

# Financial Restructuring Alert

## Reflections on Restructurings: UK Sanctions Regulator Clears Path for Future Restructurings

April 13, 2023

On 28 March 2023, the UK Office of Financial Sanctions Implementation of HM Treasury (“OFSI”) issued the “Bond amendments and restructurings for non-Designated Persons” general licence (General Licence - INT/2023/2824812) (the “Bond Amendment GL”) under the Russia (Sanctions) (EU Exit) Regulations 2019 (the “UK Russia Sanctions Regulations”).

Under the UK Russia Sanctions Regulations, hundreds of Russian individuals and entities are listed as Designated Persons and therefore subject to the asset freeze provision under Regulation 11. The impact of the asset freeze has meant previously that where UK sanctions jurisdiction applies<sup>1</sup>, a specific OFSI licence was required to implement any amendment or restructuring of an issuer’s bonds. As described in our previous alert, the unprecedented scope and application of the global sanctions against Russia as well as the Russia countersanctions response has led to complications and delays with implementing financial restructurings. However, the new Bond Amendment GL means that issuers and creditors will now no longer have to seek separate specific licences in the UK where the terms of the Bond Amendment GL can be satisfied.

The Bond Amendment GL authorises a company, entity or institution which has issued a bond and which considers that it has or may have bondholders<sup>2</sup> who are Designated Persons to effect the terms of any bond restructuring or amendments agreed between itself and its Bondholders, provided that as part of the restructuring or amendment:

- No funds or economic resources (or any legal or equitable interests or rights therein) are made available, directly or indirectly, to or for the benefit of, a Designated Person.
- Any funds or economic resources (or any legal or equitable interests or rights therein) which the Designated Person would have been entitled to as part of the bond restructuring or amendment shall be frozen and not made available to the Designated Person, until such time as they are no longer designated.

In addition, OFSI confirmed in a recent Legal Sector Forum meeting that ‘any Bond restructuring or amendments’ also covers arrangements whereby bonds are being cancelled, with or without redemption.

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Under the terms of the Bond Amendment GL, any issuer that relies on it must provide HM Treasury with details in writing of the transaction within 14 days of completing the transaction, including an explanation of the steps taken to ensure that Designated Persons will have no access to any funds or economic resources following the bond amendment or restructuring. Any persons that utilise the Bond Amendment GL will need to keep accurate, complete and readable records regarding activity under the Bond Amendment GL for a minimum of six years. The Bond Amendment GL is in place until 28 March 2025.

Prior to the issuance of the Bond Amendment GL, OFSI had issued a limited number of specific licences to allow bond restructurings and amendments, but it took many months and intense lobbying both at the department and political level before the licences were issued. This is in contrast to the US Department of the Treasury's Office of Foreign Assets Control, which to date has been far more responsive in issuing both general and specific licences.

The new Bond Amendment GL helpfully provides a framework for issuers and investors to facilitate amendments and restructurings of bonds held by Designated Persons, provided the necessary conditions of the Bond Amendment GL can be satisfied. However, the approach by OFSI has not yet been mirrored by other key sanctions regulators and where there are sanctions touch points in other jurisdictions (which may be triggered by the involvement of a variety of parties to a restructuring transaction, including but not limited to issuers, investors, trustees, financial intermediaries, legal, financial or other advisers and employees associated with the forgoing), such that the US and the EU, specific licences or other applicable exemptions may still be required before any amendment or restructuring can be implemented. Further, the Bond Amendment GL is specifically only available for Bonds (as defined within article 77 (1) of the Financial Services and Markets Act 2000 (Regulated Activities) Order 2001 or an alternative finance investment bond within the meaning of article 77A). The licence does not extend to loans or shares which are often a key part of a broader financial restructuring or amendment transaction. In situations where Designated Persons are lenders to a company or shareholders of a company, a specific licence from OFSI (and potentially licences from other sanctions regulators) may still be required before these transactions can be completed.

Whilst the new Bond Amendment GL is a helpful step in the right direction from OFSI and the UK government, the complexities and intricacies of the unprecedented global sanctions regime against Russia as well as the Russia countersanctions will continue to complicate financial restructurings for the foreseeable future. Issuers and investors will still require guidance and advice to navigate these regimes and the frequently complex sanctions jurisdictional touchpoints, especially considering the often significant penalties—and, in many cases, strict liability—for breaches.

*Akin's financial restructuring and sanctions teams have worked seamlessly together to navigate the intricacies and impacts of the sanctions regimes on numerous restructuring matters. Akin advised an ad hoc group of bondholders of Nostrum Oil & Gas plc in connection with its successful debt-for-debt and debt-for-equity restructuring (article here). Akin also advised Veon Holdings B.V. in connection with its scheme of arrangement and bond amendment and an ad hoc group of bondholders of Ozon Holdings plc in connection with its financial restructuring.*

<sup>1</sup> UK sanctions apply (a) to conduct in the United Kingdom (UK) or its territorial sea; (b) to UK nationals, wherever located; and (c) to any entity or body incorporated or constituted under the law of any part of the UK, wherever located. The term "UK national" includes any individual who is a British citizen, a British overseas' territories citizen, a British National (Overseas) or a British Overseas citizen; a person who under the British Nationality Act 1981 is a British subject; as well as a British protected person within the meaning of that Act. UK sanctions can also extend to certain British Overseas Territories (cf. Section 21 of the *Sanctions and Anti-Money Laundering Act 2018*).

<sup>2</sup> The Bond Amendment GL defines bondholder as any owner of a bond, whether that ownership is legal or beneficial.