



ARE THE UK'S RUSSIAN FINANCIAL SANCTIONS WORKING?

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ICAEW welcomes the opportunity to comment on the Treasury Committee call for evidence into the subject 'Are the UK's Russian financial sanctions working?', a copy of which is available from [this link](#).

ICAEW is a world-leading professional body established under a Royal Charter to serve the public interest. In pursuit of its vision of a world of strong economies, ICAEW works with governments, regulators and businesses and it leads, connects, supports and regulates more than 166,000 chartered accountant members in over 146 countries. ICAEW members work in all types of private and public organisations, including public practice firms, and are trained to provide clarity and rigour and apply the highest professional, technical and ethical standards.

We observe that this consultation is under the auspices of the Treasury Committee and so limited in scope to financial sanctions. We would welcome the opportunity to contribute to a complementary consultation by an appropriate committee into the sanctions which fall under the Department for Business and Trade (DBT), particularly with reference to services and other specialist areas for which DBT is the lead department.

Below, we offer comments on some of the specific questions raised in the call of evidence. Some of the other questions, such as extending sanctions to oil and gas purchasers, are beyond the scope of ICAEW and its members direct professional interest and experience and as such no comments on these points have been offered.

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ANSWERS TO SPECIFIC QUESTIONS

Point 1: Whether financial sanctions instituted by the UK on Russia, are complete and effective in terms of the entities that have been designated, and the entities which have to comply with the rules?

1. There is a general consensus among our members around the need for greater clarity around specific terminology, which is often used throughout sanctions guidance but may be understood differently to the intention by Government. Clear terminology should also be used throughout supplementary guidance, for example referring to 'Russia friendly countries' in communications is ambiguous and should be based on law, rather than subjective assessment. We also note that terms such as 'connected to Russia' are broad in possible scope and should be clarified, as currently the most relevant definition is provided by the US Securities and Exchange Commission (SEC).
2. A relevant example of the need for clarity is over the terms 'ownership and control' and how to make an assessment which meets Government's intended criteria. While ownership was clarified somewhat by additional OFSI guidance, making assessments around control is particularly challenging for companies, especially around assessing what could be both formal and informal arrangements. This is made even more challenging by the opaque system in Russia and the crossovers between the state apparatus and the private sector. The Mints judgement¹ at the Court of Appeal in October 2023 proves a clear case in point of the difficulty in applying this test, asserting that PJSC National Bank Trust, a subsidiary of the Central Bank of Russia, was "controlled" by Russian President Vladimir Putin, noting that it was reasonable to conclude that Putin could, if he wanted, "call the shots" with regard to its activities. Following this thought to its logical conclusion would indicate that all businesses in Russia could be deemed to be under the control of Putin. The Government did later issue guidance concerning this judgement, but as it contradicts some parts of the original legal ruling, confusion around the correct course of action is clearly present for companies dealing with Russian clients who are not sanctioned directly. Ownership and control confusions are also inhibiting some businesses from securing the services of a reputable auditor, because the auditor has adopted a very risk-averse position on ownership and control.
3. On a related matter, traditionally financial sanctions were closely aligned with EU and US regimes. Since the Russian sanctions were introduced in 2022, we have noticed that this alignment has reduced, specifically in key areas such as audit. We have repeatedly made representations to Government to address the rationale for this divergence and have sought to make recommendations to improve the alignment to ensure consistency. We would stress to Government that many accountancy firms dealing with a number of businesses and individuals with overseas links, are likely to be multinational accountancy firms and therefore dealing with several different regimes. These different regimes are seeking to achieve the same purpose as highlighted by political leaders, but the differences add unnecessary complexity and may reduce the effectiveness of the sanctions in practice.

Point 2: Whether assets frozen as part of the UK's financial sanctions on Russia should be confiscated, and whether there are legal precedents for such a move?

4. We believe that confiscation of seized assets will require thorough analysis and assessment by Government and others before it is undertaken, as it would set a very serious precedent. It would be necessary to provide a clear legal basis for any confiscation and expropriation of assets. While this has been done in times of war, for example under the Defence of the Realm Act 1914, it is not clear how this would work in practice currently. It would also be necessary to clearly outline where the confiscated

¹ <https://www.allenoverly.com/en-gb/global/news-and-insights/publications/losing-control-what-the-mints-court-of-appeal-judgment-means-for-uk-sanctions>

assets would be held, or how they would be liquidated or otherwise used, amongst other considerations. The Government would also need to clearly outline whether this measure applied to Russia-related sanctions only, the specific time period during which such entities were sanctioned, and whether or not other sanctions regimes could then be in scope.

5. We are concerned about the impact confiscation or expropriation of assets would have on the UK's reputation as a safe place for an individual or a commercial entity to invest. Given the challenging geopolitical climate and potential for deterioration of relationships with other major world economies, the perception of Government being able to seize and expropriate assets of an entity associated with a particular jurisdiction may pose a significant risk to the UK's reputation as a safe place for investment for 'non-Western' businesses and individuals. Separately, confiscation and expropriation of assets risks opening up the UK to a wide range of legal challenges which are likely to have a significant impact on Government resources.

Point 4: The effectiveness of the work of the Office of Financial Sanctions Implementation (OFSI)

6. There have been numerous observations in firms and businesses around the effectiveness of enforcement of sanctions violations and how this has been communicated in the event of successful action against offending parties. Thus far, the only coverage of 'successful' enforcement publicised by OFSI has related to the use of a debit card for a £250 transaction². While the proportionality of using disclosure powers on this transaction has been debated, the apparent lack of published evidence of OFSI's use of powers against more egregious sanctions violations does not give confidence that the enforcement system is working as effectively as it should. Indeed, the messaging around the disclosure of the aforementioned debit card transaction and a lack of highlighting other more serious cases may create the perception that the enforcement action is only effective against 'low level' violations, whereas more serious and sophisticated instances are either not detected or not acted upon. If OFSI has further evidence of the use of its powers of enforcement, particularly in cases of serious sanctions violations which would provide tangible benefit to Russia, then we would recommend that this be shared more widely and used as part of two-way dialogue with the private sector to improve both compliance and enforcement of sanctions.
7. We note that in the new UK Sanctions Strategy published in February 2024, it is highlighted that Government will 'work to expand the range of penalties that can be imposed for breaches of sanctions measures, to give our sanctions additional teeth³.' Building on the theme of more streamlined communication, it would be beneficial for UK businesses to understand more about these new penalties and the circumstances under which they will be imposed.
8. We welcome recent new channels to engage with OFSI and further communications have improved the accountancy sector's understanding of the scope of sanctions. However, when issues are raised relating to specific, and sometimes complex, scenarios the default response from OFSI, and Government more widely, generally centres on businesses getting their own legal advice. As a result of the general drafting of some of the legislation around sanctions and the guidance, this can often result in conflicting legal advice and a lack of consistency in the application of sanctions across the accountancy sector. ICAEW members with a multinational presence have frequently observed and relayed to Government that other sanctions regimes' enforcement bodies, particularly in the US and EU, have generally been more willing to engage on resolving technical issues raised by companies and thus have a more consistent approach nationwide to sanctions enforcement.

² <https://ofsi.blog.gov.uk/2023/08/31/ofsi-uses-disclosure-power-for-first-time/>

³ <https://assets.publishing.service.gov.uk/media/65d720cd188d770011038890/Deter-disrupt-and-demonstrate-UK-sanctions-in-a-contested-world.pdf>

9. We believe that the FCDO/OFSI licensing process would benefit from extra resource and a more streamlined communications strategy. Anecdotal evidence from our members suggests that, when licenses are requested or existing license conditions are queried, there is often a very substantial wait for a reply from FCDO and in some cases this is simply to ask if the license is still required. Since licensing may be needed for time-sensitive matters relating to the continual functioning of a business, this can present serious challenges to both businesses and their professional advisors.

Point 7 - The mitigation of any unintended consequences of financial sanctions.

10. Our principal concern around the unintended consequences of sanctions relates to the impact on the UK economy and capital markets when compared with similar jurisdictions in, for example, the US and EU. We judge that because of a lack of clarity when first issued, some sanctions have resulted in UK-based firms taking a more risk-averse approach than was possibly intended by the Government. As a result, for example, some companies who have links to Russia, but do not directly contravene sanctions, are having significant difficulties in security an auditor due to the lack of clarity in the ownership and control definition and differences in how accountancy firms implement their risk-based approach. This runs the risk of punishing UK businesses, rather than those intended targets.
11. Similarly, and relating indirectly to point six in the call for evidence, we have noticed that insurance companies and banks have adopted a very risk-averse approach which can make it difficult for our members, even when they have assessed that a business would not be in breach of sanctions, to secure the use of the banking and insurance services required to proceed with their intended business. Both ICAEW and our members have made repeated representations to Government outlining some of these likely unforeseen issues and, while some have led to dialogue, we believe that increased two-way communication and collaboration would significantly increase the practicability and effectiveness of sanctions when they are implemented.
12. We note that, at the time of Russia's invasion, there was a significant amount of Russian-linked money in the UK system and it is likely that Government did not fully assess the consequences for the survival of UK businesses reliant on such funds. While the reaction to the invasion through the implementation of sanctions was justified and understood, many of the Russian funds in the financial system were as a result of policies encouraging such investment in previous years. As a result, faster intervention or mitigation to reduce the direct impact on such businesses would have been welcome. While OFSI did issue some licenses to grant access to such funds owed to businesses by Russian and Belarusian designated persons, this was in 2023⁴ and so a year after the invasion and imposition of sanctions. Such a timeframe created significant problems for UK businesses reliant on Russian funds, including facing liquidation.
13. In respect of larger firms, as many of these firms are multinational, they often have to deal with several sanctions regimes, as mentioned above, particularly those in the EU and US. While the political statements between the UK and key allies were consistent in their stated goals, much of the detail in the sanctions legislation and guidance was different and so created extra complexities for international firms with no clear reasoning behind this divergence. Consistency across aligned countries, especially when the aims of such measures are the same, is key to enabling the smooth operation of UK and western companies while also allowing these measures to be implemented quickly and effectively across multiple jurisdictions to rapidly restrict access to funds of designated persons across all jurisdictions. As the US are generally more explicit on technical issues and in terms of penalties, these are often adopted as a lowest-common denominator approach and encourages institutions such as banks, including those based in the UK, to adopt a very risk-averse approach.

⁴ <https://ofsi.blog.gov.uk/2023/05/24/prior-obligations-general-licence/>

14. We conclude with a general reflection on the consequences of the sanctions on the UK and global economy and financial system. As a result of the sanctions, political and economic flows appear to have shifted to other overseas jurisdictions where we have less confidence in the controls in place to limit financial crime. While sanctions are often a highly effective short-term tool to respond to geopolitical and other crises, they are not a long-term solution, as alternative routes for sanctioned individuals and assets are explored and open up. We would recommend that the Government assesses the potential consequences of seeing more capital flow through other jurisdictions instead of markets we are accustomed to such as the UK, US, EU and Canada. The Government should also consider the difference in assessments which will need to be made to ensure a high level of assurance around financial crime controls is reached.