

High Court confirms actual ownership of funds must be established before offence can be made out under Russian sanctions prohibitions

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In a decision handed down in long-running proceedings brought by Russian bank Vneshprombank LLC (**VPB**) against Mr Georgy Ivanovich Bedzhamov, the High Court considered whether a "reasonable cause to suspect" is sufficient to establish an offence under Regulation 11 of the Russia (Sanctions) (EU Exit) Regulations 2019 (the **Regulations**): [Vneshprombank LLC v Bedzhamov \[2024\] EWHC 1048 \(Ch\)](#).

As a reminder (and consistently with the drafting of equivalent restrictions in other UK sanctions regimes besides Russia), Regulation 11 provides that a person (**P**) must not deal with funds or economic resources owned, held or controlled by a designated person if P knows, or has reasonable cause to suspect, that P is dealing with such funds or economic resources.

The defendant submitted that a reasonable suspicion - on its own - is sufficient to make out the offence. The court however confirmed that even where a "reasonable cause to suspect" is established, an offence can only be made out where it is established that an individual or entity is in fact owned or controlled by a designated person, and P knew or had reasonable cause to suspect that to be the case.

While the decision provides welcome confirmation that the court will not lightly extend the ambit of liability under the sanctions regime, and in particular that prosecution under Regulation 11 is dependent on establishing ownership or control of a designated person (or a person owned or controlled by a designated person), businesses will nonetheless still wish to exercise a high degree of caution when dealing with assets that have been transferred from the ownership or control of a designated person (or a person owned or controlled by a designated person), or in other scenarios where there appears to be a risk of designated person involvement.

This is particularly so given that, notwithstanding the challenges of bringing a criminal prosecution for breach of sanctions in cases of this type, the Office of Financial Sanctions Implementation (**OFSI**) retains the power to impose monetary penalties on the civil standard of proof, and on a strict liability basis (ie irrespective of knowledge or reasonable cause to suspect). As such, whilst for a breach to be established it would still be necessary for OFSI to determine (as a factual matter) ownership or control by a designated person, OFSI would not need to do so beyond reasonable doubt in the same way as a criminal prosecuting authority.

Background

VPB's US\$1.34bn claim relates to a large-scale fraud which it alleges was carried out by the defendant and his sister, a former President of VPB. The defendant made an application seeking declarations as to whether there was reasonable cause to suspect that A1 LLC (**A1**), VPB's litigation funder, was owned or controlled by a designated person for the purposes of the Regulations.

A1 is part of the Alfa Group, whose three founders and largest shareholders were all designated on 15 March 2022. The defendant submitted that there was a reasonable cause to suspect that A1 continued to be owned, held or controlled by designated persons, despite two transactions for the purported transfer of A1 to a new shareholder. As VPB's litigation funder, A1 stood to financially benefit from any recoveries obtained from the defendant.

The defendant submitted that any person who has *prima facie* reasonable cause to suspect that they are dealing with funds owned, held or controlled by a designated person, must freeze the assets (or commit an offence) - unless it is possible to dispel the suspicion (either by obtaining satisfactory evidence or by putting the matter before a court or arbitrator). VPB submitted that an offence can only be established if the funds are first proven to in fact be owned or controlled by designated persons.

Decision

The court held that it had "no hesitation" in concluding that the defendant's construction was wrong. If the defendant was correct, the Regulations would prohibit dealing with funds or economic resources held by a person in respect of whom there are reasonable grounds to suspect is, but who in fact is not, a designated person (and that a person who did so would be liable for conviction, punishable by up to 7 years' imprisonment). The court said that this would represent a "monumental extension of criminal liability" and such a construction would go against the important principle of strict interpretation of penal legislation.

On that basis, the court confirmed that making out an offence under Regulation 11 would require proof both of ownership of funds by a designated person, as well as knowledge or reasonable cause of suspicion of dealing with such funds.

In reaching that conclusion, the court rejected various submissions put forward by the defendant in support of his construction. The defendant argued that if a person faced criminal charges for contravening the Regulations in a situation where they had "reasonable cause to suspect", the fact that funds were not in fact owned by a designated person would operate as a defence. The court disagreed, as this would shift the burden of proof onto the individual to show that they did not have reasonable cause to suspect that the funds were owned by a designated person, as opposed to the burden falling on the prosecution to show that the individual dealt with funds in fact owned by a designated person and, at the time, had knowledge or should reasonably have suspected that this was the case.

The defendant's construction was also not in line with Parliament's intention to continue the EU sanction regime without substantive change. Article 2 of Council Regulation (EU) No 833/2014 of 31 July 2014 requires Member States to freeze "[a]ll funds and economic resources belonging to, owned, held or controlled by [designated persons]". This test is purely factual and it does not prohibit such dealing where there is only reasonable cause to suspect that the person in question is a designated person. The mental element introduced separately in Article 10(2) makes clear that a person could not be held liable for a breach of Article 2: "if they did not know, and had no reasonable cause to suspect, that their actions would infringe the measures set out in this Regulation". The court said this makes clear that no liability arises unless there is ownership in fact and knowledge of or reasonable cause to suspect such ownership.

The defendant also placed reliance on the General Guidance on Financial Sanctions published by OFSI, which states that the obligation to freeze assets and report them to OFSI applies where "you know or have 'reasonable cause to suspect' that you are in possession or control of, or are otherwise dealing with, the funds or economic resources of a designated person". The court said this did not impact its interpretation of the Regulations, because the Guidance does not actually analyse the provisions of the Regulations and it appears to be based on a draft of the provisions which differ to those enacted. This element of the decision highlights the importance of considering the underlying provisions of the Regulations (or other relevant legislation) in the context of sanctions analysis, where there is civil or criminal liability risk, rather than relying solely on OFSI's guidance as a statement of the legal position (albeit this is of particular importance in the context of potential administrative liability).

The court therefore concluded that VPB's construction was the correct one. An offence cannot be made out unless ownership in fact is established, as well as knowledge of or reasonable cause to suspect such ownership. As a result, it was not necessary for the court to consider whether there were "reasonable grounds to suspect" that A1 was owned or controlled by a designated person, on the facts. The court nonetheless indicated, *obiter*, that the reasonable grounds test was clearly met in this case, there being multiple indications which suggest that A1's transfer was not an arms-length transaction.

The court however declined to make a finding as to whether, on the evidence before it, there was in fact ownership and control. The issue was not advanced in the application. Moreover, the point at which the question of control matters is when a payment must be made. While that point may come shortly, it had not arrived yet.