a national of an EU member state;
- d) to any legal person, entity or body, inside or outside the territory of the Union, which is incorporated under the law of a member state;
- e) To any legal person, entity or body in respect of any business done in whole or in part within the Union.

Regulation 269

BASIC PROHIBITION – Article 2:

- All funds and economic resources belonging to, owned, held or controlled by any natural or legal persons, entities or bodies, or natural or legal persons 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.



Regulation 269

Definitions provided by Article 1 of Regulation 269:

- '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;

Regulation 269

- '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;

Regulation 269

Question:

A Cyprus company maintains a bank account with Sberbank in Russia. Sberbank has been included in Annex I to regulation 269 as of 21 July 2022. The Cyprus company is not subject to any sanctions whatsoever,

- **Are the funds deposited in the bank account frozen?**



Regulation 269

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 to Regulation 269.
- The criterion for 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, including (but not limited to):
 - Power to appoint or remove the majority of the members of the management body;
 - Controlling alone, pursuant to an agreement with other shareholders, a majority of voting rights;
 - Having the right to exercise a dominant influence over a legal person, pursuant to an agreement entered into therewith, or to a provision in its Memorandum or Articles of Association;
 - Using all or part of the assets of a legal person;
 - Sharing jointly and severally the financial liabilities of a legal person, or guaranteeing them;
 - Having influence as regards corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters;
 - Putting in place or maintaining mechanisms to monitor the commercial conduct of the entity.

Regulation 269

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 to Regulation 269.
- **Family members** – They are not directly subject to the prohibitions if their name is not expressly included in Annex I to 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.



Regulation 269

Question:

The shareholder of a Cyprus company is a Russian Public Company which is **not** subject to sanctions. However the General Director of the Russian company is personally included in Annex I to Regulation 269.

- **Can the Cyprus company be considered as sanctioned under Regulation 269?**



Regulation 269

BASIC POINTS RELATING TO THE PROHIBITION OF ARTICLE 2 :

- **Shares** qualify as funds and therefore must be frozen if belonging to, owned, held or controlled by persons listed in Annex I to Regulation 269.
- It is prohibited for the listed person to exercise any voting rights.
- Therefore voting rights are also frozen.
- Listed persons may not exercise directly or indirectly their voting rights in an entity.

Regulation 269

- **Article 7:**
 - Article 2(2) shall not prevent the crediting of the frozen accounts by financial or credit institutions that receive funds transferred by third parties onto the account of a listed natural or legal person, provided that any additions to such accounts will also be frozen. The financial or credit institution shall inform the relevant competent authority about any such transaction without delay.
 - Article 2(2) shall not apply to the addition to frozen accounts of: (a) interest or other earnings on those accounts; (b) payments due under contracts, agreements or obligations that were concluded or arose before the date on which the natural or legal person, entity or body referred to in Article 2 has been included in Annex I; or (c) payments due under judicial, administrative or arbitral decisions rendered in a member state or enforceable in the member state concerned; provided that any such interest, other earnings and payments are frozen in accordance with Article 2(1).
- **But would a Cyprus banking institution accept the crediting of a frozen account with funds transferred by third parties?**

Regulation 269

▪ **Article 8:**

Entities and bodies shall:

(a) supply immediately any information which would facilitate implementation of this Regulation, such as:

- information on funds and economic resources frozen in accordance with Article 2 or information held about funds and economic resources within Union territory belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in Annex I and which have not been treated as frozen by the natural and legal persons, entities and bodies obliged to do so, to the competent authority of the Member State where they are resident or located, within two weeks of acquiring this information;
- information held on funds and economic resources within Union territory belonging to, owned, held or controlled by natural or legal persons, entities or bodies listed in Annex I and which have been subject to any move, transfer, alteration, use of, access to, or dealing referred to in Article 1(e) or 1(f) in the two weeks preceding the listing of those natural or legal persons, entities or bodies in Annex I, to the competent authority of the Member State where they are resident or located, within two weeks of acquiring this information; and

(b) cooperate with the competent authority in any verification of such information

Regulation 269

- **Article 9 – Circumvention:** it shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures referred to in Article 2.

- **Article 10:**
 - The freezing of funds and economic resources or the refusal to make funds or economic resources available, carried out in good faith on the basis that such action is in accordance with Regulation 269, shall not give rise to liability of any kind on the part of the natural or legal person implementing it, or its directors or employees, unless it is proved that the funds and economic resources were frozen or withheld as a result of negligence.

 - Actions by natural or legal persons, entities or bodies shall not give rise to any liability of any kind on their part if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in Regulation 269.

Regulation 269

PROVISION OF CORPORATE SERVICES:

A company under your administration (or the shareholder or UBO controlling more than 50% of the shares in such company) has been included in Annex I to Regulation 269.

- **What services can you continue to offer?**
- **Can accounting or audit services be offered?**



Regulation 269

- All corporate and administrative services to persons or entities listed in Annex I to Regulation 269 must be suspended.
- 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.
- Necessary services:
 - 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;
 - Registrar of Companies fees;
 - Public utilities charges.

Regulation 269

- The relevant announcement of the Ministry of Finance dated 13 April 2022 can be found here:
- <https://mof.gov.cy/en/press-office/announcements/1101/?ctype=ar>



REGULATION 833



Regulation 833

- 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.
- **Scope of application:** Article 13 of Regulation 833, mirrors the provisions of Regulation 269.
- **Article 12 - Circumvention:** It shall be prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent prohibitions in Regulation 833.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO SELL SECURITIES – Article 5f:

- *“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.”*
- The prohibition applies to transferable securities issued by both public and **private** companies.
- As per the EU Frequently Asked Questions this prohibition does not cover the sale of securities to non-Russian entities that are owned by Russian nationals. However the provision of Article 12 in relation to circumvention should be taken into consideration and *‘EU operators should exert enhanced due diligence’*.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER TRUST SERVICES – Article 5m:

- It is 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 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).

- The exemption in paragraph 4 of Article 5m states that the prohibition shall not apply when the trustor (settlor) or beneficiary is a national of a Member State, or a country member of the EEA or of Switzerland, or a natural person having a temporary or permanent residence permit in a Member State, in a country member of the EEA or in Switzerland.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER TRUST SERVICES – Article 5m:

- The prohibition to register a new trust or provide trustee services only applies where a settlor or beneficiary is a Russian person.
- Where applicable, these services could be provided or continue if these persons are removed from the trust or similar legal arrangement.
- Furthermore, in accordance with Article 5m, paragraph 4, the prohibitions do not apply where a trust or similar legal arrangement has only **one** settlor or one beneficiary who is a national of a Member State or a natural person having a temporary or permanent residence permit in a Member State.
- Finally, **paragraph 5(b) of Article 5m Regulation 833** provides that a national competent authority may also authorise the provision of services if the trustee does not accept from or distribute assets to a settlor or beneficiary in paragraph 1 (a) to (e). This means that a trust or similar legal arrangement can continue to operate, for instance, where there are several beneficiaries including EU persons.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER SERVICES – ARTICLE 5n:

- It is 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.

- It is prohibited to provide, directly or indirectly, architectural and engineering services, legal advisory services and IT consultancy services to (a) the Government of Russia; or (b) legal persons, entities or bodies established in Russia.

- The prohibitions above do not apply to:
 - the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy.
 - to the provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a member state, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a member state.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER SERVICES – ARTICLE 5n:

- The sanctions on ‘legal advisory services’ have been designed so as to preserve access to justice and the right of defence.
- ‘Legal advisory services’ include:
 - the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law;
 - participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and
 - preparation, execution and verification of legal documents.
- However, the provision of the legal advisory services may still be allowed (even outside of the EU) if it falls within the scope of Article 5n(5) of Regulation 833, i.e. if the services are strictly necessary for the exercise of the right of defense in judicial proceedings and the right to an effective legal remedy.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER SERVICES – ARTICLE 5n:

- Paragraphs 1, 2 and 2a shall not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a Member State, a country member of the European Economic Area, Switzerland or a partner country.
- Therefore such services can be offered to a Russian legal person, if for example such legal person is a subsidiary of a company established in the EU.

Regulation 833 – Relevant Prohibitions

PROHIBITION TO OFFER SERVICES – FIREWALLING DEROGATION:

- By way of derogation from paragraphs 1 and 2, the competent authorities may authorise the provision of services referred to therein, under such conditions as they deem appropriate, after having determined that those services are strictly necessary for the setting-up, certification or evaluation of a firewall which:
 - (a) removes the control by a natural or legal person, entity or body listed in Annex I to Regulation 269, over the assets of a non-listed legal person, entity or body incorporated or constituted under the law of a Member State which is owned or controlled by the former; and
 - (b) ensures that no further funds or economic resources accrue to the benefit of the listed natural or legal person, entity or body.
- The derogation only applies if the relevant conditions are met, and notably provided that:
 - the relevant services are strictly necessary for the setting-up, certification or evaluation of a firewall;
 - the firewall effectively removes the control by the listed person, entity or body over the assets of a non-listed EU person, which is owned or controlled by the former and
 - ensures that no further funds or economic resources accrue for the benefit of the listed person.

Criminal Offences

- The restrictive measures imposed by the Regulations do not themselves create criminal offences.
- It is for the member states to introduce criminal offences while implementing the relevant sanctions in their domestic legal systems.
- In accordance with the Regulations, member states shall lay down the rules on penalties applicable to infringements of the provisions thereof and shall take all measures necessary to ensure that they are implemented.
- 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) 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, Cyprus law states:

(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).

(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.

Derogations and exclusions

- **Derogations** – need to obtain clearance/approval from competent authorities.
- The relevant provision includes express reference to a particular derogation and the need to obtain an authorisation by the competent authority.
- Example - Article 4 (1) of Regulation 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;”

Derogations and exclusions

- **Exclusions:** no clearance/approval required by competent national authorities.
- The relevant prohibition: **“shall not apply...”**.
- Example: Article 5n of Regulation 833 – prohibition of legal advisory services:

“Paragraphs 1, 2 and 2a shall not apply to the provision of services intended for the exclusive use of legal persons, entities or bodies established in Russia that are owned by, or solely or jointly controlled by, a legal person, entity or body which is incorporated or constituted under the law of a member state, a county member of the EEA, Switzerland or a partner country...”



Procedure to obtain clearance

- The Ministry of Finance is the Cyprus competent authority designated under both Regulations.
- In relation to Restrictive Measures two separate units/committees have been established:
 - SEOK (The Advisory Committee on Economic Sanctions).
 - MEK (Unit for the implementation of sanctions).
- **SEOK Competence:** Examines requests for (a) the release of frozen funds; (b) provision of services; (c) accepting deposits over EUR 100,000; (d) incorrect freezing of funds.
- **MEK Competence:** Examines requests submitted by interested persons regarding approvals under the derogations – clearances for a particular activity/transaction.

Procedure to obtain clearance

- **Applicable Forms:**
 - SEOK 1- Application to release frozen funds or economic resources.
 - SEOK 2- Application for provision of services to sanctioned persons.
 - SEOK 3 - Application for derogation under Article 5b of Regulation 833.
 - SEOK 4 - application for wrong freezing of assets
 - EMEK1 – Application submitted to MEK.

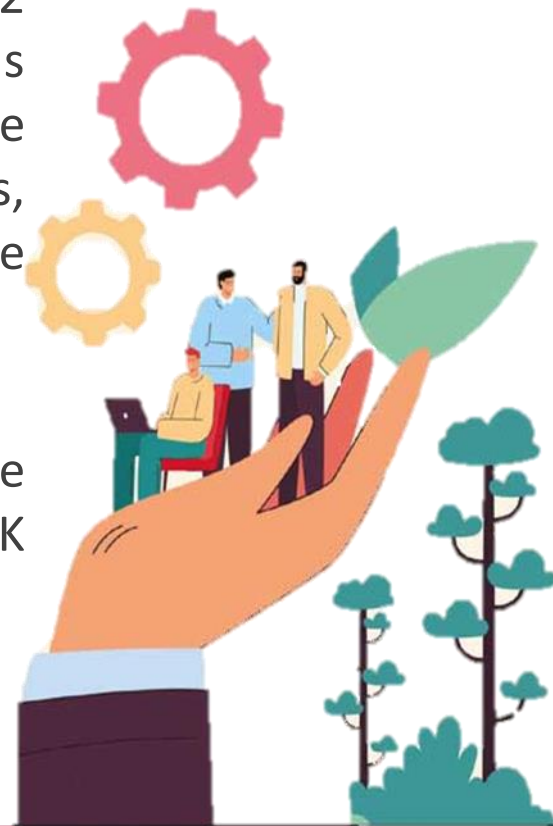
- **Supporting Documents** – all forms must be accompanied by all supporting documentation.



Procedure to obtain clearance

ANNOUNCEMENT OF THE CYPRUS REGISTRAR OF COMPANIES (ROC):

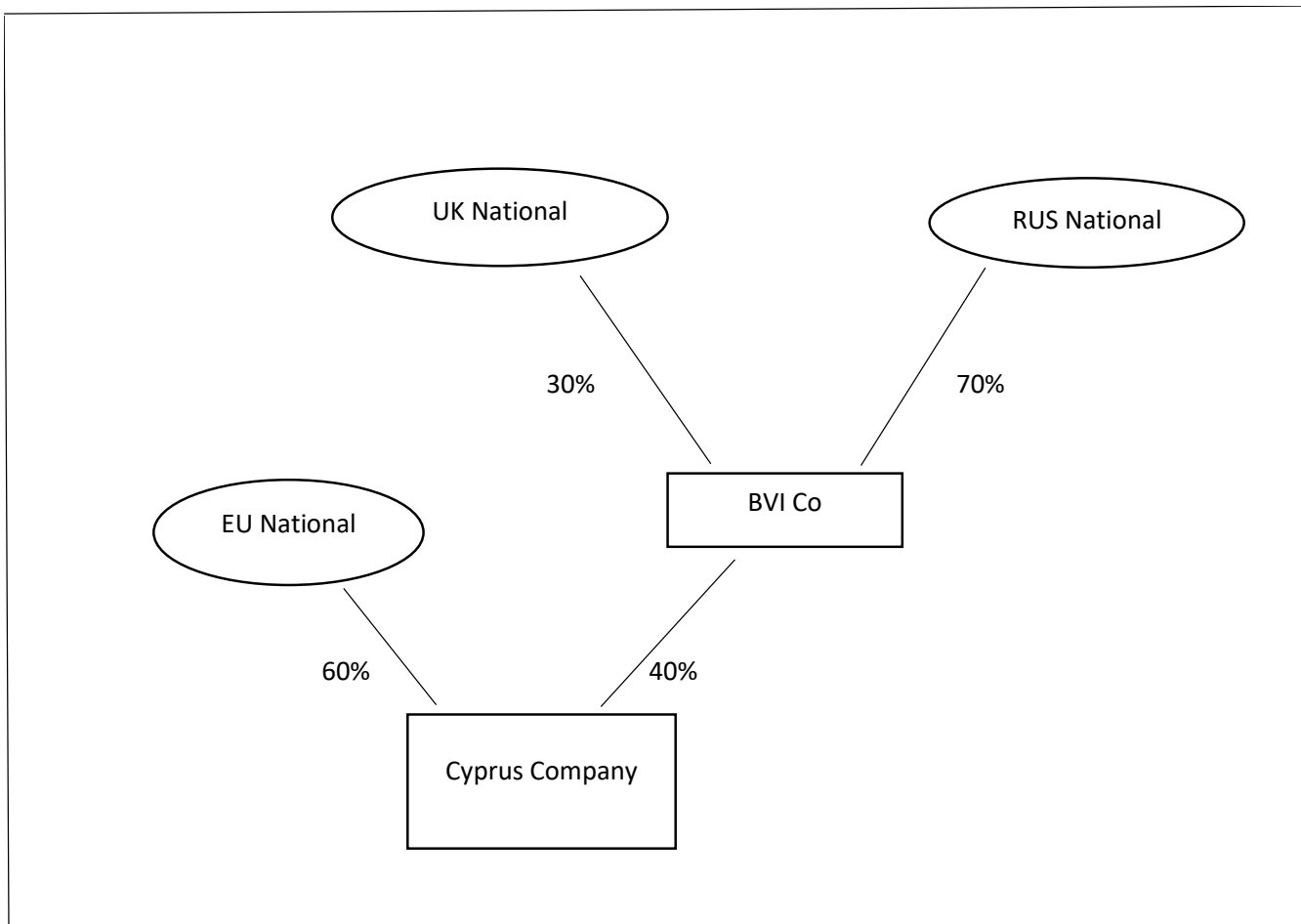
- The ROC issued an announcement on 30 May 2022 that they will accept no applications or submissions for companies, the name of which is included in the sanctions or for companies, having shareholders, UBOs or officers, who have been included in the sanctions.
- For the relevant submissions to be accepted by the ROC, an application should be first submitted to MEK for a relevant approval.



EXAMPLE 1: SEOK 4 – Wrong freezing of funds

- The shareholders of a Cyprus entity (CypCo) include an EU national physical person holding 600 ordinary shares in the issued share capital thereof and a BVI entity holding 400 shares in the issued share capital thereof.
- The shares in the BVI entity are held by two individuals, a Russian national, holding 70% of the issued shares and a UK national holding 30% of the issued shares. The Russian individual has been listed in Annex I to Regulation 269.
- As a result the Cyprus bank, in which CypCo maintains a bank account, has frozen the account of the Cyprus entity.

EXAMPLE 1: SEOK 4 – Wrong freezing of funds



SEOK 4

SEOK 4-EN

Advisory Committee on Economic Sanctions (SEOK)-application for wrong freezing of assets

The competent authority will accept applications only from regulated legal advisors. The provision for such a service is deemed as authorized without the need to apply to the competent authority. For the payment of such a service to the service provider the Financial Institution will need to apply to SEOK for the unfreezing of the funds of the sanctioned person.

Application Information

Service Provider * the applicant Legal advisor	
Contact Information - Name	
-Telephone / Fax	
-E-mail	
Date of application	
In case this application is urgent, please provide supporting documentation	
Customer's name	
Credit/Financial Institution which in your opinion has wrongly froze the customer's assets	
Person under sanctions which the Credit/Financial Institution claims control and ownership of your customer (Physical or legal)	
Regulation under which the person is sanctioned	
Information on economic activity of customer	
Number/ Code and date of previous approval (if applicable)	

PART A
Please provide a clear structure of your customer whose, in your opinion, assets are wrongly frozen by the Credit/financial Institution

SEOK 4-EN

Advisory Committee on Economic Sanctions (SEOK)-application for wrong freezing of assets

PART B

Please give your legal opinion and explain the reasons why in your opinion the person/s/entity's assets are wrongfully frozen.

PART C

Please list the submitted documents of your application with a reference in order to process your application more easily.

SEOK 4-EN

Advisory Committee on Economic Sanctions (SEOK)-application for wrong freezing of assets

PART D

Service provider-applicant control and assurance

Service providers should exercise all necessary controls in order to be assured before applying for an authorization to the Competent Authority that with their application will not circumvent the restrictions.

It is hereby emphasized that it is prohibited to participate, knowingly and intentionally, in activities the object or effect of which is to circumvent the restrictions.

The application should be sent by the applicant to SEOK at the email address:
seok@mof.gov.cy

EXAMPLE 2: EMEK1 – ROC Submissions

- For the same company, the service providers have submitted with the ROC an application for the change of director, pursuant to the resignation of one of the three directors of CypCo, and the appointment of another director, in accordance with a resolution of the board of directors of CypCo. The articles of association of CypCo provide that the minimum number of directors shall be three.
- The ROC refused to process the HE4 form, due to the fact that the Russian individual, who is included in Annex I to Regulation 269, has been notified in the Cyprus BO register as a UBO of CypCo, having a controlling interest of 28%.
- The ROC returned the form to the service providers and notified them that they need to apply to MEK for a clearance to submit the application with the ROC (in light of the ROC announcement dated 30 May 2022).

EMEK1

Sanctions Implementing Unit in the Financial Sector

EMEK1

PART A

Article of Regulation in accordance with which this application is submitted	
Provide relevant data to support this application as an urgent matter	

PART B

Date of application	
Name of applicant ¹ <small>(natural or legal person)</small>	
If the name of the applicant is included in a sanctions list, provide details	
Are of activity of the applicant	
Address of the applicant	
Contact details-name	
Contact details-telephone/fax	
Contact details-email	

PART C

Explain the proposed transaction/activity as well as the relevant existing provisions of the sanctions that require the submission of this application.

¹ Enclose the applicant's copy of identity document or passport. In case of a legal entity e.g. a company, enclose copies of legal documents of the company including its shareholding structure as well as details of the ultimate beneficial owners together with copies of identity documents or passports.

PART D

Other information or points you consider useful for the Sanctions Implementing Unit

PART E

In case you wish to submit documents in support of your application, list them below:

Sanctions Implementing Unit in the Financial Sector
c/o Ministry of Finance
Tel. 22601263
E-mail: sanctionsunit@mof.gov.cy

CASE STUDIES



CASE STUDY 1 – SALE OF SECURITIES

You receive an email from one of your clients (a Russian national residing in Dubai) saying that he wishes to purchase the shares in a Cyprus company (incorporated in June 2022) from an EU national shareholder.

- What would your reply be?
- Would your reply be any different if the shares in the Cyprus Company were denominated in USD?
- Would your reply be any different if the Client is a resident of Switzerland?
- Would your advice be any different if the Client said that he wishes to incorporate a new Cyprus Company?

CASE STUDY 2 – PROVISION OF SERVICES

You provide administrative services (authorised person, registered office and accounting/bookkeeping) to the Cyprus branch (AE) of a Russian entity. The Russian entity is not subject to any sanctions. You are requested to provide bookkeeping services to the branch for the first half of 2023.

- Do you accept the engagement?



CASE STUDY 3 - PAYMENTS

The UBO of a company under your administrations has been listed in Annex I to Regulation 269. The company maintains a bank account with a Cyprus bank with considerable funds. You are the bank account signatory. The client asks whether the below payments can be performed:

- Payment of annual levy to the ROC.
- Payment of the municipality tax.
- Payment of legal fees due to a Cyprus law firm for the filing of a court petition during 2022.
- Payment due under a contract concluded in January 2022 for the provision of Transfer Pricing services.
- Payment of dividends to be distributed for 2022 pursuant to a shareholders resolution.

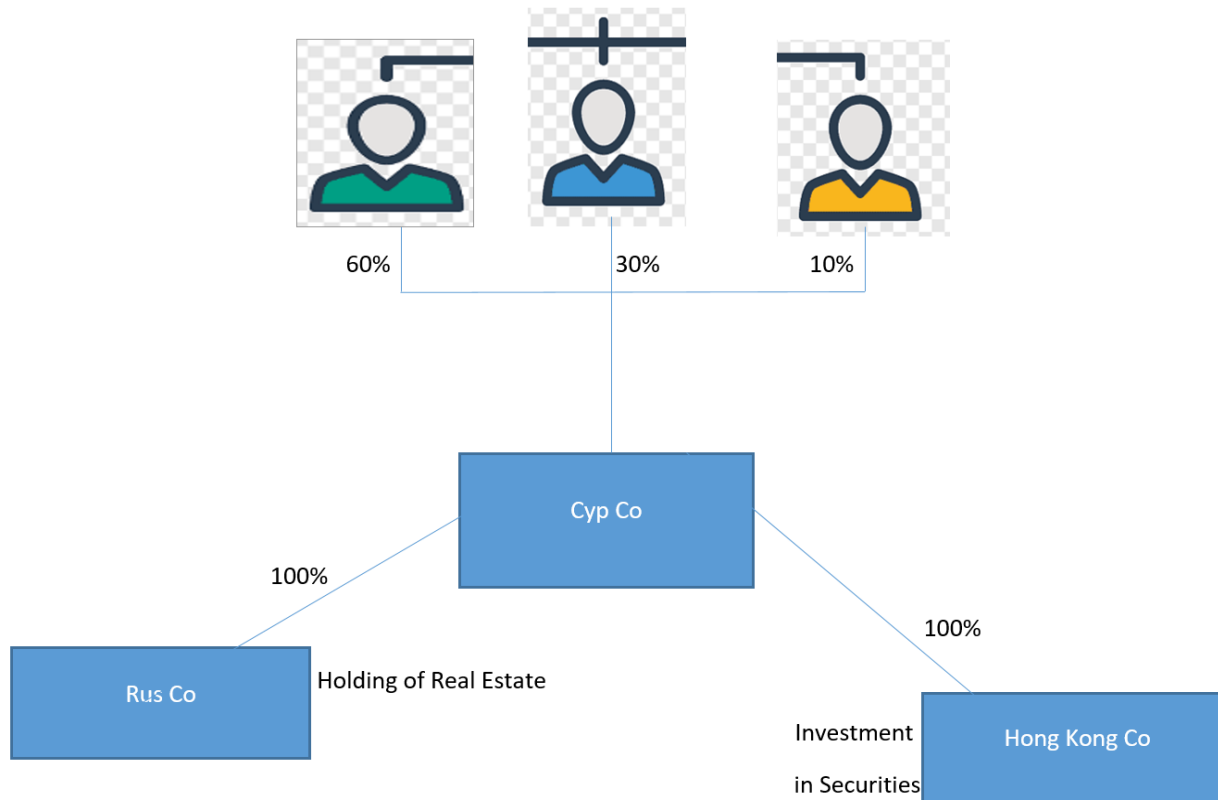
CASE STUDY 4 - TRUSTS

You act as the Trustee of a Cyprus international trust. The trust is irrevocable and fully discretionary. The settlor has not reserved any powers and the beneficiaries do not have any rights, apart from the right to be considered by the Trustee in any potential distributions. The settlor is a Russian national but resident in Switzerland. The beneficiaries include his wife (Russian national and resident in Monaco) and his adult son (Russian national and resident in Russia).

- Are you allowed to offer Trustee services under Regulation 833?
- Would your reply be different if only his son was the beneficiary?
- Would your reply be different if his wife is a Swiss resident?
- If both beneficiaries are included in Annex I to Regulation 269 would the Trustee or the trust be considered as being subject to sanctions as well?

CASE STUDY 5 – PROVISION OF CORPORATE SERVICES

Would you provide corporate services to CypCo?



CASE STUDY 5 – PROVISION OF CORPORATE SERVICES

Would you provide corporate services to CypCo?

Let's assume that all shareholders of CypCo are Russian Nationals and Residents.

- Is CypCo subject to an asset freeze if the 10% shareholder is listed in Annex I to Regulation 269?
- What if, the articles of CypCo include extensive shareholders' reserved matters, requiring unanimous members' resolutions for a number of matters?
- What would you check in relation to the holding of the Real Estate?
- What would you check in relation to the securities held by the Hong Kong subsidiary?

INCLUSION OF CYPRUS SERVICE PROVIDERS IN UK AND US SANCTIONS LISTS



UK SANCTIONS:

“FINANCIAL FIXERS”

[...] acting on behalf of or at the direction of a person who is or has been involved in obtaining a benefit from or supporting the Government of Russia, namely Roman Arkadyevich Abramovich;

[...] associated with a person who is or has been involved in obtaining a benefit from or supporting the Government of Russia, namely Roman Arkadyevich Abramovich.

UK SANCTIONS:

... associated with Alisher Usmanov, specifically through the professional services that [...] provides which benefit Usmanov. It is reasonable to suspect that [...] receives a benefit from the professional services he provides to Usmanov. Usmanov was designated by the UK Government on 3 March 2022, and is involved in obtaining a benefit from or supporting the Government of Russia.

[...] is also director of Sberbank Investments Limited, a Cyprus based subsidiary 100% owned by PJSC Sberbank. PJSC Sberbank is a Russian bank owned by the Russian Ministry of Finance. Sberbank Investments Limited is therefore a company carrying on business as a Government of Russia-affiliated entity. Therefore, [...] is involved in obtaining a benefit from or supporting the Government of Russia.

USA OFAC SANCTIONS LIST:

“TARGETING USMANOV FACILITATORS”

Usmanov has at his disposal a wide network of businesses in financial safe havens and family members through which to conduct financial transactions, enabling him to potentially circumvent sanctions

Cyprus national [...] is an Usmanov advisor who handles financial matters on behalf of Usmanov. [...] has assisted Usmanov with acquiring real estate and manages assets for both Usmanov and Usmanov’s family members. [...] was designated for having acted or purported to act for or on behalf of, directly or indirectly, Usmanov, a person whose property and interests in property are blocked.

CYPRUS CONFIDENTIAL

- *“The Cyprus Confidential investigation... exposes how Cyprus-based financial services firms have enabled the Russian elite — including President Vladimir Putin’s inner circle — to shelter their wealth and then, as Russia invaded Ukraine in 2022, shield billions of dollars in assets from the threat of impending sanctions.”*
- Cyprus, has launched a criminal investigation, to identify any breaches or circumvention of the sanctions by service providers.

CONSIDERATIONS :

- Is there a future for any Russian related business, in the field of professional and corporate services in Cyprus?
- Is Cyprus able to protect and safeguard the provision of corporate services, within the EU context and by redirecting the professional services industry towards the West?



FINAL REMARKS

The professional services industry will never be the same again:

- Increased compliance and reporting obligations.
- Possible criminal offences.
- Reputational risks.
- Lack of guidance and certainty.
- Necessity for obtaining MEK/SEOK approvals leading to additional administrative burden.
- Difficulty with payments.
- Inflexibility of, and lack of cooperation from, Cyprus banking institutions.



ANY QUESTIONS?



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Thank you.



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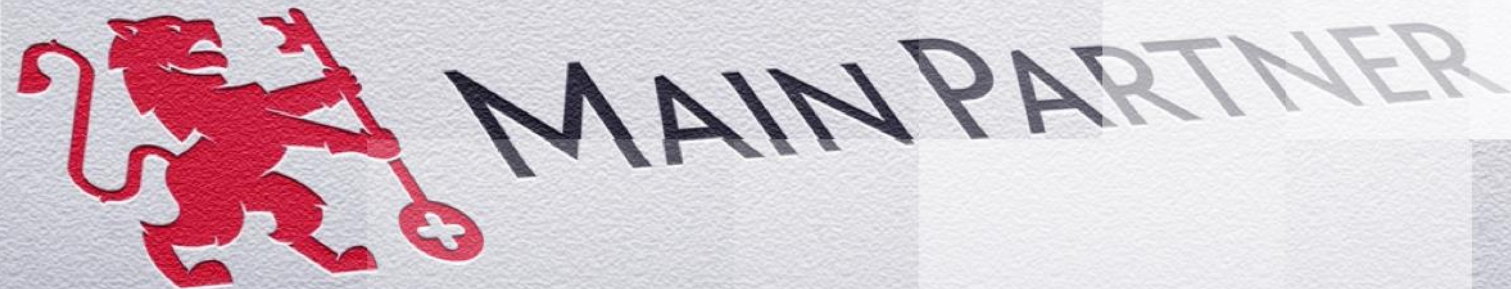
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Sanctions: practical aspects and case studies

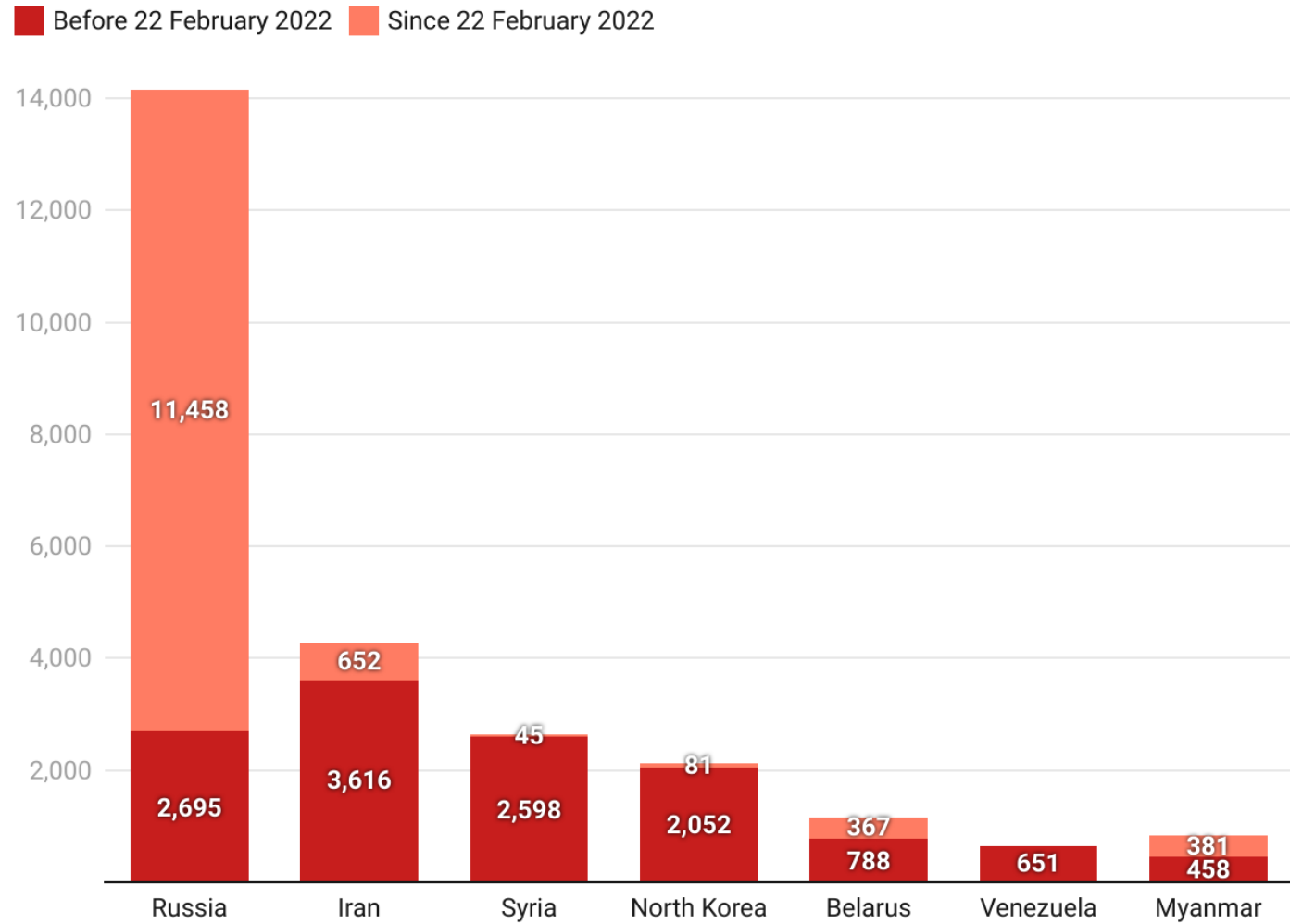
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Overview of sanctions: top sanctioned countries?

Russia Tops Sanctioned Countries



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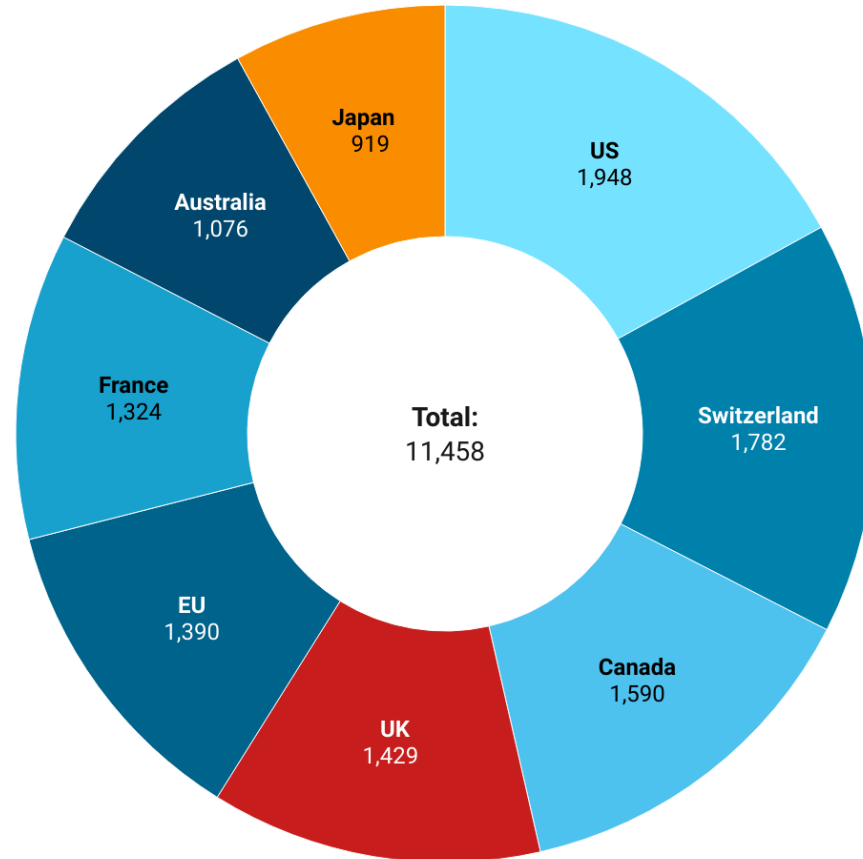


Overview of sanctions: who sanctioned Russia?

Who Sanctioned Russia

Since 22 February 2022

US (1,948) Switzerland (1,782) Canada (1,590) UK (1,429) EU (1,390)
France (1,324) Australia (1,076) Japan (919)



Source: Castellum.AI • Created with Datawrapper

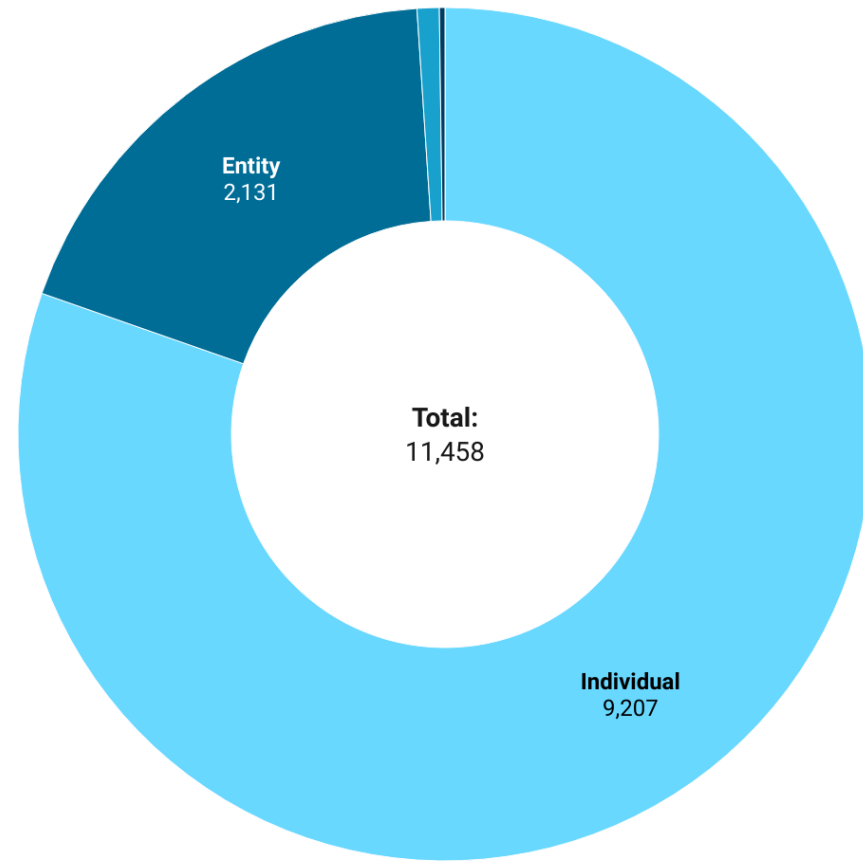


Overview of sanctions targeting Russia by type

Sanctions Targeting Russia by Type

Since 22 February 2022

Individual (9,207) Entity (2,131) Vessel (96) Aircraft (24)



Includes designations from: Australia, Canada, EU, France, Japan, Switzerland, UK, and US.

Source: Castellum.AI • Created with Datawrapper



Overview of sanctions: major sectoral sanctions and export control restrictions

Major Sectoral Sanctions and Export Control Restrictions

Implementation: - Announced or Implemented, Not Announced

	Australia	Canada	EU	Japan	Switzerland	UK	US
Oil price cap and restrictions on Russian oil imports							
Restrictions on Russian gas imports							
Restrictions on Russian coal imports							
Restrictions on Russian gold imports							
Restrictions on maritime services for Russian oil exports							
Restrictions on Russian metals imports (e.g. iron and steel)							
Restrictions on export of metals to Russia							
Restrictions on export of luxury goods to Russia							
Restrictions on import of luxury goods from Russia							
Restrictions on export of technology to Russia							
Restrictions on broadcasts by Russian state-owned media							
Restrictions on export of professional services (e.g. consulting, accounting services) to Russia							
Restrictions on Russian access to IMF & World Bank funds							

Banking: account opening

	Cyprus	Switzerland
Basic account opening documents/requirements	1. EU/EEA documents, including ARC 2. Source of funds 3. Rental agreement/utility bill with consumption	1. EU/EEA documents 2. Source of funds 3. Rental agreement/utility bill/confirmation from Mukhtar 4. Tax residency certificate
Advantages/disadvantages	4. No requirement to the minimum balance 5. No transfers from/to Russia in rubles 6. Ability to have a debit card	5. Min balance: 5 M 6. Transfers from and to Russia in rubles - possible 7. Ability to use loans

Cases...banking :



Rockwool case vs ABN Amro (C/10/665575 / KG ZA 23-835, Rotterdam, civil law), as of 1 November, 2023

Summary of proceedings

With reference to Article 35 of the General Banking Terms and Conditions, the defendant **terminated the banking relationship(s)** with the plaintiffs due to the risks identified by the defendant with regard to **sanctions violations, third-party payments**, switching suppliers and sustainability challenges. In these proceedings, the plaintiffs claim that the defendant shall **be obliged to continue banking relationship(s)** in its current form and on the same terms. **This claim is granted** due to the fact that the use of a right to terminate the agreement is unacceptable **according to the standards of reasonableness and fairness.**



Cases...banking :

Vekselberg and Postfinance bank (4A84,2021,Switzerland, civil law), as of 2 February, 2022

Summary of proceedings

- Vekselberg received an **account closure letter** from Postfinance in **2018** with a reason- bank does not have an appetite for such risk (Vekselberg was included into US sanctions list);
- **2020-** Bern court supported the decision of Postfinance bank (e.g. **account closure**);
- **2 February, 2022-** High Court of Switzerland (during the appeal) ruled that the bank **shall not close the account** of Vekselberg, even the client was included into sanctions list.

Outcome:

- Vekselberg will **continue to have an account in Postfinance**, opened in CHF
- **Postfinance shall compensate** Vekselberg with –
 - ✓ **8,000 CHF** for the court proceedings, and
 - ✓ **9,000 CHF** as moral compensation.





Sanctions packages:

Russian client with no EU documents cannot:

- Incorporate a EU company;
- Open an account in a EU bank and deposit more than EUR 100,000;
- Set up a trust (even he has Russian and Swiss documents)... strange



Adding **US sanctions** whereas U.S. persons are prohibited from exporting, reexporting, selling, or supplying, directly or indirectly **to persons located in the Russian Federation** :

- accounting
- trust services
- corporate formation services
- management consulting
- quantum computing services
- architecture services
- engineering services

12 package is coming :

- Ban on russian diamonds; and
- Measures to better enforce the price cap on Russian oil.

The EU is also proposing to:

- Ban Russians from holding posts in European companies that provide crypto-asset wallets, accounts and custody services;
- Ban providing software licenses for the management of enterprises and software for industrial design and manufacture;
- **Require that firms in Europe owned or controlled by Russians or Russian entities seek authorization to transfer funds out of the EU;**
- Introduce a requirement that exporters introduce clauses in their contracts prohibiting the re-export of Russia to certain goods.



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