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## DEAR INSOLVENCY PRACTITIONER Issue 144 – April 2022

Dear Reader

Please find enclosed further information regarding financial sanctions and the responsibilities of Insolvency Practitioners, which updates and replaces previous guidance published in 2016.

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## **115) Amendments to Article 89 - Financial Sanctions and Insolvency Practitioners (originally published in Dear IP no 73 in October 2016)**

Further to the recently published Article 114, UK Government Sanctions on Russia ([Dear IP no 142](#)), Insolvency Practitioners should be aware that Article 89, Financial Sanctions and Insolvency Practitioners ([Dear IP no 73](#)) has been updated and now is as follows:

### **Financial Sanctions and Insolvency Practitioners**

The Insolvency Service is aware of some individuals who may be subject to financial sanctions who are seeking to use both solvent and insolvent liquidations to circumvent financial sanctions. This article provides some information about financial sanctions and details of a free subscription service to identify designated persons, entities or bodies to which Insolvency Practitioners are encouraged to subscribe.

#### **Overview**

Certain formal insolvency procedures could be used to circumvent or breach financial sanctions. Breaching financial sanctions is a criminal offence. This notice sets out the responsibilities of Insolvency Practitioners and directions to further sources of information and guidance.

Financial sanctions are in force against a number of regimes, individuals and companies. In practice this means that you cannot do business with such designated individuals or companies, companies owned or controlled by designated entities, or undertake any relevant transaction that may be indirectly benefitting a designated entity, unless there is a relevant exemption in the sanctions regime or, you have a licence from the Office of Financial Sanctions Implementation (OFSI). For further information on financial sanctions, see the OFSI guidance:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

#### **How do sanctions affect Insolvency Practitioners?**

In order to comply with financial sanctions, Insolvency Practitioners must ensure the following:

- insolvency services are not provided to, or for the benefit of, a designated person (a company or individual subject to financial sanctions) or an entity owned and/or controlled by a designated person;
- transactions which are subject to financial sanctions (for example, transfers of funds in some circumstances) are not carried out;

- assets which should be frozen must not be realised or made available to a designated person;
- formal insolvency processes are not used as a route to circumvent sanctions;

unless there is a relevant exemption in the legislation of the sanctions regime or you have an OFSI licence that permits you to do so.

Insolvency Practitioners should familiarise themselves with financial sanctions and understand how they apply to their business. When conducting usual anti-money laundering checks, practitioners should refer to the OFSI list of financial sanctions targets:

<https://www.gov.uk/government/publications/financial-sanctions-consolidated-list-of-targets> (section 3 gives more information on this list and how to use it).

It is a criminal offence to breach the prohibitions in financial sanctions regimes. If you find that you have already carried out an economic transaction that was prohibited by sanctions (for example by dealing with a designated person's funds without an OFSI licence) you should contact OFSI to regularise the position. ([OFSI@hmtreasury.gov.uk](mailto:OFSI@hmtreasury.gov.uk)).

### **Licences**

Under certain circumstances a licence may be issued to allow transactions to take place. These circumstances are limited to the licensing grounds as set out in the legislation of the sanctions regime and Practitioners should be aware that not all transactions or insolvency services can be licensed. For more information on licences including the process of applying for a licence and the circumstances in which they can be provided please refer to the OFSI guidance.

Licences cannot be issued retrospectively so it is important to apply for a licence before any work takes place.

Please note that OFSI will only consider licence applications where you have identified a valid and appropriate licencing ground that permits a licence to be issued as set out in the relevant legislation.

### **Further Information**

OFSI operates a free subscription service which allows subscribers to receive updates whenever there are changes to financial sanctions effective in the UK. Practitioners can find out how to subscribe at:

<https://public.govdelivery.com/accounts/UKHMTREAS/subscriber/new>

*Any enquiries regarding this article should be directed towards HM Treasury's Office of Financial Sanctions Implementation at [OFSI@HMTreasury.gov.uk](mailto:OFSI@HMTreasury.gov.uk), telephone number 020 7270 5454*

**Amendments:**

- On OFSI's advice, a previous reference to Section 9 of the OFSI Guidance, Compliance for Businesses from 2016 has been removed. Current OFSI guidance is available at [Financial sanctions: guidance](#).
- References to EU legislation have been removed.
- The email for HM Treasury's Office for Financial Sanctions Implementation has changed to [OFSI@hmtreasury.gov.uk](mailto:OFSI@hmtreasury.gov.uk).