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**Cayman Islands: Law & Practice
and Trends & Developments**

Paul Kennedy and Sam Keogh
Campbells LLP



CAYMAN ISLANDS



Law and Practice

Contributed by:

Paul Kennedy and Sam Keogh
Campbells LLP

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Campbells LLP is a leading full-service offshore law firm established in 1970. From offices in the Cayman Islands, the British Virgin Islands and Hong Kong, it provides comprehensive corporate and litigation advice and services to clients worldwide in relation to Cayman Islands and British Virgin Islands law. It is regularly trusted to advise some of the most prominent names in

finance, investment and insurance, and is frequently involved in the largest and most complex transactions, disputes and insolvencies in both jurisdictions. The firm is internationally recognised for its expertise and is proud to be actively involved in the development of legislation, sitting on critical government legislative committees.

Authors



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cross-border disputes relating to funds and other offshore structures, asset recovery claims and fraud investigations, and in breach of duty claims in relation to the managers, auditors, administrators and custodians of investment vehicles. Paul is one of the leading experts in the Cayman Islands on sanctions and asset freezing measures affecting offshore assets, and has also written and spoken extensively on cross-border litigation and insolvency matters.



Sam Keogh is a senior associate in the litigation, insolvency and restructuring group at Campbells, based in the Cayman Islands office. He has significant regulatory

experience, including in relation to the Cayman Islands sanctions regime. Sam has been heavily involved in the firm's economic sanctions and regulatory practice, in particular advising a number of clients in relation to sanctions imposed following the Russian invasion of Ukraine and related sanctions licence applications. Sam's other regulatory experience includes AML/CTF regulatory proceedings, financial services regulatory proceedings, investigations into international corruption and bribery allegations, and advising on regulatory audits, investigations and document production notices.

Campbells LLP

Floor 4, Willow House, Cricket Square
George Town, Grand Cayman
Cayman Islands
KY1-9010
Tel: +1 345 949 2648
Web: www.campbellslegal.com

Campbells

1. Trends and Overview

1.1 Sanctions Market

There has recently been an increase in sanctions-related legal work, as sanctions resulting from Russia's invasion of Ukraine have remained in place and been expanded since 2022, and do not show any signs of being removed. As a result, there has been an increase in activity looking to divest, restructure or otherwise take steps to address the impact of those sanctions on non-sanctioned investors and service providers, who have now been impacted for more than two years.

1.2 Key Trends

The top trend in sanctions in the Cayman Islands in the last 12 months has been ongoing refinement of the sanctions regime as it applies to Russia. Since 2022, these sanctions have expanded significantly from the original – and standard – asset freeze sanctions, to imposing prohibitions on the provision of specified transactions, including the provision of certain professional services, to any person connected with Russia, whether or not they are designated.

However, in conjunction with this expansion, efforts have been made to refine the sanctions regime, and to address circumstances where third parties have been impacted by the sanc-

tions regime for reasons beyond their control. This has most recently led to an amendment to the sanctions regime, to allow the Governor to grant licences to permit Cayman Islands persons to divest themselves of assets held in Russia, or to buy out investments in themselves by designated persons.

The overall direction of many of these changes, including general licences issued by the Governor of the Cayman Islands, has been to provide avenues for otherwise innocent third parties to take steps to extricate themselves from relationships with the intended targets of the sanctions regime. The most recent changes provide for investors to seek licences to divest themselves of assets in Russia, or to buy out designated investors, in order to bring such relationships to an end.

1.3 Key Industries

The sector most affected by sanctions regulations in the Cayman Islands is the investment funds industry, including investors and service providers to Cayman Islands investment funds.

1.4 Overview

1.4.1 Types of Sanctions

The Cayman Islands takes its sanctions regime from the United Kingdom, as it is a British Overseas Territory that is self-governing domestically,

but for which matters of defence and foreign relations, including sanctions, are the responsibility of the United Kingdom. The Cayman Islands sanctions regime is therefore governed by the United Kingdom's Sanctions and Anti-Money Laundering Act 2018 (the "Act"). Sanctions relating to particular nations, persons or subject matters are enacted through secondary regulations promulgated under that Act (eg, the Russia (Sanctions) (EU Exit) Regulations 2019 and the Counter-Terrorism (Sanctions) (EU Exit) Regulations 2019). These regulations are applied in the Cayman Islands by Orders in Council, which give effect to them in the Cayman Islands (eg, the Russia (Sanctions) (Overseas Territories) Order 2020 and the Counter-Terrorism (Sanctions) (Overseas Territories) Order 2020).

The Orders in Council impose applicable Regulations on the Cayman Islands, ordinarily with modifications or amendments to adapt the regulations to the Cayman Islands. These amendments typically revise references in the original Regulations to the territory, regulatory bodies or specified offices of the United Kingdom so that they become equivalent references for the Cayman Islands (eg, amending the Regulations so that the Governor of the Cayman Islands can grant sanctions licences, rather than the Secretary of State of the United Kingdom).

As in the United Kingdom, sanctions can be targeted at specific countries or at issues that are not specific to a particular country (such as terrorist activities, cyber-attacks or human rights violations). Sanctions are implemented by the United Kingdom (through its Secretary of State) designating specific entities or individuals, or categories of entities or individuals, as "designated persons". The United Kingdom maintains a list of those persons it has designated (and

who are therefore sanctioned in the Cayman Islands).

The Act specifies six types of sanctions that can be imposed by regulations:

- financial sanctions;
- immigration/travel sanctions;
- trade sanctions;
- aircraft sanctions;
- shipping sanctions; and
- other sanctions for the purposes of UN obligations.

The most commonly applicable of these categories in the Cayman Islands is financial sanctions. The primary financial sanction imposed in the Cayman Islands is an asset freeze. The standard form of asset freezing sanctions prohibits any person subject to the sanctions regime from dealing with the funds or economic resources of a designated person, including by the designated person themselves. They also prohibit making funds or economic resources available to or for the benefit of a designated person. These prohibitions have a broad application, and also include any entities majority held or controlled, directly or indirectly, by a designated person.

Trade sanctions prohibit or restrict the export or import of certain goods, the transfer of specified technology, and the provision of certain services to designated persons or, in some cases, to persons connected with Russia, whether or not they are designated persons. These prohibitions can include specific goods, services or technologies, specific industries and specific sub-regions of particular countries.

Aircraft and shipping sanctions include restrictions on specified aircraft or ships, including ships or aircraft owned, controlled, chartered or

operated by a designated person, or by other targets of the sanctions regime. Typically, they prohibit such ships or aircraft from accessing ports in the Cayman Islands or being registered in the Cayman Islands, and may provide for the detention of such ships or aircraft should they be in the Cayman Islands. They can also include restrictions on owning, chartering or operating specified aircraft or ships.

Finally, a person to whom the sanctions regime applies is prohibited from circumventing the sanctions regulations by participating in activities knowing that the object or effect of them is (including indirectly) to circumvent those regulations or to enable or facilitate their contravention. Any person who does so is subject to the same penalties as they would be for a primary breach of the regulations (see 2.2.2 Breaching Sanctions).

1.4.2 Scope of Sanctions

The Cayman Islands sanctions regime applies to:

- transactions within the territory or territorial sea of the Cayman Islands; and
- conduct by a Cayman Islands person wholly or partly outside the territory.

A Cayman Islands person is:

- a body incorporated or constituted under the law of any part of the Cayman Islands; or
- an individual ordinarily resident in the Cayman Islands who is:
 - (a) a British citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas citizen;
 - (b) a person who under the British Nationality Act 1981 is a British subject; or

- (c) a British protected person under the British Nationality Act 1981.

Sanctions also apply to any Cayman Islands ship or Cayman Islands aircraft, meaning any ship or aircraft that is registered in the Cayman Islands, or that is not registered outside of the Cayman Islands and is wholly owned by Cayman Islands persons (whether or not it is registered in the Cayman Islands).

1.4.3 Domestic and/or Supranational Measures

Sanctions are imposed in the Cayman Islands through the Orders in Council promulgated by the United Kingdom, which extend the United Kingdom's sanctions regime to its Overseas Territories, including the Cayman Islands.

These sanctions are imposed at a domestic level by the applicable Orders in Council, but such Orders also impose supranational measures (including UN and UN Security Council sanctions), which are therefore also in force in the Cayman Islands.

2. Overview of Regulatory Field

2.1 Primary Regulators

The Financial Reporting Authority of the Cayman Islands is the primary regulator with responsibility for sanctions in the Cayman Islands. The Governor of the Cayman Islands is generally responsible for granting sanctions licences, and she takes advice from both the Financial Reporting Authority and the Cayman Islands Attorney General's Chambers. Such licences can only be granted with the consent of the United Kingdom's Secretary of State.

2.2 Enforcement

2.2.1 Enforcement Responsibilities

Breaches of the Cayman Islands sanctions regime are criminal offences, the prosecution of which is the responsibility of the Cayman Islands Director of Public Prosecutions. In practice, a referral to the Director of Public Prosecutions to investigate (with the assistance of the Royal Cayman Islands Police Service, if necessary) and, if appropriate, prosecute a breach of the sanctions regime would be made by the Financial Reporting Authority.

2.2.2 Breaching Sanctions

Breaching the Cayman Islands sanctions regime is a criminal offence. The applicable penalties are set out in the relevant Order imposing the sanction that has been breached. In general, the maximum penalties are a fine at the discretion of the Grand Court of the Cayman Islands (which may be unlimited in amount, but cannot be excessive or unreasonable in the circumstances of the breach) and up to seven years' imprisonment.

These penalties are specifically extended to the directors or controllers of a company that has breached the sanctions regulations, and also apply to any conduct that circumvents or is intended to circumvent the sanctions regime.

There is no difference in the maximum penalties applicable for a primary breach of the sanctions, a director or controller of a company that has breached the sanctions regime, or for conduct with the effect or intention of circumventing the sanctions regime.

2.2.3 Mitigation

No mitigating steps are specified in the Cayman Islands sanctions regime. However, the penalties for any breach have a discretionary component,

with the specific penalties for any breach to be determined by the Grand Court of the Cayman Islands following conviction.

Where a person has only inadvertently breached sanctions, has taken steps to mitigate the breach, and has reported the breach and co-operated with the relevant regulatory bodies, it would generally be expected that the Court may determine in its discretion to impose lower penalties. Conversely, deliberate breaches, any steps that aggravate the breach, attempting to conceal any breach or failing to co-operate in any investigation would generally be expected to lead the Grand Court to impose greater penalties following conviction.

2.2.4 "Strict Liability"

The sanctions regime in the Cayman Islands does not operate on the basis of "strict liability".

2.3 Licensing

2.3.1 Derogation

A number of the relevant Orders provide for the Governor of the Cayman Islands to issue licences to permit derogation from certain specified sanctions. The Governor can issue a licence only if specified purpose requirements are met, and will almost certainly impose conditions and reporting requirements on any licence she issues. As set out in 2.1 **Primary Regulators**, the Governor may generally only issue a licence with the consent of the United Kingdom Secretary of State.

The grounds on which a licence can be issued depend upon the specific Order imposing the relevant sanction in the Cayman Islands, and on the specific sanction for which a licence is sought, and can include the following:

- to enable the basic needs of a designated person or any dependent family member of a designated person to be met;
 - to enable the payment of reasonable professional fees for the provision of legal services, or reasonable expenses associated with the provision of legal services (including to a designated person or a person controlled directly or indirectly by a designated person);
 - to enable the payment of reasonable fees or services charges arising from the routine holding or maintenance of frozen funds or economic resources;
 - to enable an extraordinary expense of a designated person to be met;
 - to enable, by the use of a designated person's frozen funds or economic resources, the implementation or satisfaction of a judicial, administrative or arbitral decision or lien made or established before that person was designated;
 - to enable anything to be done to deal with an extraordinary situation;
 - to enable, by the use of a designated person's frozen funds or economic resources, the satisfaction of an obligation of that person which arose before that person was designated;
 - to enable anything to be done in order that the functions of certain diplomatic missions or consular posts, or of an international organisation enjoying immunities in accordance with international law, may be carried out;
 - to enable anything to be done in connection with the performance of any humanitarian assistance activity;
 - to enable anything to be done in connection with the provision of medical goods or services for the benefit of the civilian population of a country, or the import, export or use of medical goods;
 - to enable anything to be done in connection with the production or distribution of food for the benefit of the civilian population of a country;
 - subject to specific conditions, to enable a Cayman Islands entity to divest itself of funds or economic resources located in a sanctioned country, or to buy out any interest in the entity held by the government of a sanctioned country or a designated person, or to take steps to enable another person to undertake such steps;
 - to enable anything to be done by, or on behalf of, a relevant financial authority for the purposes of the functions of that authority;
 - to enable anything to be done by a person, following consultation by that person with the central monetary authority of the Cayman Islands, that is necessary or expedient in order to protect or enhance the stability of the financial system of the Cayman Islands;
 - to enable anything to be done by a person, following consultation with the authority responsible for the regulation of financial services in the Cayman Islands, that is necessary or expedient in order to promote the safety and soundness of a firm which is supervised by that authority; or
 - to enable the carrying out of projects exclusively in support of hospitals, other public health institutions or civilian education establishments, or the provision or maintenance of supplies or equipment for medical use, or to prevent or mitigate an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment, in certain specified territories (in particular, occupied territory of Ukraine).
- Licence applications can take a significant period of time to process, and must be made as early as possible before any proposed transaction is due

to take place. The relevant regulatory authorities often have questions, or seek clarification of particular points of transactions before granting a licence. In addition, the significant increase in sanctions imposed, persons designated and licence applications as a result of the Russian invasion of Ukraine has led to significant delays in the processing time for licence applications. While historically licences could be granted in two to three months, the current expected timeframe for any application is significantly longer.

The Cayman Islands regulatory authorities and the United Kingdom regulatory authorities both prioritise licence applications that are made on humanitarian grounds, and can also process urgent applications in life-threatening circumstances where they arise. However, such applications are rare in practice.

Any person applying for a sanctions licence must provide a comprehensive and detailed explanation of any transaction for which they are seeking a licence. This explanation must include the value and currency(ies) of any transaction, the purpose of the transaction and the route for any payment(s) necessary for the transaction (including the sender and receiver of all funds or assets being transferred for the transaction, and any intermediaries or other beneficiaries who have any role in the transaction), and must specify how any funds or assets will be accounted for.

Any person who wishes to apply for a sanctions licence must submit a licence application form, and it is strongly advisable that they also submit a detailed explanation of why the licence is necessary, containing the details set out above. The licence application form is available at www.fra.gov.ky.

2.3.2 Provision of Legal Services

The Governor of the Cayman Islands has issued a number of general licences in relation to the sanctions regime regarding Russia. These licences apply:

- to allow for the provision of legal services to designated persons, subject to certain caps and restrictions;
- to certain investment funds, to allow the fund or its manager to:
 - (a) pay expenses necessary for the maintenance and existence of the fund (eg, annual Registered Office fees); and
 - (b) redeem non-sanctioned investors from a fund that is frozen;
- to allow providers of trust services to take actions necessary to terminate the provision of those services; and
- to allow the supply or delivery of oil at a unit price at or below the price cap specified in sanctions relating to Russia.

The Governor has not issued any general licences in relation to any other applicable sanctions regimes.

2.4 Reporting

Financial institutions and other specified persons and entities (including banks and law firms) must file a Compliance Reporting Form with the Financial Reporting Authority if they know or have reasonable cause to suspect that a person is a designated person, that assets exist which are affected by the applicable sanctions regime (eg, because they are owned, held or controlled by a designated person), or that certain offences under the sanctions regime may have been committed. They must file this form as soon as practicable after they become aware of the relevant facts, or develop the relevant suspicion.

The Compliance Reporting Form is available at www.fra.gov.ky.

A Compliance Reporting Form must include details of the information on which the relevant knowledge or suspicion is based, as well as any other information the person filing the form knows about the designated person or their funds or economic resources.

In addition, a person who holds funds or economic resources of a designated person must freeze those assets and make a report to the Financial Reporting Authority. Finally, all sanctions licences issued by the Governor of the Cayman Islands, including the general licences referred to in **2.3.2 Provision of Legal Services**, include reporting requirements relating to the transaction(s) authorised by them.

3. Recent and Future Legal Developments

3.1 Significant Court Decisions or Legal Developments

Only one court decision dealing specifically with sanctions has been handed down in the Cayman Islands in the last three years, which dealt with the ability of attorneys to continue to act where a client had become a designated person in the course of a proceeding. In that decision, *MaplesFS Limited v B&B Protector Services Limited & Ors* (10 March 2022, Doyle J), the Grand Court held that Cayman Islands attorneys cannot accept fees from a designated person without a licence nor provide legal services on credit, but they can act pro bono for a designated person for a time to assist them in complying with existing Directions of the Court.

The leading case in the Cayman Islands remains *Palladyne International Asset Management B.V. v Upper Brook (A) Limited & Ors* (18 November 2019, Field, Morrison and Beatson JJA), in which the Cayman Islands Court of Appeal held that exercising the voting rights attaching to shares in a frozen Cayman Islands company to appoint or dismiss directors and to change the name of that company did not constitute “dealing with” those shares in breach of the applicable asset freeze.

Beyond those decisions, the most significant developments in the Cayman Islands related to sanctions have been the expansion of the applicable sanctions regime to include persons connected with Russia, whether or not those persons have been designated, and the implementation of general licences to allow the basic functions of maintaining Cayman Islands investment funds to continue, where the combination of existing law and the sanctions regime would otherwise have led to those funds being dissolved and their assets ultimately passing to the government.

3.2 Future Developments

As far as is known, there are no significant upcoming developments, but the Cayman Islands sanctions regime continues to evolve, and it is highly likely that there will be further developments in the upcoming 12 months and beyond.

4. Delisting Challenges

4.1 Process

As persons are sanctioned in the Cayman Islands as a result of being sanctioned by the United Kingdom, the power to vary or revoke a designation lies with the United Kingdom Secretary of State. The Sanctions and Anti-Money

Laundering Act 2018 provides for a designated person to request that the Secretary of State varies or revokes their designation. However, the Governor of the Cayman Islands does not have any equivalent power.

4.2 Remedies

A challenge to a sanctions designation would need to be made in the United Kingdom.

4.3 Timing

This is not applicable in the Cayman Islands.

5. Trade and Export Restrictions

5.1 Services

Trade sanctions imposed by the Cayman Islands sanctions regime include measures prohibiting the provision of certain services to designated persons, or to persons connected with Russia. Financial sanctions prohibiting making funds available to a designated person would also ordinarily prohibit importing services, where doing so would require payment. UN and equivalent sanctions regimes that impose wholesale bans on the export or import of services to or from specified countries are also incorporated into the Cayman Islands sanctions regime.

5.2 Goods

Trade sanctions also include measures that prohibit the export or import of certain goods, or the transfer of specified technology. Financial sanctions and UN (and equivalent) sanctions also apply in the Cayman Islands to prohibit the import or export of goods to or from specified countries.

6. Civil Litigation and Arbitration

6.1 Force Majeure

To date, the Cayman Islands courts have not specifically considered the consequences of the applicable sanctions regime acting as a bar to the performance of contractual obligations (whether in the form of a contractual force majeure clause, or under the doctrine of frustration). However, in the absence of specific local precedent, it is likely that the courts of the Cayman Islands would take into account the position adopted by English Courts.

6.2 Enforcement

The courts of the Cayman Islands have not specifically dealt with the enforcement of judgments by or against a sanctioned party. However, the Governor is permitted to grant a sanctions licence to allow satisfaction of a judgment, or equivalent determination, out of the assets of a designated person. In the absence of such a licence, enforcement would not be possible against such assets.

7. Designation, Compliance and Circumvention

7.1 Executive Body

The power to make, vary or revoke a designation lies with the United Kingdom Secretary of State.

7.2 Scope of Designation

The Cayman Islands sanctions regime applies to designated persons and to any person owned or controlled directly or indirectly by a designated person.

In general, a person will be owned or controlled directly or indirectly by a designated person if:

- the designated person holds directly or indirectly more than 50% of the shares or voting rights in that person;
- the designated person holds the right directly or indirectly to appoint or remove a majority of the board of directors of that person; or
- it is reasonable, having regard to all the circumstances, to expect that the designated person would be able, in most cases or in significant respects, to achieve the result that the affairs of that person are conducted in accordance with the designated person's wishes.

In practice, this means that close associates, close relatives, business partners and indirectly held companies of a directly designated person can be considered as designated persons for the purposes of the Cayman Islands sanctions regime. This is particularly the case where the assets of these other persons were provided by, or significantly derive from, the designated person.

7.3 Circumvention

7.3.1 Prohibiting Provisions

Any person to whom the Cayman Islands sanctions regime applies is prohibited from circumventing the sanctions regulations by participating in any activities if they know that the object or effect of those activities is (directly or indirectly) to circumvent the sanctions regulations, or to enable or facilitate their contravention.

7.3.2 Criminal Penalties

Circumvention is a criminal offence, and carries the same penalties as a primary breach of the regulations (a fine at the discretion of the Grand Court, and up to seven years' imprisonment).

Trends and Developments

Contributed by:

Paul Kennedy and Sam Keogh
Campbells LLP

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Campbells LLP

Floor 4, Willow House, Cricket Square
George Town, Grand Cayman
Cayman Islands
KY1-9010
Tel: +1 345 949 2648
Web: www.campbellslegal.com

The logo for Campbells LLP, featuring the word "Campbells" in a blue, serif font with horizontal lines above the letters.

The Sanctions Regime in the Cayman Islands: an Overview

Two main trends have developed in the Cayman Islands sanctions space in the last two years, beginning in early 2022. The first is the significant ongoing expansion of the sanctions regime as it relates to Russia and, more recently, Belarus, following Russia's invasion of Ukraine in February 2022. The second is a corresponding increase in the tools available to manage and mitigate the impact of these expanded sanctions on innocent third parties who have been affected by them.

These trends have led to several significant developments in Cayman Islands sanctions, which began in late 2022 and are expected to continue for the foreseeable future. The most significant of these developments have been the issuance of several general licences by the Governor of the Cayman Islands and the application of sanctions to persons who have not been specifically designated.

Recent Trends in Cayman Islands Sanctions *Expansion of the scope of sanctions*

Russia's invasion of Ukraine in February 2022 triggered a massive expansion of sanctions worldwide, and the Cayman Islands has been no exception. From an initial designation of seven oligarchs identified as having links to

the Russian government or military in March 2022, there are now 1,707 individuals and 334 entities included in the applicable list of designated persons. The Cayman Islands sanctions regime imposes sanctions on any entity owned or controlled, directly or indirectly, by a designated person, and on any person (whether an individual or entity) who would be expected to act in accordance with a designated person's wishes (including, for example, close relatives, close associates and business partners). As a result, a large number of entities are now subject to Cayman Islands sanctions.

In addition to the expansion of the number of persons who are targeted by the Cayman Islands sanctions regime, the sanctions imposed by that regime have also expanded significantly. The sanctions Regulations relating to Russia were initially in a largely standard form, which imposed an asset freeze on designated persons, restricted the import or export of specified restricted, dual-use and energy-related goods, and restricted the activities of specified categories of ships. However, as a result of a number of amendments since early 2022, the sanctions regime relating to Russia now also targets:

- persons connected with Russia (whether or not they are designated);

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- investments in relation to Russia (whether or not a designated person is involved);
- the provision of professional and business services (including trust, accounting, legal, consulting and other services);
- director disqualification;
- aircraft;
- luxury goods;
- iron and steel products (including those proceeded in a third country);
- metals (including separate regulations relating to gold, processed gold and gold jewellery);
- interception and monitoring services;
- jet fuel and fuel additives;
- revenue-generating goods;
- products originating from occupied territory of Ukraine;
- oil and oil products, including maritime transport thereof;
- diamonds and diamond jewellery;
- coal and coal products;
- liquefied natural gas; and
- internet services.

The combination of the significant increase in the number of designated persons and the significant expansion of the scope of the Russia sanctions has meant that vastly more investments, assets, entities and transactions are now caught or potentially caught by the Cayman Islands sanctions regime.

Expansion of the scope of sanctions management tools

However, with this expansion of the impact of sanctions has come a corresponding increase in the tools available to investors, service providers, entities and regulators in order to manage the impact of the expanded sanctions regime on those who are not its direct targets.

Initially, the Russia sanctions regime had a limited number of general exceptions, and limited grounds upon which the Governor of the Cayman Islands could issue a licence to allow conduct that would otherwise breach the sanctions regime. Those exceptions primarily related to obligations that had existed prior to a person being designated, and the most relevant ground for issuing a licence was where doing so was necessary in order to provide for the basic needs of a designated person (including a designated entity). The limited availability of exceptions to the sanctions regime reflected that, at the time, the impact of the sanctions regime was intended to be, and mostly was, limited to designated persons, their close associates and entities controlled by them.

However, as the sanctions regime and its impacts expanded, it was recognised that additional exceptions and additional grounds for the issuance of sanctions licences were needed in order to limit the impact of sanctions on unintended targets. As a result, new exceptions have been provided for:

- actions that are required to comply with statutory or regulatory requirements (eg, the completion of annual audits by investment funds);
- the trading of securities issued by a person connected with Russia, which were admitted to trading on a regulated market prior to the imposition of the relevant prohibition;
- the provision of technical assistance where required to protect safety or the lives on board an aircraft or ship;
- actions done for the official purposes of a diplomatic mission or consular post in Russia, or of an international organisation enjoying immunities in accordance with international law;

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- the provision of expert evidence before administrative agencies, courts or other official tribunals, or in arbitral or mediation proceedings;
- providing legal advice as to whether any act or proposed act would breach the sanctions regime;
- actions taken in dealing with an emergency (meaning the urgent prevention or mitigation of an event likely to have a serious and significant impact on human health or safety, infrastructure or the environment); and
- allowing the removal of an aircraft or vessel to Russia, provided that the removal is not for the purpose of a transfer of ownership or a change of operator.

Additional grounds for the Governor to issue a sanctions licence have also been provided, to enable:

- actions to be done in connection with humanitarian assistance activity;
- the provision of medical goods or services for the benefit of the civilian population of a company, including the import, export or use of medical goods;
- the production or distribution of food for the benefit of the civilian population of a country;
- Cayman Islands entities to divest themselves of assets located in Russia, or to buy out investments in themselves held by the government of Russia or a designated person (provided the funds for the buyout are transferred to a frozen bank account);
- actions to be taken by or on behalf of a financial authority for the purposes of its functions;
- the processing of payments in connection with a licence issued for a different specified purpose;
- the financial stability of the Cayman Islands; and

- the safety and soundness of a supervised Cayman Islands firm.

The combination of these additional general exceptions to the sanctions regime and the addition grounds on which the Governor can issue a sanctions licence (including a general licence) has significantly increased the ability of innocent parties to take steps to extract themselves from investments, assets and relationships that are targeted by the sanctions regime.

While Russia's invasion of Ukraine remains ongoing, the expansion of the scope and targets of the sanctions regime and the corresponding expansion of the tools available to mitigate the impact of sanctions on persons who are not its intended targets are expected to continue.

Significant Developments in Cayman Islands Sanctions

The most significant recent developments in the Cayman Islands sanctions space stem directly from the two trends set out above. The first of these developments is the issuance by the Governor of the Cayman Islands of five General Licences, which allow specified persons to take actions which would otherwise breach the sanctions regime, and the second is the expansion of the sanctions regime in July 2022 to include non-designated persons, which was an otherwise unprecedented step from a sanctions perspective.

General licences

Beginning in October 2022, the Governor of the Cayman Islands has now issued five general licences, which allow specified conduct that would otherwise be prohibited by the sanctions regime, in order to ameliorate unintended consequences of that regime for persons who are not its intended targets.

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The first and most significant of these general licences was issued to allow Cayman Islands investment funds that were themselves frozen because they were owned or controlled directly or indirectly by a designated person to:

- redeem the investments of non-designated investors, so that they did not remain trapped in the frozen fund; and
- make payments for the funds' basic needs, including insurance premiums, audit and accounting fees, corporate and regulatory fees, registered office fees, directors' fees, professional service providers' fees and other reasonable routine expenses, to make payments of reasonable fees and charges arising from the routine holding and maintenance of their frozen assets, and to make payment of reasonable fees and expenses for legal services.

This licence also specifically provides that service providers will not breach the sanctions regime by receiving any of these fees.

This licence was issued in order to ameliorate the otherwise harsh effects of the sanctions regime on:

- non-designated investors in Cayman Islands funds, whose investments would otherwise have been frozen for an indeterminate period of time (in the case of some funds, now over two years);
- members of the Cayman Islands funds industry, including fund managers, registered office providers, auditors and attorneys, whose only choices in the absence of the licence would have been to resign or to provide services for no fees (as providing services on credit would breach the asset freeze regulations); and

- the funds themselves, where failure to pay the required regulatory fees would ultimately have led to the funds being deregistered and then dissolved, and their assets passing to the Cayman Islands government.

Subsequent sanctions licences have been granted to allow:

- providers of trust services to designated persons to take actions to terminate those services;
- attorneys and law firms to provide legal services to designated persons, and designated persons to make payments of legal fees, subject to certain caps on the total fees and the hourly rates of the attorneys providing the legal services; and
- the supply or delivery of Russian oil below specified price caps (in line with similar global price caps).

The purpose of the first of these is, like the funds licence, to avoid trapping trust services providers in a situation where they cannot provide services but also cannot take any steps to terminate their obligations to provide them.

The purpose of the second of these licences is to enable attorneys to act for designated persons, in order to avoid circumstances where either:

- litigation or transactions where a designated person is a party must be stayed (paused) while that person remains designated, to the detriment of all other parties to the litigation or transaction; or
- designated persons are unable to bring or defend claims, with the possible results that claims they may have will become time-barred, or that they will be subject to summa-

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ry judgment against them, without the merits or justice of those claims being determined.

As far as is known, no further general licenses are planned or proposed, but the Governor is expected to continue to issue general licences as and when necessary as the sanctions regime continues to develop.

Expansion of sanctions prohibitions to non-designated persons

The second and by far most significant recent development in the Cayman Islands sanctions regime was the extension of sanctions in relation to Russia to persons who are not specifically designated.

Beginning in July 2022, provisions were added to the Russia sanctions regulations prohibiting specified conduct in relation to “persons connected with Russia”. Under these regulations, a person is connected with Russia if they are an individual or association or combination of individuals ordinarily resident in Russia, an individual or association of individuals located in Russia, or an entity that is incorporated or constituted under the laws of Russia, or that is domiciled in Russia.

These regulations therefore apply to:

- all individuals resident in Russia;
- all individuals located in Russia (whether or not they reside there); and
- all Russian companies.

The number of persons caught by these regulations is therefore significantly greater than the number who are specifically designated. The breadth of these definitions has resulted in a significant expansion of the Cayman Islands sanctions regime in relation to Russia, and in the

prohibition of many transactions even where no designated person is involved or might benefit.

Transactions that may, be prohibited under these provisions, depending on their circumstances and on whether any exceptions apply, include:

- dealing with transferable securities or money market instruments issued by a person connected with Russia;
- making a loan or granting a credit to a person connected with Russia;
- directly or indirectly acquiring any ownership interest in land in Russia, or any ownership interest in or control over any entity connected with Russia;
- establishing any joint venture with a person connected with Russia;
- directly or indirectly acquiring any ownership interest in or control over an entity that is not connected with Russia, for the purpose of making funds or economic resources available for the benefit of any person connected with Russia (including any entity controlled, directly or indirectly, by any person connected with Russia);
- providing investment services related to any of the acquisitions set out above;
- providing trust, insurance or reinsurance, accounting, advertising, architectural, auditing, business and management consulting, engineering, IT consultancy and design, or public relations services to any person connected with Russia;
- making restricted, energy-related, luxury or other specified kinds of goods, or specified technology or jet fuel available to any person connected with Russia;
- providing technical assistance, financial services or brokering services relating to any of the goods, technology or jet fuel specified above to a person connected with Russia;

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- supplying banknotes or making banknotes available to a person connected with Russia; or
- providing port access to any ship owned, controlled, chartered or operated by persons connected with Russia.

In addition, under these regulations, the Cayman Islands may detain any ship owned, controlled, chartered or operated by persons connected with Russia and must not register any ship that appears to be owned, controlled, chartered or operated by persons connected with Russia. Any aircraft owned, chartered or operated by a person connected with Russia may not overfly or land in the Cayman Islands.

These prohibitions go far beyond freezing the assets of designated persons, and represent a major change in the Cayman Islands sanctions regime. It remains to be seen whether there will be any further such expansions of the sanctions regime or further prohibitions in relation to persons connected with Russia, although, as set out above, the recent trend has been continued extension of the sanctions regime to new targets.

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