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Latest UK sanctions against Russia targeting crude oil and petroleum products - Effective 5 December 2022



In this December edition of Arbitration insights from Singapore, we will examine the 16th amendment¹ to the UK's sanctions against Russia, The Russia (Sanction) (EU Exit) Regulations 2019 (the "**Regulations**")², which comes into force on 5 December 2022 (the "**16th Amendment**").

The 16th Amendment will prohibit the import into the UK of Russian crude oil and petroleum products listed in Schedule 3F of the Regulations, and related technical and financial assistance or brokering services; and the supply or delivery by ship Russian oil and oil products falling within commodity code 2709.

We also set out what to expect from the forthcoming Russian oil price cap exception and what it may mean in practice for those impacted; and consider whether Office of Financial Sanctions Implementation's powers to impose penalties as described in the 16th Amendment exceed the authority conferred on it by the UK Parliament.

¹ Available here: [The Russia \(Sanctions\) \(EU Exit\) \(Amendment\) \(No. 16\) Regulations 2022, 2022, No. 1122](#).

² References in this article to a "Regulation" is a reference to the corresponding Regulation in the UK's sanctions against Russia, as amended. The latest available version of the Regulations (which excludes changes brought into force at a future date such as pursuant to the 16th Amendment) is available here: [The Russia \(Sanctions\) \(EU Exit\) Regulations 2019 \(legislation.gov.uk\)](#)

Summary of the 16th Amendment



Commencement date for ban of the import of Russian oil into the UK

The prohibition on the import into the UK of Russian crude oil and petroleum products listed in Schedule 3F of the Regulations, and related technical and financial assistance or brokering services, is now effective as of 5 December 2022 (previously, this was due to take effect on 31 December 2022) (Regulation 46Z3).

Prohibitions on the maritime transportation of certain oil and oil products

From 5 December 2022, it is prohibited to supply or deliver³ by ship⁴ Russian⁵ oil and oil products falling within commodity code 2709 either (1) from Russia to a country other than the UK, Isle of Man or Russia (a "**third country**"), or (2) from one third country to another third country (Regulation 46Z9B).⁶

The new prohibitions are therefore potentially wide enough to capture not only shipping companies but also refiners, importers, brokers, traders, banks, trade finance providers, insurers, and reinsurers. Note also that the prohibitions apply to conduct anywhere in the world by UK companies and UK nationals (including British overseas territories citizens).

From 5 February 2023, equivalent prohibitions come into force in respect of Russian oil and oil products falling within commodity code 2710 (Regulations 46Z9B-46Z9D) (together with the prohibitions described in Regulation 46Z9B, referred to above, the "**Maritime Services Prohibitions**"). Commodity code 2710 lists "*petroleum oils and oils obtained from bituminous minerals, other than crude; preparations not elsewhere specified or included, containing by*

weight 70% or more of petroleum oils or of oils obtained from bituminous minerals, these oils being the basic constituents of the preparations; waste oils".

The Maritime Services Prohibitions are not contravened in cases of emergency, or if the oil or oil products in question: (1) do not originate in Russia; (2) are not owned by a person connected with Russia; and (3) are only loaded in, departing from or transiting through Russia (Regulations 60HA and 61(1A)).

The Office of Financial Sanctions Implementation ("**OFSI**") has been given the powers to grant specific licences authorising conduct that would otherwise breach the Maritime Services Prohibitions, and to request information relevant to those licences and to disclose information (Regulations 64(1), 72(5)(c), 72(7) and 78(2)(d)). This is in itself interesting as OFSI is the authority responsible for implementing the UK's *financial sanctions*. Other Government authorities (principally, the Export Control Joint Unit) typically implement the UK's trade sanctions and are responsible for granting licences. We expect OFSI to issue guidance on these sanctions in due course. We consider the distinction between financial and trade sanctions further below in the context of civil penalties.

The only licensing ground currently available is if the relevant conduct would be necessary "*to deal with an extraordinary situation*" (Part 4 of Schedule 5). The Explanatory Memorandum accompanying the 16th Amendment suggests that licences will be issued in certain circumstances to permit specific activities critical to energy security, and, as described below, to give effect to the price cap exception agreed amongst the G7 (paragraphs 7.9 and 7.10 of the Explanatory Memorandum).⁷



³ "Supply or deliver by ship" includes any ship-to-ship transfer of the goods concerned.

⁴ "Ship" means every description of vessel (including a hovercraft) used in navigation, except the naval, military or air-force ships of any country.

⁵ I.e., goods that originate or are consigned from Russia.

⁶ Note that, unlike the prohibition on importing Russian oil into the UK, the 16th Amendment does not include a prohibition on

providing "*technical assistance*" relating to the supply or delivery of Russian oil to third countries. It is not clear why not, particularly as it had become normal for this ancillary measure to be included in trade sanctions.

⁷ The Explanatory Memorandum is available here: https://www.legislation.gov.uk/ukxi/2022/1122/pdfs/ukxiem_2022_1122_en.pdf

Reporting obligations in respect of the Maritime Services Prohibitions

A person involved with either: (1) the supply or delivery of oil or oil products listed in Schedule 3F of the Regulations, as amended (which is wider than those goods covered by the Maritime Services Prohibitions); or (2) the provision of financial services or funds or brokering services relating to such oil or oil products, must report to OFSI if:

1. they know or have reasonable cause to suspect that:
 - a. a person has breached any of the Maritime Services Prohibitions; or
 - b. a person has knowingly or recklessly provided information to OFSI that is false in a material respect, or that a person has produced to OFSI, or provided OFSI with, a document that is not what it purports to be, for the purposes of obtaining a licence; and
2. the information or other matter on which the knowledge or cause for suspicion is based came to them in the course of carrying on their business (the "**Reporting Obligations**").

The price cap exception

A General Licence will be introduced to permit the supply or delivery by ship of oil and oil products falling within commodity codes 2709 and 2710, and the provision of related ancillary services, to third country importers, so long as they purchase the products below an agreed price (the "**General Licence**") (paragraph 7.9 of the Explanatory Memorandum).

The General Licence follows the previous commitment made by the UK and the G7 partners to introduce a price cap on Russian oil. Whilst the detail of the General Licence has yet to be published, in its statement dated 2 September 2022, HM Treasury envisaged "*that practical implementation of the price cap will be based on a recordkeeping and attestation model covering all relevant types of contracts*".⁸ During a webinar hosted by the Foreign, Commonwealth and Development Office, it was stated that the attestation model will follow a three-tier system, as follows:

1. **Tier 1:** persons who regularly have direct access to price information in the ordinary course of business, such as commodities brokers and refiners, will need to retain and share documents that show that seaborne Russian oil was purchased at or below the price gap;
2. **Tier 2:** persons who are sometimes able to request and receive price information, such as financial institutions should, where practicable, request, retain and share the above documents; and
3. **Tier 3:** persons who do not regularly have direct access to price information in the ordinary course of business, such as insurers and P&I clubs, should obtain and retain attestations from the customer that they commit not to purchase seaborne Russian oil above the price cap, for example as part of their annual insurance policy renewal process or updates to their insurance policy. Insurers may request attestations from customers that cover the entire period of a policy, rather than request separate attestations for each shipment.⁹

The US Office of Foreign Assets Control has published its "[Preliminary Guidance on Implementation of a Maritime Services Policy and Related Price Exception for Seaborne Russian Oil](#)", which sets out broadly the same model.¹⁰

Civil penalties and broadening of OFSI's powers

The 16th Amendment provides that OFSI can impose a monetary penalty if it determines that on the balance of probabilities a person has breached the Maritime Services Prohibitions or the Reporting Obligations (in addition to the potential criminal liability that may flow from those breaches) (Regulation 88C(1) and (3)).¹¹

Breach of the Maritime Services Prohibitions is also strict liability civil 'offence', i.e., it is not a defence to show that a person had no reasonable cause to suspect an offence had occurred. However, with respect to the Reporting Obligations, it is a defence to both criminal and civil liability if a person can show they did not know and did not have any reasonable cause to suspect the Reporting Obligations had been breached.

⁸ The full statement is available here: [G7 Finance Ministers statement on Russia's war of aggression against Ukraine - GOV.UK \(www.gov.uk\)](#). Note that in its statement dated 3 November 2022, HM Treasury confirmed that there will be no price cap exception in respect of the prohibition on the import of Russian oil into the UK.

⁹ The webinar is available here: [UK sanctions relating to Russia - GOV.UK \(www.gov.uk\)](#).

¹⁰ Note that this guidance is not binding, albeit that the G7 nations have emphasised the need for consistency between the different

nations' sanctions regimes. In any event, we expect OFSI to issue its own guidance in due course.

¹¹ The maximum criminal penalty for breach of the prohibitions relating to the Maritime Services Prohibition is 10 years imprisonment or a fine (or both). The maximum criminal penalty for breach of the reporting restrictions is 6 months imprisonment or a fine (or both).

The maximum penalty OFSI can impose is either £1 million or 50% of the estimated value of the breach (if it is possible to estimate), whichever is greater (Regulation 88C(6)). The procedure which OFSI must follow is set out in Regulation 88D.

OFSI's power to impose monetary penalties was originally created by section 146 of the Policing and Crime Act 2017. However, in relation to the UK's autonomous sanctions (such as those contained in the Regulations), section 146 only authorises OFSI to issue monetary penalties in relation to provisions containing a prohibition or obligation imposed under section 3(1) or (2) of the Sanctions and Anti-Money Laundering Act 2018 ("**SAMLA**"), i.e., the measures set out in Part 3 of the Regulations.

The Maritime Services Prohibitions and Reporting Obligations were not imposed in exercise of the powers conferred by section 3(1) or (2) of SAMLA, but rather form part of the UK's trade sanctions against Russia (set out in Part 5 of the Regulations).¹² Further, even if the Maritime Services Prohibitions were imposed in exercise of the powers conferred by section 3 of SAMLA, Regulation 88 states that "*Each provision in*

Part 5 (Trade) [including the Maritime Services Prohibitions] which contains a prohibition imposed for a purpose mentioned in section 3(1) or (2) of the Act is to be regarded as not being financial sanctions legislation for the purposes of Part 8 of the Policing and Crime Act 2017".

Presumably, the UK Government considers that it has been given the power under SAMLA to authorise the imposition of monetary penalties outside of financial sanctions by secondary legislation. The precise basis relied upon is not clear and it may well be challenged in future. It is notable that the Explanatory Memorandum accompanying SAMLA states that "*the government does not intend to impose monetary penalties in respect of breaches of trade sanctions*". It is also unclear why the UK Government has sought to authorise the imposition of monetary penalties in relation to the Maritime Services Prohibitions and not other trade sanctions measures, such as the prohibition on importing Russian oil into the UK, which is due to come into force on the same day. As is often the case with sanctions, further clarity would be welcome.

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¹² The introduction to the 16th Amendment sets out the provisions of SAMLA under which the 16th Amendment was made and there is

no reference to section 3 of SAMLA (reference is made to section 5 of SAMLA, which provides the power to impose trade sanctions).

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1100+
People worldwide



49
Top rankings for individuals



8
Offices worldwide



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40
Languages spoken by our staff



90+
Countries in which our clients are



73%
Revenue growth in the last seven