

Russia Guidance

Guidance for the financial and investment restrictions in Russia (Sanctions) (EU Exit) Regulations 2019



HM Treasury
Office of Financial
Sanctions Implementation

June 2021



Russia (Sanctions) (EU Exit) regulations 2019

The Office of Financial Sanctions Implementation (OFSI), part of HM Treasury, is responsible for improving the understanding, implementation and enforcement of financial sanctions in the UK. We publish a list of individuals and organisations subject to financial sanctions as well as general guidance to help you comply. This is available on OFSI's gov.uk webpages – see back page of this guidance.

The Russia (Sanctions) (EU Exit) Regulations 2019 (the Regulations) impose financial, trade, transport and immigration sanctions to encourage Russia to cease actions which destabilise Ukraine, including actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The territorial extent of the Regulations is the whole of the UK, and it also applies to conduct by UK persons – both

nationals and corporate bodies - outside the UK. The Regulations entered into force on 'exit day' and replace the EU sanctions regime relating to Russia's actions in the Ukraine.

The names of designated persons are not included in the Regulations, but instead will appear on the administrative list on gov.uk. This enables immediate publication following a decision to make or amend a designation, limiting the opportunity for designated persons to remove assets from the UK.

OFSI guidance on Russia regulations

While there are different sanctions outlined in the Regulations, this guidance produced by OFSI expands specifically on financial and investment restrictions. In addition to asset freezes common among other sanctions regimes, these restrictions include unique measures that seek to prevent access to

capital markets for Russian state-owned financial institutions.

They also detail restrictions on investments in relation to the Republic of Crimea and the city of Sevastopol.

Any exceptions related to each restriction, including instances where you may be able to apply for a licence from OFSI, are also outlined.

This guidance details instances involving both trade and financial sanctions separately, and also where they overlap. In addition, there is guidance available on the other restrictions detailed in the regulations, affecting transport, immigration, and trade sanctions in respect of Russia.

That additional guidance is published by other UK government departments including the Department for International Trade, Home Office and the Foreign and Commonwealth Office.

To achieve their purposes, the Regulations impose a number of prohibitions and obligations. The Regulations establish penalties and offences to enforce these, which are set out in detail in the corresponding report made under section 18 of the Sanctions and Anti-Money Laundering Act 2018 (SAMLA) which is available on gov.uk.

Asset Freezes

The Regulations detail financial prohibitions in relation to designated persons (DPs). DPs are persons (natural or legal) who are subject to financial sanctions. These sanctions include but are not limited to: asset freezes, restrictions on making funds and or economic resources available to, or for the benefit of, DPs, either directly or indirectly.

There are exceptions to some of the asset freezing provisions which apply within certain defined circumstances. Additionally, where a DP's assets have been frozen, the person or representative may apply for a licence from OFSI to be able to utilise their funds or economic resources in certain circumstances. For further information on asset freezes, see

OFSI's General Guidance on Financial Sanctions.

Financial services – processing payments

The Regulations set out how to prevent a DP benefitting from procuring financial services. Where the provision of financial services is prohibited, this includes the provision of processing payments. This comprises payment and money transmission services, including credit, charge and debit cards, travellers' cheques and bankers' drafts. This differs from the EU sanctions regime.

Other restrictions: financial services and investments

Transferable securities or money-market instruments

The Regulations detail prohibitions on dealing in certain transferable securities and money market instruments. They prohibit dealing with, directly or indirectly, a transferable security or money market instrument if it has a maturity exceeding 30 days and was issued after 1 August 2014 by the following list in the box below:

- Sberbank
- VTB Bank
- Gazprombank
- Vnesheconombank (VEB)
- Rosselkhozbank
- An entity incorporated or constituted in a country other than the UK which is owned directly or indirectly by one or more of the banks listed above

The regulations also prohibit dealing, directly or indirectly, with a transferable security or money market instrument if it has a maturity exceeding 30 days and was issued after 12 September 2014 by the following again set out in the box below:

- OPK Oboronprom
- United Aircraft Corporation
- Uralvagonzavod
- Rosneft
- Transneft
- Gazprom Neft
- An entity incorporated or constituted in a country other than the UK which is owned, directly or indirectly, by one of these entities.

Prohibitions on dealing with certain transferable securities and money market instruments catch the securities of subsidiaries established in a country other than the UK and owned by the entities listed above (see Schedule 2 to the Regulations). This means that the securities of subsidiaries incorporated or established in the UK are not subject to these prohibitions. This differs from the EU sanctions regime.

There are no grounds under which a licence can be granted in relation to these prohibitions. There is an exception for acts done for the purposes of national security or the prevention of serious crime.

“Money-market instrument” means an instrument of a kind normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers, excluding instruments of payment.

“Transferable security” is a security that’s negotiable on the capital markets, including shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares. It also includes bonds or other forms of securitised debt, including depositary receipts in respect of such securities.

Other securities that give the right to purchase or sell any security of a kind mentioned above are also covered by the term. However these do exclude instruments of payment.

Loan and credit arrangements

You must not, directly or indirectly, grant, or enter into any arrangement to grant a new loan or credit with a maturity exceeding 30 days to:

- Sberbank
- VTB Bank
- Gazprombank
- Vnesheconombank (VEB)
- Rosselkhozbank
- OPK Oboronprom
- United Aircraft Corporation
- Uralvagonzavod
- Rosneft
- Transneft
- Gazprom Neft
- An entity incorporated or constituted in a country other than the UK which is owned, directly or indirectly, by one of the abovementioned entities.

The 11 entities listed immediately above, which appear in Schedule 2 to the Regulations, **are not subject to an asset freeze.**

Exceptions

The prohibitions outlined above in relation to loans and credit arrangements are not breached if any of the following are granted:

- A relevant loan which makes funds available for a non-restricted trade. “Non-restricted trade” refers to any trade (goods and services other than financial services) that is not otherwise prohibited under the Regulations. The underlying trade must have a UK nexus.
- A relevant loan that makes emergency funds available to meet applicable solvency or liquidity criteria for a relevant subsidiary, as defined in the Regulations.
- A relevant loan consisting of a drawdown or disbursement made under an

arrangement that was entered in to before 15th September 2014, as detailed in the Regulations.

The national security or prevention of serious crime exception applies to all prohibitions.

Investments in relation to Crimea

Any reference to Crimea in the Regulations means the Autonomous Republic of Crimea and the city of Sevastopol.

Under the Regulations, it is prohibited to, directly or indirectly, extend a participation, or acquire any ownership interest, in land located in Crimea. The same restrictions also apply when it comes to acquiring any ownership interest in an entity which has a place of business located in Crimea (a “relevant entity”).

There is also a prohibition on granting any loan or credit to a relevant entity. This prohibition includes entering into any arrangement to grant a loan or credit, or otherwise provide funds, including equity capital, to a relevant entity, or for the purpose of financing any such entity.

It is prohibited to establish a joint venture in Crimea or with a relevant entity.

It is also prohibited to provide any investment services directly related to any of the activities listed above.

Exceptions

Provided that a person notifies HM Treasury no later than five working days before the day on which an act is carried out, no prohibition relating to investments in Crimea are contravened by a person meeting an obligation under a contract that was concluded before 20 December 2014. This includes an ancillary contract necessary to satisfy such a contract. Additionally, the prohibitions on investments in Crimea are not contravened by a person operating outside Crimea where the related investment is not destined for an entity in Crimea.

Additionally, where an activity would otherwise be prohibited in relation to investments in Crimea, a person or their

representative may apply for a licence from OFSI to carry out those activities in certain circumstances. OFSI expects that legal and professional advisers will have fully considered the relevant law and formed a view about an application before approaching OFSI for guidance or submitting an application. All applications are assessed against the relevant regulations and are done so on a case by case basis.

Contacting OFSI

If you find out that a person or organisation you are dealing with is subject to the financial sanctions detailed in the Regulations, you must immediately:

- stop dealing with them
- freeze any assets you’re holding for them
- inform OFSI as soon as possible by either emailing: ofsi@hmtreasury.gov.uk, or by calling the general enquiries line: +44 (0)20 7270 5454

Frequently asked questions¹

For the purposes of the Q&A only, targeted entities are the persons defined in regulations 16(2) and (4) and the relevant persons defined in regulation 17(5).

- 1) *If before 12 September 2014, a UK person extended a loan or credit to a targeted entity, can it then sell a part of or the whole claim with a maturity exceeding 30 days to another targeted entity?*

In so far as the arrangement would not involve new loans or credit to either targeted entity, or any other restricted activity, such a resale would be allowed. A change of lenders, even if they are a targeted person, would not generally be prohibited by the Regulations, to the extent this does not constitute advancing new funds to a targeted entity.

- 2) *Are derivatives covered by the prohibitions in the regulations?*

Derivatives which give the right to acquire or sell a transferable security or money market instrument covered by the regulations, such as options, futures, forwards or warrants, irrespective of how they are traded (on-exchange or over-the-counter (OTC)) are covered by prohibitions set out in the regulations. Certain other derivatives, such as interest rate swaps and cross currency swaps, are not covered by the prohibitions set out in the regulations, nor credit default swaps (except where these give the right to acquire or sell a transferable security). Derivatives used for hedging purposes in the energy market are also not covered.

- 3) *If a UK person extended a loan or credit with a maturity exceeding 30 days before or on 12 September 2014, could the UK person enter into an M&A transaction whereby a targeted entity assumes the role of the borrower of the debt arising from such loan after 12 September 2014?*

It would be prohibited for a UK entity to enter into any M&A transaction, whereby a targeted entity would assume the role of borrower of an existing loan or credit. The example above would effectively constitute making a new loan or credit available to a targeted entity after 12 September 2014 and would therefore be prohibited.

- 4) *A loan or credit with a maturity exceeding 30 days before or on 12 September 2014 had been extended by a UK person to a financial sanctions target. Can the UK person cancel or forgive debt arising from such a loan after 12 September 2014?*

The Regulations prohibit targeted entities from being extended credit or a new loan, as their purpose is to restrict access to capital, even in circumstances where the sums extended need to be reimbursed. Cancellation of the debt would provide access to capital in the same way as a loan but without a duty to reimburse or pay interest. It would therefore be prohibited.

- 5) *Can UK persons place term deposits with a maturity exceeding 30 days in a bank which is a targeted entity after 12 September 2014?*

While the prohibitions set out in the Regulations do not specifically target deposit services, where term deposits are used to circumvent the prohibition on new loans or credit, such deposits would be prohibited.

- 6) *With regards to loans made to a targeted entity, can UK persons provide payment or settlement services including in the context of correspondent banking?*

For the purposes of the Regulations, payment and settlement services, including through correspondent banking, would be construed as directly or indirectly 'making' or 'being part of an arrangement to make' a relevant loan or credit to a targeted entity. Any loans or credit made after exit day which are the subject of such payment or settlement services must comply with the 30-day maturity limit, or

¹ These FAQs reproduce relevant guidance from the 'European Commission guidance note on the implementation of certain provisions of regulation (EU) no 833/2014'

related exceptions, in order to avoid being caught by the restrictive measures.

- 7) *If a UK person has provided a good or service to a targeted entity, would payment terms/delayed payment for such a good or service exceeding 30 days constitute a new loan or credit?*

For the purposes of the Regulations, payment terms/delayed payment for goods or services are not considered loans or credit. The provision of payment terms/delayed payment may not be used, however, to circumvent the prohibition to provide new loans or credit.

- 8) *How should the rollover of debt obligations by targeted entities be treated?*

The prohibitions in the Regulations extend to the rollover (including cashless) of existing debt. Any rollovers must comply with the 30-day maturity limit imposed for new transactions made after 12 September 2014. However, multiple rollover agreements with a maturity of 30 days or less could amount to circumvention.

- 9) *Can a UK person provide funds to a non-targeted entity, which are channelled through a targeted entity, provided that the funds do not stay with the targeted entity for more than 30 days?*

Such an arrangement would not constitute providing a new loan or credit with a maturity exceeding 30 days to a targeted entity. It would therefore not fall within the prohibitions set out in the Regulations.

- 10) *Do the Regulations limit the ability of UK subsidiaries of targeted entities to monitor risks, including the evaluation of credit risk, for operations across the group?*

The purpose of the Regulations is to prevent access to capital markets for Russian state-owned financial institutions and to encourage Russia to cease actions destabilising Ukraine. While receiving information and undertaking

risk management and monitoring is unaffected by the Regulations, such risk management would not be permitted if it amounted to circumvention of any of the financial sanctions.

- 11) *Can a modification be made to a transferable security entered into prior to 1 August 2014 or 12 September 2014 respectively?*

It is prohibited to adjust a transferable security entered into prior to 1 August 2014 or 12 September 2014 respectively where the change would result or potentially result in additional capital being made available to a targeted entity. While certain other changes may be permitted, a case by case assessment would be made of the effect and substance of any changes in order to determine whether or not such changes reasonably requires this to be considered a new instrument.

- 12) *Do promissory notes fall within the scope of prohibitions relating to transferable securities or money-market instruments?*

As a freely transferable debt instrument, promissory notes may be dealt in on the money markets and thus, to the extent that they are issued by a targeted entity, they would fall into the scope of the prohibitions.

If a targeted entity were to issue a non-negotiable promissory note as a means of payment for non-prohibited goods with UK persons, that would not be prohibited by the Regulations. This allows legitimate trade to continue while remaining consistent with the objectives of Regulation.

- 13) *Do bills of lading fall within the scope of prohibitions relating to transferable securities or money-market instruments?*

In so far as bills of lading document the carriage and receipt of goods and serve as proof of entitlement to such goods, they do not fall under the prohibitions.

In any negotiable form where bills can be traded for financing purposes, or any similar activity which could amount to circumvention, these instances would be prohibited by the Regulations.

14) *Can UK persons use repurchase agreements or securities lending agreements with a non-targeted entity using any transferable securities or money market instruments issued by a targeted entity as collateral?*

If transferable securities or money market instruments were issued between 1 August 2014 to 12 September 2014 with a maturity exceeding 30 days by entities 1-5 in Schedule 2 of the regulations, or after 12 September 2014 with a maturity exceeding 30 days by entities 6-11 in Schedule 2, UK persons are prohibited from entering into repurchase agreements or securities lending agreements where such transferable securities or money market-instruments, which are prohibited under the regulations, are used as collateral.

15) *Can UK persons enter into repurchase agreements or securities lending agreements with a targeted entity (bank), if non-prohibited instruments are used as collateral?*

Repurchase agreements or securities lending agreements are money market instruments as defined in Article 16 of the Regulations, as they are instruments normally dealt in on the money market. UK persons are therefore prohibited from entering into repurchase agreements or securities lending agreements with relevant targeted entities as outlined by the Regulations.

16) *Is the provision of financial research in relation to prohibited transferable securities allowed?*

In relation to 'dealing with transferable securities or money-market instruments', Article 16 states that it is prohibited to provide investment services, including the provision of investment advice, relating to the security or instrument. While the provision of research is formally different from the

provision of advice, it may constitute indirect advice and in such case would tend to constitute a form of investment service and would thus be prohibited.

17) *What constitutes a letter of credit?*

A letter of credit is an undertaking by a bank to pay the beneficiary of the credit (or to accept and pay drafts drawn by the beneficiary) in accordance with, and upon satisfaction of the terms and conditions of the credit. It is no more than an undertaking from the bank (at the request of its customer) to extend a credit, or make a payment, provided that the condition set out within the letter of credit itself are satisfied and the bank is provided with proof of this (usually by the provision of documents).

By way of example, a simple letter of credit in respect of a transaction to purchase oil, may provide that a bank "B" will undertake to pay a sum of money (equal to the purchase price of the oil) to a third party oil provider, "P", once a document is provided to B showing that the bank's customer, "C" has received the oil.

18) *How should the exception for the financing of "non-restricted trade" under the Regulations [Regulation 59] be interpreted?*

This exception is included to ensure that funding remains available for trade with the UK, where such trade is not otherwise restricted by Russia or other trade sanctions. For the exception to apply, the loan or credit must have a specific and documented objective of making funds available for trade in goods or in non-financial services between the UK and another country. This exception, detailed in Regulation 59 of Russia (Sanctions) (EU Exit) Regulations 2019, should be interpreted as an exception from the general prohibition in Regulation 17 which restricts the provision of loans and credit with a maturity of over 30 days to sanctioned entities set out in Schedule 2 of the 2019 Regulations

as well as to any of their subsidiaries incorporated or constituted outside the UK. The exception should be read in the context of the general aim of Russia sanctions and be interpreted narrowly.

19) *If a UK person had extended a loan or credit to a targeted entity before or on 12 September 2014, is it allowed to sell a part of or the whole claim with a maturity exceeding 30 days to another targeted entity?*

In so far as it does not involve any new loans or credit to a targeted entity, the resale of an account receivable to another targeted entity is allowed.

20) *Can a UK credit institution owned by a relevant person provide collateral (e.g. in the form of guarantees, deposits, pledges, risk participations or funded participations) for intra-group risk mitigation purposes to its non-UK subsidiary?*

Yes, provided the collateral provided does not constitute a relevant loan under Regulation (17) and the collateral used is not a transferable security or money market-instrument covered by Regulation (16).

21) *Can United Kingdom persons issue or deal with depositary receipts issued after 1 August 2014 (in the case of a targeted entity covered by Regulation 16(2)) or after 12 September 2014 (in the case of a targeted entity covered by Regulation 16(4)) if such depositary receipts are based on equity issued by a targeted entity?*

Depositary receipts are transferable securities as defined in Regulation 16(10). Consequently, United Kingdom persons may not issue or deal in depositary receipts issued after 1 August 2014 (in the case of a targeted entity covered by Regulation 16(2)) or after 12 September 2014 (in the case of a targeted entity covered by Regulation 16(4)) in any of the following cases from this non-exhaustive list:

- the depositary receipts are based on equity issued by a targeted entity after 1 August

2014 (in the case of a targeted entity covered by Regulation 16(2)) or after 12 September 2014 (in the case of a targeted entity covered by Regulation 16(4)); or,

- the depositary receipts are based on equity issued by a targeted entity before or on 1 August 2014 (in the case of a targeted entity covered by Regulation 16(2)) or before or on 12 September 2014 ((in the case of a targeted entity covered by Regulation 16(4)) and are issued under a depositary agreement with that targeted entity. These depositary receipts would constitute new transferable securities issued on behalf of a targeted entity and would therefore be prohibited by Regulation 16(1) or Regulation 16(3).

22) *Where the underlying of cash-settled derivatives consists of securities falling under Regulation 16(2) or 16(4), are transactions with such derivatives permitted under those provisions so long as this does not involve the actual purchasing, selling, or holding of the underlying securities?*

The prohibitions of Regulation 16(1) and 16(3) extend to direct or indirect dealings in all "transferable securities". Under Regulation 16(10), "transferable securities" includes any securities "giving the right to purchase or sell any" transferable security". In such cases, the Regulations' prohibitions apply regardless of whether or not that right is actually exercised.

23) *If a targeted entity issues new transferable securities after 1 August 2014 (in the case of a targeted entity covered by Regulation 16(2)) or after 12 September 2014 (in the case of a targeted entity covered by Regulation 16(4)) that are fungible with pre-existing transferable securities, can United Kingdom persons still deal in the old securities in the event that is impossible to identify from the securities that were issued before or after the relevant cut-off dates?*

United Kingdom persons may deal in transferable securities issued by a targeted entity before 1 August 2014 (in the case of a targeted entity covered by Regulation 16(2))

or before 12 September 2014 (in the case of a targeted entity covered by Regulation 16(4)). Market participants bear the onus of ensuring that any trades they enter into do not involve the prohibited securities.

24) *Can UK persons confirm or advise a letter of credit that was issued after exit day by a targeted entity for the export or import of goods or services between non-UK countries? Is discounting or post financing of such letters of credit allowed?*

UK persons can confirm or advise letters of credit, and provide discounting or post financing for them, unless the maturity exceeds 30 days and applicant of the letter of credit is a relevant person as outlined in Regulation(17). This would be prohibited as it constitutes extending a relevant loan.

Contact OFSI

Helpline:

0207 270 5454

Monday – Friday, 09.00 – 17.00

Email enquiries:

ofsi@hmtreasury.gov.uk

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