

IPReg Guidance - Russia and Belarus sanctions

A number of issues have emerged about how the day to day activities of some firms have been impacted by sanctions. IPReg has therefore decided to provide this guidance on what it would expect firms to do when they are considering what action to take on an issue relating to sanctions.

Please note that this is guidance only – it should not be used as a substitute for obtaining your own independent advice. However, if a complaint is made to IPReg about decisions that firms have made that are connected to sanctions, we will take into account the extent to which you have considered this guidance when considering what action, if any, to take.

IPReg cannot give legal advice on whether any actions or business with Russian/Belarusian clients, Russian/Belarusian government departments or the Russian or Belarusian IPO would engage the UK Government's sanctions directives (or those of other states).

All regulated persons should educate themselves by reading the various guidance materials available. Useful links about the sanctions framework and sources of information and help are on the [IPReg website](#). [CIPA](#) and [CITMA](#) have also provided information on their websites.

If a complaint is made about something you decide to do, IPReg will expect you to be able to justify your decision; we will then consider whether enforcement/regulatory action is warranted. Your decisions should weigh your obligations in law at the point when your decisions were made as well as your ethical and regulatory obligations. Your decisions should reflect those obligations, some of which may be competing.

You are therefore strongly advised to keep records of your decisions and the reasons for them; this should include all the factors that you considered in reaching your decision. For example (this list is not exhaustive):

- advice you obtained from someone in your firm or externally;
- sources of information that you used to inform your decision (we would expect these to be official and reliable sources of information such as the UK Government website);
- the likely impact on your client(s);
- your firm's policies on the matter including its commercial and reputational interests;
- your terms of business/client care correspondence;
- notes of key discussions including how the decision was reached.

General

If you work in a firm, you should speak to your Head of Legal Practice/General Counsel/Compliance Officer if you have concerns about whether the sanctions framework applies to work that you are doing. Attorneys in smaller firms and sole traders may wish to take independent legal advice.

If you work in industry (e.g. you work for/are employed by a Russian/Belarusian-owned company or you work for a company that does business with a Russian/Belarusian-owned business) you should seek advice from your in-house legal team about what this means for you and your ability to maintain those ties.

Ceasing to act for a client

If you are considering whether to continue to act for a client even if they are not on the sanctions list, you should bear in mind that in general you can choose who you act for. You can also choose not to accept instructions from a new client. In considering whether to act (or not) you should take care

to ensure that your actions are lawful (e.g. under equalities legislation). In deciding whether to cease to act for a client, in addition to understanding the legal position including your terms of business and client care letter, you should be able to show that you have considered and mitigated the risks to your client of ceasing to act for them.

Payments to/from clients

Monetary penalties can be imposed for breaches of financial sanctions. The Office of Financial Sanctions Implementation (OFSI) is the part of the Treasury that applies these powers. It has produced [guidance](#) that sets out what the powers are, how OFSI will use them and a person's rights if it imposes a monetary penalty on them.

OFSI [guidance](#)¹ states that if the financial sanction takes the form of an asset freeze, it is generally prohibited to:

- deal with the funds or economic resources belonging to or owned, held or controlled by a designated person;
- make funds or economic resources available, directly or indirectly, to, or for the benefit of, a designated person; or
- engage in actions that directly or indirectly circumvent the financial sanctions.

OFSI can license certain uses of frozen funds under derogations present in the financial sanctions legislation. A licence is a written permission from OFSI allowing an act that would otherwise breach prohibitions imposed by financial sanctions. Once OFSI has issued a licence, monetary penalties may also apply to breaches of licence conditions. You should notify IPReg if you apply to OFSI for a licence.

Advice about whether you can continue to make/receive payments from clients may be available from OFSI. You can contact OFSI direct: ofsi@hmtreasury.gov.uk; Telephone: 020 7270 5454

OFSI also publishes a [blog](#) which you may find useful.

Legal Professional Privilege (LPP)

Information about OFSI's approach to LPP can be found in these documents:

- [Guidance](#) on monetary penalties – see paragraphs 3.37 and 3.38
- [General guidance](#) on UK financial sanctions – see paragraph 5.4

You should note that OFSI's general guidance states:

“OFSI expects legal professionals to carefully ascertain whether legal privilege applies, and which information it applies to. OFSI may challenge a blanket assertion of legal professional privilege where it is not satisfied that such careful consideration has been made.”

LPP is a complex subject and you should seek independent legal advice if you are unsure of the position.

¹ Paragraph 1.14

Whistleblowing

If you are a partner, director or employee of a firm and become aware that a firm is breaching sanctions (e.g. by not conducting the relevant checks), IPReg would expect you to report such behaviour either to [IPReg](#) or to [OFSI](#) .

In the case of reports submitted to IPReg, we will conduct a preliminary inquiry. If we consider that the information is credible, we will contact the whistleblower and provide an anonymised report and any additional information gathered during the preliminary inquiry to OFSI.

Whistleblowers can be assured that IPReg will deal with your report sensitively. If information is provided to us on a confidential basis, we will make every effort to keep your identity secret and only reveal it where necessary to those involved in investigating your concern. However, confidentiality cannot be guaranteed.

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