



## My debtor is subject to sanctions: can I enforce and, if so, how?

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Russia's invasion of Ukraine has had wide-reaching consequences not only in respect of the devastation to the lives and livelihoods of the Ukrainian and Russian people, but across European economies generally.

For many decades prior to the imposition of sanctions following the Russian invasion, individuals and entities connected to Russia operated solvent and profitable businesses in the UK economy. Now, due to the freezing of assets and bank accounts, those same entities find themselves being restricted from paying their debts, and their counterparties are restricted from receiving payment from them. This leaves creditors out of pocket, with no clear path to recovery.

Given the war that continues in Ukraine, there is understandably no political appetite to remove or dilute the sanctions regime that is in place. So, how do creditors and other third parties affected by all of this get paid? What are their enforcement options?

A solution to these complex situations might lie in the insolvency regime and the appointment of independent administrators to deal with the frozen assets and liaise with OFSI impartially.

### **Illustration: prejudice caused to a commercial landlord**

Last year, Clyde & Co LLP was instructed by a client in its capacity as a landlord of commercial premises.

The tenant's business was the chartering of aircraft to third parties for the purpose of transporting freight cargo. Its filed accounts showed that it had had a particularly good trading history during the Covid-19 pandemic following increased demand for the transportation of essential medical supplies.

In June 2022, the tenant's sole shareholder and director was named on the "consolidated list of financial sanctions targets" in the UK, rendering him a "designated person" pursuant to sanctions regulations that were introduced following the Russian invasion of Ukraine. As a result, owing to its ownership and control by a designated person, the tenant entity was also considered to be a "designated person" for the purposes of the UK regime.

Following this, the tenant's management and employees left the premises in somewhat of a hurry: picture half-consumed cups of tea at workstations, Hi-Viz jackets on chairs, and a safe (purportedly containing not inconsiderable amounts of cash in various currencies) all left behind.

The effect of the sanctions regime on the tenant meant that, without a licence from the Office of Financial Sanctions Implementation (“OFSI”) and/or unless a specific legal exemption applied (none did), the tenant’s assets were frozen, and no one was permitted to “deal” with them. This made it impossible for the tenant to pay its debts as they fell due, including the debt owed to our client.

Our client found itself prejudiced in two ways. First, and most pressingly, it was unable to market and relet the premises because it was not permitted to remove (or deal in any way with) the items that had been left behind by the tenant.

Secondly, by the time of our instruction, the tenant owed substantial rent arrears and even though it most likely had sufficient means to pay the debt, it was impossible to force payment from an entity whose resources were frozen, and, in addition, our client was prohibited from receiving funds from it. The same applied to the tenant’s guarantor under the lease: that entity was also a designated person.

Our client forfeited the lease but could not re-let the premises. Its loss, therefore, continued to grow: if the tenant hadn’t been a designated person, the landlord could have cleared and re-let the premises and received rent from another tenant. Instead, it had cluttered and unoccupied premises, with no prospect of receiving rent from elsewhere.

## **Trying to obtain an OFSI licence**

In July 2022 (a month after its tenant became a designated person), our client applied to OFSI for a licence to try to resolve the situation. This application included a request by our client to allow it to receive amounts from the tenant.

One year later, however, our client was still waiting on a response from OFSI – a government department which, quite understandably, had become subject to significantly increased demand, with licences to access funds being sought by creditors and designated persons alike. Our client found itself without an obvious route to a solution.

## **Administration: a court-ordered solution?**

Upon discussing matters with our specialist insolvency team, our client concluded that a solution might lie in seeking an order from the court placing the tenant entity into administration, so that independent administrators could investigate the tenant’s affairs, assets and liabilities and, subsequently (subject to obtaining an OFSI licence), deal with them.

Crucially, our client considered that independent administrators might be more successful in obtaining an OFSI licence: if appointed, administrators would be able to act impartially and in the interests of the tenant’s creditors as a whole and could take steps to ensure that no funds or assets were released to any designated persons (this being a key purpose of the sanctions regime).

In November 2023, our client applied for an administration order and, two months later, in January 2024, the order was granted, placing the tenant into administration and appointing insolvency practitioners as administrators.

Subsequently, the administrators successfully obtained an OFSI licence, allowing them to deal with the tenant’s property (in accordance with the terms of the licence). In practice, this meant that the premises

could be cleared of the tenant's items, and our client could (after some reparatory works) re-let the property on the open market.

The costs related to the administration application were payable as an expense of the administration.

As the administration currently takes its course, the tenant's assets will be realised, and the cash recovered used to pay the claims of unsanctioned creditors, including those of our client.

## **Comment**

With the assistance of Clyde & Co's specialist insolvency, sanctions, and real estate teams, we were able to assist our client in unusual and complex circumstances.

It is our view that appointing administrators could provide a solution to many different situations and across a variety of sectors. It would assist parties with the benefit of arbitral awards or judgments made in their favour against a designated entity, as well as those with contractual debts.