1. INTRODUCTION

1.1 This document sets out the Law Society's highest priority concerns in relation to the Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2023 (the "**Amending Regulations**"), which introduced new provisions into the Russia (Sanctions) (EU Exit) Regulations 2019 (the "**Regulations**"). It explains why we consider an urgent general licence and additional guidance is required to address the immediate and most severe unintended consequences of new regulation 54D of the Regulations, whilst a longer term solution is considered.

1.2 Regulation 54D prohibits the provision of legal advisory services to any person who is not a United Kingdom person in relation to, or in connection with, any activity which would be prohibited if done by a United Kingdom person or in the United Kingdom.

1.3 The stated purpose of the new regulation, as referred to by the Government in the press release accompanying it, is to prevent UK lawyers from advising Russian companies in certain business deals – thwarting Russia from benefitting economically from the UK's world-leading legal expertise. The press release also states that it will stop the use of UK legal professionals to facilitate certain commercial activity which benefits Russia – and may block legal professionals from advising international companies on lending decisions to Russian businesses, for example. We fully endorse this objective.

1.4 However, as discussed in the meeting on Tuesday 4 July, the language of the new regulation goes far beyond these aims, and has created a problem for the legal services industry in the UK and beyond, and for non-Russian companies seeking advice from UK lawyers and UK firms. It has also led to a situation whereby the UK legal services sanctions are significantly more extensive than the US anti-facilitation prohibition and the EU legal services sanctions, as explained further below.

1.5 In this paper we summarise the concerns arising from the Amending Regulations in the following priority areas: (i) the provision of sanctions compliance advice and, relatedly, the position of in-house lawyers, and (ii) advice to clients who wish to terminate existing relationships with Russia. These are, in the Law Society's view, the most pressing issues to resolve in relation to the Amending Regulations. However, there are other important issues, for example in relation to the licensing process and the interaction between privilege and reporting obligations during the wind-down period, which also need to be addressed urgently.

1.6 More fundamentally, whilst some problems created by the Amending Regulations can be ameliorated, to a limited extent and in the near term, by a General Licence, very significant difficulties will remain. Those issues stem from the drafting of the restrictions, as discussed below, and can (and in our view must) be addressed by amendments to that drafting. The Regulation criminalises a huge range of legal advice which is not the intended target of the sanctions – advice which benefits multinational corporations and banks, not Russia or Russian companies. We believe that relatively minor changes could be made which would enable the restrictions to be refocussed on their stated purpose.

1.7 There is an overwhelming need for any business doing work internationally to receive integrated advice on sanctions regimes across the world, which can only be delivered by law firms with the relevant expertise. Most of these firms are based, or have substantial operations, in the UK. Their sanctions practices are actively serving the vast majority of the UK's major enterprises and providing them with expert advice they are unlikely to find anywhere else. If the issues highlighted in this document are not addressed, the unintended consequence of these measures is that both the specialist lawyers undertaking this work and, in many cases, the inhouse counsel whom they advise won't be able to provide sanctions advice to their clients, forcing UK and international businesses to seek this advice elsewhere or to proceed with no such advice at all. This in turn will impact, not just UK firms' practices, but more significantly the business of their clients and their ability to comply with sanctions. The net effect will be to weaken, rather than strengthen, the robustness of UK and allied nations' sanctions regimes.

1.8 We are grateful for the constructive discussions we have held with the Ministry of Justice

("**MoJ**") following the publication of the Amending Regulations, and we welcome the opportunity to provide these submissions. We look forward to continuing our dialogue on this topic and, given the urgency, we would be pleased to discuss these submissions, the enclosed draft general licence, and potential amendments to the Regulations, at your earliest convenience.

2. COMPLIANCE ADVICE

2.1 Multi-jurisdictional advice: the concern

2.2 The broad language of the Regulation prohibits not only advice which *facilitates* or *enables* activity that would be prohibited if it was conducted in the UK or by a UK person ("**UK-prohibited activity**"), but any advice *in relation to*, or *in connection with*[1] UK-prohibited activity. Advice includes "*the provision of legal advice…involving…the application or interpretation of the law*"[2].

2.3 This extensive prohibition on the provision of advice is coupled with a narrow exemption covering advice on compliance *with the UK Regulations*[3].

2.4 This effectively precludes the provision of advice as to whether a specific activity is prohibited by sanctions imposed on Russia by other jurisdictions such as the US and EU[4].

2.5 For example, if an international company wishes to know whether a specific activity it is contemplating is prohibited by UK, EU and US sanctions, a UK lawyer can answer whether it is prohibited by UK sanctions or not (due to the exemption in regulation 60DB(3)), but, if it is UK-prohibited activity, the lawyer cannot then advise whether it is also prohibited by EU or US sanctions.

2.6 Many international companies rely on the expertise of UK based lawyers to advise them on sanctions compliance advice. These are companies who wish to do the right thing and ensure they are not infringing any applicable sanctions.

2.7 Giving such advice does not enable or facilitate the activity – it simply allows a company to know whether they would be infringing a law applicable to them, and to understand how to ensure they do not do so. Whilst it is laudable that the legislation expressly allows the giving of advice in relation to whether a matter is subject to UK sanctions, this ignores the reality that many UK lawyers are asked to advise also on whether the same issue is prohibited by the sanctions laws of other allied countries[5], and the steps they can take to ensure they stay on the right side of the line.

2.8 Another difficulty is that the compliance advice exception in regulation 60DB(3) is limited to advice relating to compliance *with sanctions* and not other forms of compliance advice. The same fact-pattern on which a client seeks sanctions advice may raise risks under, for example, anti-money laundering laws, anti-bribery laws or export control laws, which also apply extra-territorially. Clients will generally wish to understand the full range of risks which a given scenario may present, so that they can mitigate those risks and act in accordance with all laws applicable to them. If the fact-pattern on which compliance advice is sought involves UK-prohibited activity, it appears that a lawyer may only be able to provide the client with sanctions advice, and not assist it in remaining compliant with other criminal laws.

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[1] Regulation 54D(1) of the Regulations.
[2] Schedule 3J, paragraph 8A(1)(a)(i) of the Regulations.
[3] Regulation 60DB(3).
[4] In this note, we assume that the Regulations will be given what appears to be their natural meaning, and that phrases such as "in relation to" or "in connection with" may be read widely. Our comments on scenarios which would or would not be prohibited follow that approach.
[5] For convenience, most of the multi-jurisdictional advice examples in this note refer to EU or US law, and EU or US clients. However, advice will frequently be required on the laws of other sanctioning jurisdictions. In addition, client (particularly those seeking to exit investments in Russia) will typically need legal advice regarding Russian counter-sanctions, which some UK firms are able to provide.

2.9 As a result, the Amending Regulations do not achieve their stated aims: *"wealthy individuals and businesses linked to the Russian regime will be further restricted from accessing UK legal expertise to carry out deals that could bolster the nation's war chest".* Instead, they prevent global financial institutions and multinational corporate entities from obtaining legal advice on sanctions imposed by the UK's allies – harming non-Russian business more than Russian business. Criminalising a lawyer who advises a client as to whether a particular matter is prohibited by the sanctions or other laws of our key allies appears to make little sense and has a significant impact on the UK legal services industry whose professionalism and expertise is sought after around the world.

2.10 We set out below a number of illustrative examples:

1. A UK law firm is asked to advise a Japanese client on compliance with UK, US and EU sanctions in relation to a potential transaction involving Russia. *In a scenario where the transaction would involve UK-prohibited activity, the firm can advise the client of this fact, but would not be permitted to provide the equivalent US or EU analysis.*
2. A lawyer working in the US, but who is a UK national, is asked to advise a US client on compliance with US sanctions against Russia; the client has no UK nexus and therefore does not require UK analysis to be carried out. *In circumstances where the underlying activity would be UK-prohibited activity, the lawyer is unable to advise on US sanctions.*
3. A Singaporean client seeks advice on the risks to which it may be subject in relation to a transaction aimed at exiting a pre-invasion joint venture with a Russian politically exposed person, who has recently been designated by the UK. The client wants advice on US sanctions and the US Foreign Corrupt Practices Act, and on Singaporean law. *In circumstances where the exit would involve any UK-prohibited activity, the lawyer is unable to advise on these US and Singaporean risks.*
4. The Paris office of a UK firm advises a French bank on whether a proposed transaction (taking place wholly in France) is compliant with both EU and UK sanctions. The conclusion is that the transaction is licensable (and can therefore be carried out lawfully) in France. However, *if the transaction would involve UK-prohibited activity and no equivalent UK licensing ground exists, the EU compliance advice would appear to be unlawful.*

2.11 The lawyers in the examples above are not enabling or facilitating the client's activity by advising whether the EU or US sanctions would prohibit the activity or not. As a result of the new law, they would however now commit a criminal offence by providing this advice.

2.12 If clients cannot get advice of this type from UK lawyers, they will have to turn elsewhere. We see no obvious policy objective that would be served by this.

2.13 Our member firms have reported multiple instances of these issues arising and creating problems in just the few days since the Amending Regulation was laid. These problems will only grow as time goes on.

2.14 **Impact on UK-headquartered firms**

2.15 It is also important to note that many UK firms are structured as single partnerships (or limited liability partnerships), or use UK legal entities (or branches thereof) to house their overseas offices. Many of the largest international UK firms are set up in this way. This means that the overseas offices of those firms are required, as UK persons, to comply with the Regulations. Even those firms with different structures may well require global compliance with the Regulations for policy reasons, or due to the integration of teams and back office functions.

2.16 To take the second example in the box above, this means that, irrespective of the nationality of the individual lawyer, the effect of the new law is that the New York office of the firm cannot advise a US client, in the US, on an OFAC licence or compliance matter - if the underlying activity would be UK-prohibited activity. That is so even if there is no UK nexus to the activity at all.

2.17 Where the nature of the advice sought is not to enable or facilitate a transaction that is prohibited, but instead to advise a US company on local compliance in the US, it makes no sense to us that the giving of such advice should now be a criminal offence.

2.18 Again, we understand many firms are having to turn away such instructions.

2.19 Many firms will also use their London office (rather than, for example, an EU office) as the hub for their sanctions practice, with many UK-based lawyers being qualified to advise on the sanctions imposed by multiple jurisdictions. It is a daily occurrence in such firms for London teams to be approached for advice on compliance with the sanctions imposed by the EU, US and other jurisdictions.

2.20 The unintended consequences highlighted above will therefore have a particularly significant impact on UK-headquartered international firms.

2.21 **The position of in-house lawyers**

2.22 There is also a material issue for lawyers employed within companies (i.e. outside of private practice) and who are relied on to give advice to their employers about the sanctions imposed by multiple jurisdictions.

2.23 As currently drafted, the impact of the Amending Regulations on in-house lawyers and compliance professionals is unclear. However, there is nothing in the Amending Regulations to suggest that the restrictions should be read as only applying to lawyers in private practice; and we assume that the restrictions therefore apply to in-house lawyers.

2.24 In-house lawyers, particularly those working in financial crime teams of global banks and other multinational companies, will frequently advise on the sanctions regimes of multiple jurisdictions. They often have regional or global roles.

2.25 We set out below some examples of the difficulties which in-house lawyers now face:

5. A UK-based US-qualified lawyer works in the financial crime team of a global investment bank. The lawyer assists the bank's subsidiaries throughout the EMEA region to comply with EU, UK, US and other applicable sanctions. *In relation to UK-prohibited activity, the lawyer must now stop advising on anything other than UK sanctions. As a result, the lawyer cannot do their job. The bank will still need the advice, so may consider moving their role outside the UK.*

6. A UK national is a lawyer in the Paris office of a multinational corporate entity. Their role involves advice on US, EU and UK sanctions. *They must stop providing this advice in respect of UK-prohibited activity. It appears they are now simply unable to do their job.*

2.26 If these lawyers are now able to advise only on UK sanctions, they cannot fulfil their duties. It serves no meaningful purpose for in-house lawyers not to be able to tell their employers whether a matter is prohibited by the sanctions of other jurisdictions, and what steps can be taken to ensure compliance. Indeed, if UK lawyers are 'walled off' from advising on particular activity, this could ultimately increase the risk of non-compliance by the companies for which they work, contrary to the Government's intention[6].

[6] The company could not fill the gap by turning to their usual external legal advisers, because (if they are UK lawyers) they will also be prohibited from providing this advice.

2.27 This cannot, we think, have been the intention of the legal services restrictions, and (as above) has the result of harming non-Russian businesses more than their Russian equivalents. Notably, the employing entity will still need the advice, and banning the employees who typically provide it from continuing to do so will simply lead to a shift of roles out of the UK and/or employment of non-UK nationals in such roles overseas.

2.28 Whilst the most problematic aspects of this issue can be addressed by the introduction of a general licence in the terms proposed by the Law Society, we would also welcome confirmation as to whether the restrictions were even intended to apply outside private practice[7].

2.29 **The UK sanctions are significantly more onerous than the US and EU sanctions**

2.30 As illustrated by the above examples, the impact of the Amending Regulations is far more extensive than the equivalent EU measures or the US concept of facilitation.

US sanctions

2.30.1 In the US, OFAC has explained in guidance that US persons, wherever located, may not approve, finance, facilitate, or guarantee any transaction by a foreign person, where the transaction by that foreign person would be prohibited if undertaken by a U.S. person or within the United States – See Guidance on the Provision of Certain Services Relating to the Requirements of U.S. Sanctions Laws (January 2017). However, the provision of compliance advice under the sanctions laws of the UK and other sanctioning countries, as well as under US sanctions, would not be deemed to "facilitate" the underlying transactions or dealings to which the advice relates – because the purpose of the advice is to enable the client to determine whether such transaction or dealing would breach applicable sanctions rather than whether and how they should undertake such transaction or dealing if it would not contravene the applicable sanctions.

2.30.2 For this reason, OFAC has not needed to issue a general licence to permit such advice (either for US or UK or other non-US sanctions advice); the guidance confirms that such advice is not a prohibited form of facilitation.

2.30.3 By contrast, because the UK restrictions cover "*any advice in relation to, or in connection with*" UK-prohibited activity, without any requirement for enablement or facilitation, a general licence is needed to reach the same outcome as the US.

EU sanctions

2.30.4 The EU restrictions relate only to advice provided (directly or indirectly) to the Government of Russia, or legal persons, entities or bodies established in Russia. The UK restrictions are considerably broader in that they apply to legal advisory services provided to any non-UK persons[8]. The EU does not prohibit the provision of compliance advice to non-Russian companies[9].

2.30.5 We recognise that the EU restrictions raise separate challenges and support the UK's intended approach of focussing on activity which enables or facilitates breaches, rather than banning legal advice to persons of a particular nationality. However, because the UK sanctions in fact extend beyond facilitation, in practice they are having a much more significant impact for firms than the equivalent EU sanctions have done.

2.31 **Individual licensing is not a viable solution**

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[7] We note in this regard the references in the press release to the export of legal services to Russia, which would appear to be more consistent with an intention to capture firms in private practice.
[8] Notwithstanding the statement in the press release announcing the Amending Regulations that the measures "will prevent UK lawyers from advising Russian companies in certain business deals".
[9] See Article 5n of EU Counsel Regulation (EU) No 833/2014.

2.32 The ability of the Department for Business and Trade ("**DBT**") to issue individual licences permitting activity which would otherwise contravene these restrictions does not address the issues outlined above.

2.33 Whilst we acknowledge that the DBT licensing process is often quicker than the OFSI licensing processes, realistically firms would have to wait (optimistically) weeks and (more likely) months before being able to confirm to clients whether or not they can provide advice, and any limitations on the scope of such advice. This is completely unworkable in practice when firms are asked to advise clients on urgent and complex matters.

2.34 We note the following examples of the likely challenges:

> 7. A German client has a (pre-invasion) investment in Russia. The German company has been asked to approve a payment by the subsidiary which will be paid to a counterparty at a UK-sanctioned bank. It needs to approve or decline the payment next week. It approaches a UK firm, its regular adviser, for advice on whether this is lawful under EU, UK and US law.
>
>   The UK firm says that it may or may not be able to provide the advice, that it will need to disclose details of the transaction to the UK government, and that it hopes to be able to confirm whether it can act or not in around a month, or possibly longer. *The client chooses not to instruct the firm.*
>
> 8. As above, but the firm says that it can provide advice on UK law only. *The client chooses not to instruct the firm as it is more efficient for it to get the same advice from a non-UK firm that can cover all three regimes.*

2.35 It would also be unworkable to rely on individual licences because the statutory Guidance indicates that DBT will only license the provision of advice where the underlying activity would itself be licensable in the UK. There will be many cases where firms are asked to provide compliance advice on matters which involve UK-prohibited activity which is not licensable.

2.36 Finally, even if there were ways to overcome difficulties with timescales and licensing grounds, the position would still be unworkable in many cases, as firms would need to carry out a detailed sanctions analysis in order to determine whether or not an underlying activity is prohibited by the Regulations prior to being able to take on new mandates. It may be impossible to do so on transactional matters where the transaction structure (which may impact the analysis of whether the transaction involves UK-prohibited activity) may be unknown at the outset. For example:

9. An Italian company owes money to a UK-sanctioned Russian company. The Italian client wants EU, US and UK sanctions advice on whether it can make payment, how to apply for licences (if available), and whether it can enter into an agreement with the Russian company to defer payment.

   Payment to a Designated Person is prohibited, and is generally not licensable (assuming the food, medical, humanitarian and extraordinary situation grounds are not relevant here). It therefore appears the law firm cannot be licensed to provide the advice.

10. A French client has a (pre-invasion) subsidiary in Russia which it wants to sell to its local management team in order to exit. It wants advice from the Paris office of a UK firm to ensure the transaction is sanctions-compliant and to provide the corporate, tax and other advice on the exit. It also needs advice on Russian counter-sanctions and how they may impact the exit. The detail of the transaction structure has not been settled as this will depend on negotiations during the transaction and the legal advice which is to be given.

    The transaction structure may or may not involve UK-prohibited activity (for example, the restrictions on dealings in shares issued by Russian companies may be relevant if the management team are to acquire the subsidiary via a new SPV). The law firm cannot assess at this stage whether a licence is required as the transaction structure is not settled. It is not in the client's interests for the law firm to start work and then need to stop part way through if it transpires some aspect of the transaction is UK-prohibited. The law firm therefore cannot act, even though the ultimate intention of the client is to exit Russia in a sanctions-compliant manner.

2.37 **Conclusion**

2.38 It is important that UK lawyers should be able to continue to advise clients on sanctions and other compliance matters, in order that they can ensure that they can comply with the sanctions imposed on Russia not just by the UK, but by its partners and allies, and with applicable criminal law. International companies need this advice. If they cannot obtain it from UK lawyers, they will go to other lawyers; no useful purpose would in our view be served by this.

2.39 These issues must be addressed urgently. As things currently stand, firms are declining instructions on a daily basis, and their global clients are being prevented from obtaining the advice that they need in order to operate their businesses in a manner compliant with the sanctions imposed by the UK's allies. Relatively minor amendments could be made to the Regulations so that they do not have these unintended consequences. In the interim, the issuance of a general licence to expressly permit the provision of compliance advice (beyond compliance with UK sanctions) would assist on a temporary basis.

2.40 If unresolved, it is also inevitable that the cost impact of the Amending Regulations will greatly exceed the £5m per annum threshold described in the Explanatory Memorandum.

2.41 A copy of a proposed draft general licence is enclosed for consideration by the MoJ and DBT.

3. **DIVESTMENT / TERMINATION OF EXISTING RELATIONSHIPS**

3.1 A further issue of significant importance is that the current legal services restrictions will severely impact firms' ability to assist clients who wish to exit the Russian market. We understand such exit to be consistent with the overall purpose of the Regulations and government policy.

3.2 We use 'exit' in this context to refer to a range of situations where a non-UK, non-Russian company is seeking to divest Russian investments, close down Russian operations or otherwise extricate itself from business dealings with Russian counterparties – often acting in accordance with licences obtained in its "home" jurisdiction(s). It is the reality of the UK legal market that many companies in such a position will approach their UK relationship firms as a "one stop shop" to provide advice on all aspects of transactions of this type, in respect of all relevant jurisdictions. However, the Amending Regulations have made it impossible for UK firms to take on many instructions of this kind.

3.3 We understand that the Government's intention is for advice in relation to exits to be dealt with via individual licensing. However, we expect this to be unworkable because:

3.3.1 There is no general 'divestment' licensing ground.

There are licensing grounds in the statutory guidance relating to the provision of certain professional and business services, to the effect that "*a licence may be granted for services that are necessary for non-Russian persons to divest from Russia, or to wind down business operations in Russia*". However, these do not apply to other restrictions. In relation to the legal services restrictions, the guidance states that a licence will be granted if (a) a licensing ground would apply to *the activity in relation to which the legal advice is being given*, or (b) that a licensing ground would apply to the activity if there was UK jurisdiction over it.

So, for example, if the advice on exit involves advice on transactions with Designated Persons, or transactions that would engage the restrictions in regulations 16, 17 or 18a, it would appear that the advice could not be licensed (because there is no 'divestment' licensing ground in relation to such transactions).

3.3.2 As explained above, licensing timescales and the requirement for potentially commercially sensitive information to be provided to the UK government mean that many clients would be unwilling to instruct a UK law firm in any event, even if the law firm's work could be licensed.

3.4 These issues will not be resolved by the issuance of a 'compliance' related general licence, because advice on exits will usually extend beyond advice purely related to sanctions compliance. For example:

11. A French client has a (pre-invasion) subsidiary in Russia which it wants to sell to its local management team in order to exit. It wants advice from the Paris office of a UK firm to ensure the transaction is sanctions-compliant and to provide the corporate, tax and other advice on the exit. It also needs advice on Russian counter-sanctions and how they may impact the exit. The transaction structure involves the incorporation and sale of a new Russian SPV, which could (for a UK person) breach the regulation 16 restrictions relating to dealings in 'new' transferable securities issued by Russian entities. *The transaction structure involves UK-prohibited activity. There is no licensing ground applicable to regulation 16. The law firm therefore cannot be licensed to undertake this work.*

12. A UK firm is asked to advise an EU bank on an English law loan agreement extended to a designated Russian entity prior to the imposition of sanctions. In addition to sanctions advice, the EU bank wants advice on ways to restructure the loan in order to remove itself from the Russian market (e.g. selling its participation to another lender); this would require input from finance experts and others within the firm. The EU bank intends to apply for a licence from its competent authority for any restructuring. *The firm could not act without a licence, notwithstanding that the transaction will be licensed by a partner country and is for a purpose consistent with UK policy aims. The client goes elsewhere for the advice because of the delay and uncertainty associated with a UK licence application.*

3.5 Given the above, we would strongly suggest that a general 'divestment' licence is important, so that firms can continue to support clients in their attempts to exit Russia and Russia-related relationships. We understand this to be consistent with the policy intention of the sanctions. Such advice provides no benefit to the Russian regime.

3.6 As indicated in our examples above, we expect that, if UK firms are required to seek individual licences for this work, the outcome in many cases will be that, where clients can find foreign firms to provide the advice, they will do so. The client will therefore still receive the advice in any event.

3.7 In cases where clients are willing to instruct a UK firm, and for the firm to seek a licence (which we expect will be unusual, but might sometimes be the case), there is a separate potential impact on those clients. The longer it takes for 'western' companies to exit Russia, the more difficult the process is becoming, with the Russian government putting in place new measures to seek to expropriate assets and otherwise impede the exit of investment from the jurisdiction. Given the prevalence of English law as a governing law in international contracts, restricting access to UK firms in this context only assists Russia in its endeavours.

3.8 The Law Society have therefore proposed that the general licence permit the provision of legal advice relating to the divestment or winding down of Russian interests. We regard this as somewhat less urgent than the compliance advice general licence discussed at section 2 above, but nonetheless important.

4. OTHER ISSUES

4.1 We are continuing to gather feedback from firms regarding the impact that the sanctions are having, and expect to have further comments in the coming days. In the first instance, however, we wished to flag four important points:

4.1.1 For existing matters, where advice is provided under an existing engagement, there is an exception in regulation 60DB(4) which allows the continued provision of advice until 29 September 2023, subject to a notification requirement.

It is unclear what information is required to be notified to the Secretary of State, and how a firm can make such a notification in circumstances where its professional duty of confidentiality to its client will apply and its advice may be subject to its client's legal professional privilege.

UK law firms and UK lawyers are liable to claims from their client if they breach their duty of confidentiality and they can also be subject to regulatory action by the Solicitors' Regulation Authority. Any legal exceptions to this duty must be clear and precise so that those seeking legal advice understand how their information will be handled and when they cannot expect confidentiality to be maintained. Firms, lawyers and their insurers also require such clarity to manage their business risk.

Legal professional privilege (LPP) provides a further protection to those seeking legal advice and is a complex ever-evolving area of law. Whilst we expect that the notification requirement does not apply to information subject to LPP, this should be confirmed.

However it should be noted that determining whether LPP applies to information provided by a client is not necessarily a simple analysis, due to the extensive case law on this area. Therefore if only information subject to LPP (and not the duty of confidentiality) is protected from being included in the notification, it will leave firms and their clients unable to quickly and easily understand what information is protected from disclosure and add further confusion for clients seeking legal advice (particularly where they are looking for assistance in complying with sanctions law).

Many firms are reporting that clients who are told that their name may need to be disclosed to the UK government in connection with the receipt of sanctions compliance advice are unwilling to receive that advice any longer from UK law firms. A company should not have to disclose such matters to the UK government simply because it has chosen to instruct a UK-headquartered law firm.

Given the considerations above, we have expressly provided in the draft General Licence that clients' LPP is not overridden. However, the position regarding the regulation 60DB(4) notification obligation will still need to be clarified.

4.1.2 As a further point in respect of existing matters, if for example the Paris office of a UK firm is unable to complete an existing engagement prior to 29 September 2023 and it has to cease acting to avoid committing a criminal offence under UK law, it may result in a breach by that office and/or its lawyers of their regulatory and ethical obligations to the client (under the Paris Bar rules) resulting in a regulatory sanction and/or a claim against the firm or lawyer by the client.

4.1.3 As noted in the divestment section above, the effect of the new restrictions appears to be to impose a dual licensing requirement where the firm is advising an EU (or US) client on a matter in respect of which the client requires an EU (or US) licence, and which is also UK-prohibited activity. It is unclear what (if any) benefit is served by doubling the licence administration. Given the time and cost of making such an application, it makes it unworkable, meaning UK lawyers effectively can no longer advise on such matters - where companies are seeking to comply with the laws of other allied nations.

We would suggest that activity which is expressly licenced by UK partner countries (and perhaps activity by persons in UK partner countries which does not require a licence) should not trigger the legal service restrictions.

4.1.4 We understand that where the matter on which the law firm is advising is UK-prohibited activity because of the involvement of a Designated Person, OFSI's view would be sought as part of the DBT licensing process. Whilst we appreciate that this is a different process to the grant of a licence by OFSI, and that MoJ will also be involved, it is unclear to us how this will be capable of being operated in a timely fashion.

4.2 We look forward to discussing the issues set out in this note with you further. If there is any additional information which it would be helpful for the Law Society to provide, please let us know.

DRAFT 7 July 2024

Privileged and Confidential

GENERAL TRADE LICENCE

General Trade Licence (Russia Sanctions – Legal Advisory Services)

Dated [xyz] granted by the Secretary of State.

The Secretary of State, in exercise of powers conferred by the Russia (Sanctions) (EU Exit) Regulations 2019 (the "Regulations") and in particular Regulation 65 (Trade licences) with reference to Regulation 54D (Legal Advisory Services), hereby grants the following General Trade Licence:

Licence

1. Subject to the exclusions, conditions and requirements set out below, this licence authorises the direct or indirect provision of legal advisory services as otherwise prohibited by Regulation 54D of the Regulations, to any person:

   (a) as to whether an act or a proposed act complies with or could trigger punitive measures in relation to, sanctions or export controls on or concerning Russia or the non-government controlled Ukrainian territory, imposed by any jurisdiction;

   (b) in relation to, or in connection with compliance with, or addressing the risk of punitive measures under, (i) sanctions or export controls concerning Russia or the non-government controlled Ukrainian territory imposed by any jurisdiction; (ii) sanctions imposed by Russia on persons from jurisdictions which have imposed sanctions on Russia; (iii) or any other criminal law; and

   (c) in relation to or in connection with, (i) any sale of any direct or indirect ownership, interest in or control over a person, other than an individual, connected with Russia, or of land located in Russia, (ii) any winding down or cessation of the business of any subsidiary of the person, which is a person connected with Russia, or (iii) the termination or modification of any contractual arrangements with a person which is or becomes, or which is or becomes owned or controlled, directly or indirectly by, a person connected with Russia or a person who is subject to sanctions imposed by any jurisdiction on Russia.

Exclusions

2. This licence does not apply where the Provider, at the time of act, has been served with a notice which suspends or revokes their ability to use this licence, unless the period of suspension or revocation has expired.

3. This licence does not apply if the legal advisory services facilitate any activity which is:

(a) prohibited under any of regulations 11 to 18C of Part 3 (Finance), Chapters 2 to 6 or Chapter 6B of Part 5 (Trade); or

(b) contravenes regulation 19 or 55

Conditions and Requirements

4. The authorisation in paragraph 1 above is subject to the following conditions:

(a) The provisions of Regulation 76 (General trade licences: records) of the Regulations apply to any act under the authority of this licence. Providers who use this licence will not be required to disclose information protected from disclosure under applicable legal privileges.

(b) In accordance with the applicable legislation, the records required by this licence must be kept for a period of 4 years beyond the end of the calendar year in which the record was created and the Provider must permit them to be inspected and copied by any person authorised by the Secretary of State or the Commissioners.

(c) Without prejudice to Part 9 (Enforcement) of the Regulations, failure to comply with any condition may result in the Provider's use of this licence being revoked or suspended. The Provider will be notified in writing of any such suspension or revocation.

Prohibitions not affected by this Licence

5. Nothing in this licence affects any prohibition or restriction other than Regulation 54D of the Regulations.

Interpretation

6. For the purpose of this licence:

(a) "Provider" means any legal or natural person located in or operating from within the United Kingdom or which is a United Kingdom person as defined in Regulation 2 of the Regulations operating anywhere in the world engaging in any activity authorised at paragraph 1;

(b) unless the context otherwise requires, any other expression used in this licence shall have the meaning it bears in the Regulations.

Entry into Force

7. This licence shall be effective as of 30 June and shall be of indefinite duration

An Official of the Department for International Business and Trade, authorised to act on behalf of the Secretary of State

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