



MAPLES
GROUP

Navigating Sanctions

(whilst respecting the right to a defence and access to justice)

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Agenda

- *“Sanctions are a necessary tool in the arsenal of diplomacy, but they must be used wisely and with a clear understanding of their potential impact”*
 - John F. Kennedy
- 1. Legal Advisory Services Prohibition v Access to Justice
- 2. Real-World Impact of Overlapping Financial Sanctions on Industry
- 3. The Challenges of De-Listing Applications

Legal Advisory Services Prohibition

Access to Justice

“Access to legal representation is an important element of the core democratic principle of the rule of law”

(OFSI/DTI, “Complying with professional and business services sanctions related to Russia”, updated 10 October 2024)

- Access to justice traditionally seen as an aspect of the Rule of Law, or from the perspective of the right of access to a court element of the Right to a Fair Trial
- See, e.g. Article 6, European Convention on Human Rights; Article 14, International Covenant on Civil and Political Rights; Article 47, EU Charter of Fundamental Rights
- Even there, the emphasis has been on the right to representation in the criminal context

Legal Advisory Services Prohibition

Access to Justice (cont.)

Lord Bingham in *Daly* [2001] UKHL 26:

“Among the rights which, in part at least, survive [the imposition of a custodial order] are three important rights... the right of access to a court; the right of access to legal advice; and the right to communicate confidentially with a legal adviser under the seal of legal professional privilege. Such rights may be curtailed only by clear and express words, and then only to the extent reasonably necessary to meet the ends which justify the curtailment.”

- But case concerned a challenge to a policy that prisoner may not be present when their legally privileged correspondence is examined by prison officers during cell searches
- And it accepts that such rights are qualified

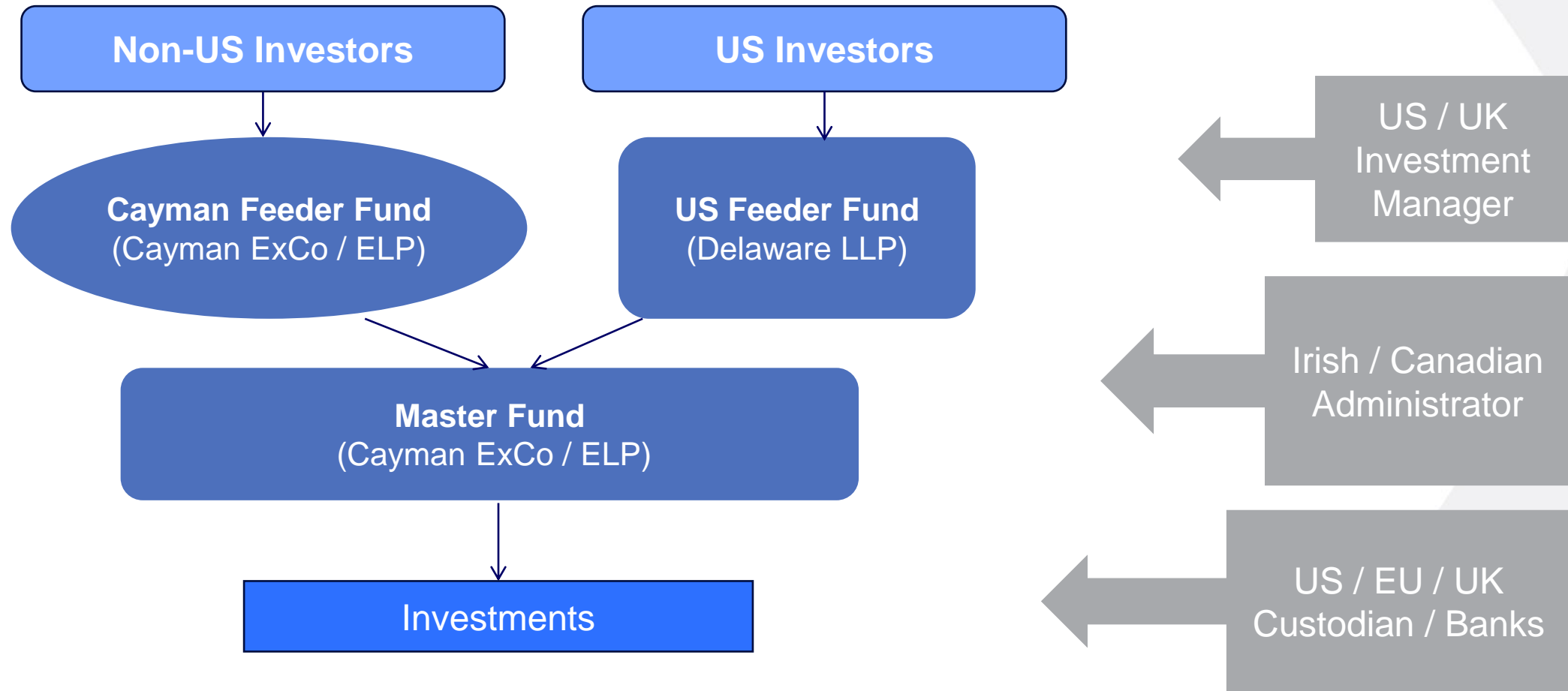
Legal Advisory Services Prohibition

Access to Justice (cont.)

- Regulation 54D, Russia (Sanctions) (EU Exit) Regulations 2019
- Specific legal advisory services measure introduced on 4 September 2024
- Applies to UK persons and persons in the UK. Prohibits (under threat of criminal sanction) providing legal advisory services to non-UK persons, where the object or effect of those services is to enable or facilitate financial or trade activity which would be prohibited under the UK sanctions regime if the activity was done by a UK person or within the UK
- Legal advisory services are the provision of legal advice to clients in non-contentious matters (see paragraph 8A, Schedule 3J of the Regulations)
- Distinct from restrictions on provision of legal services to Designated Persons, now governed by OFSI General Licence INT/2024/5334756

Impact of Overlapping Financial Sanctions

Standard Investment Fund Structure



Impact of Overlapping Financial Sanctions

Ownership and Control

- Test
 - 1st Condition – A person holds, directly or indirectly, more than 50% of the shares or voting rights in an entity, or the right to appoint or remove a majority of the board of directors of an entity
 - 2nd Condition – It is reasonable, with regard to all the circumstances, to expect that the person would (if they chose to) be able, in most cases or in significant respects, by whatever means and whether directly or indirectly, to achieve the result that the entity's affairs are conducted in accordance with their wishes
- Guidance
 - Range of non-exhaustive examples
 - Stretching from appointing, by exercising voting rights, a majority of the board...to...
 - *“having the ability to direct another entity in accordance with one's wishes. This can be through any means, directly or indirectly”*

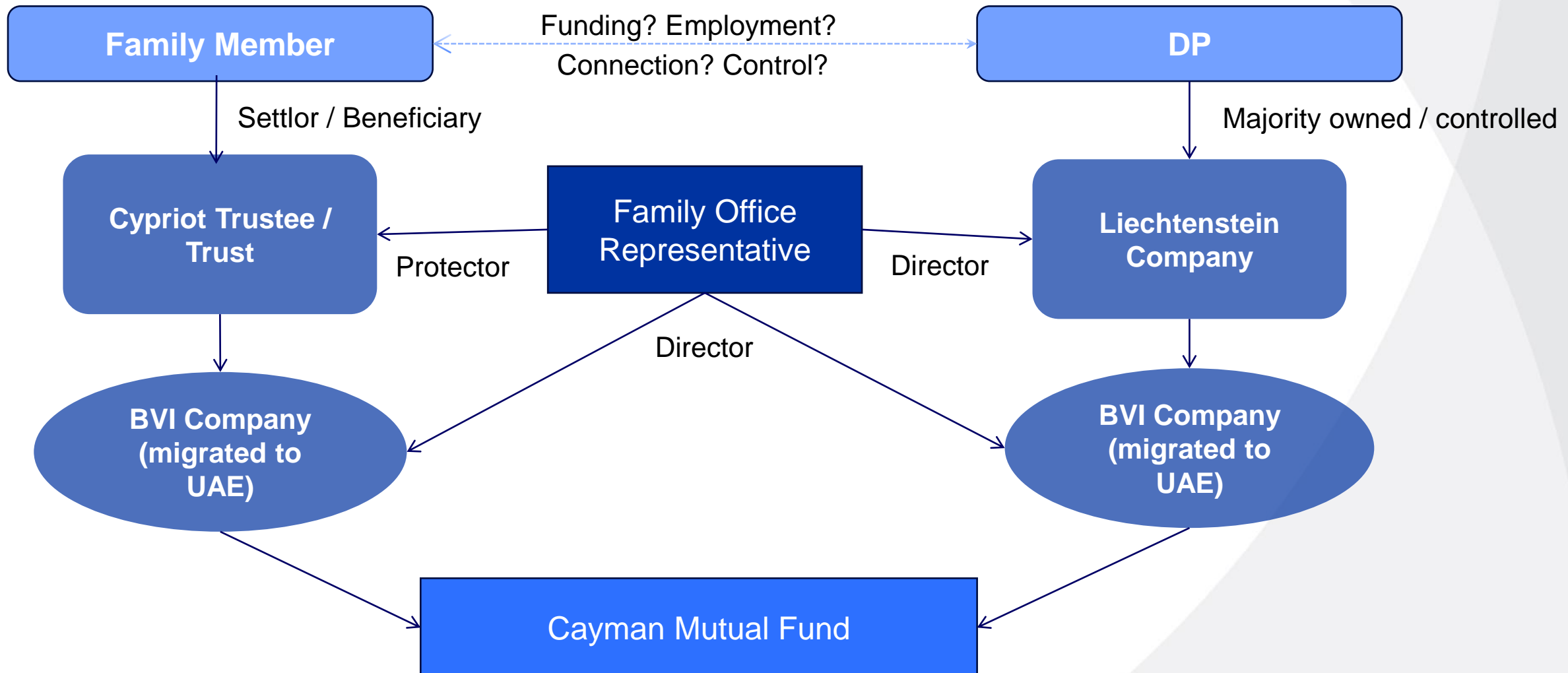
Impact of Overlapping Financial Sanctions

Ownership and Control (cont.)

- Control Test Currently in Flux
 - *Mints v National Bank and Bank Okritie*
 - *Litasco SA v. Der Mond Oil and Gas Africa SA and Locafrique Holding SA*
 - *Hellard & Others v. OJSC Rossiysky Kredit Bank (in Liquidation) & Others*
- Types of control
 - *De jure control*
 - Actual present *de facto* control
 - Potential future *de jure* control
 - Potential future *de facto* control

Impact of Overlapping Financial Sanctions

Practical Example (family member)



Impact of Overlapping Financial Sanctions

The s.44 SAMLA Defence

- “44. Protection for acts done for purposes of compliance*
- (1) This section applies to an act done in the reasonable belief that the act is in compliance with —*
- (a) regulations under section 1, or*
- (b) directions given by virtue of section 6 or 7.*
- (2) A person is not liable to any civil proceedings to which that person would, in the absence of this section, have been liable in respect of the act.*
- (3) In this section “act” includes an omission.”*
- A party must have subjectively believed that it would have been acting in breach of sanctions and that such belief was objectively reasonable.

Impact of Overlapping Financial Sanctions

Enforcement Risk



Wise Payments – 31 August 2023

£250 cash withdrawal

No civil monetary penalty

First use of disclosure enforcement powers



HERBERT
SMITH
FREEHILLS

Herbert Smith Freehills CIS LLP Moscow – 20 March 2025

£465,000 monetary penalty

Payments to third party accounts at sanctioned banks

Ranging from £40 to almost £4million

The Challenges of De-Listing Applications

Overview

- Sanctions: powerful tool of foreign policy
- Can conflict with fundamental rights
- Focus: challenges of de-listing (and listing), access to justice, and procedural fairness

The Challenges of De-Listing Applications

Immediate Designation – Immediate Impact

- Sanctions freeze assets, restrict movement, harm reputations
- No prior notice or hearing
- Impacts family members, business, livelihood
- Can be imposed for ulterior purposes

The Challenges of De-Listing Applications

Listing and De-listing Processes by Jurisdiction

- **UK Sanctions Lists:**
 - * The UK Consolidated List: includes all persons subject to financial sanctions.
 - * The UK Sanctions List: provides the legal basis and reasons for designation under UK regulations.
- De-listing for UK Sanctions involves an application to the Office of Financial Sanctions Implementation (OFSI) or a challenge before the High Court under the Sanctions and Anti-Money Laundering Act 2018.

Status: Asset Freeze Targets

REGIME: Global Human Rights

INDIVIDUALS

1. Name 6: ABAHUSSAIN 1: MANSOUR 2: OTHMAN 3: M 4: n/a 5: n/a.
DOB: (1) 10/08/1972. (2) 11/08/1972. POB: Majma, Saudi Arabia a.k.a: (1) ABAHUSEYIN, Hussein, Mansour, Othman, Aba (2) ABAHUSEYIN, Mansour, Osman (3) ABAHUSEYIN, Mansour, Othman, M (4) ABAHUSEYIN, Mansur, Othman, M (5) ABAHUSSAIN, Hussein, Mansour, Othman, Aba (6) ABAHUSSAIN, Mansour, Osman (7) ABAHUSSAIN, Mansur, Othman, M (8) ABAHUSSEIN, Hussein, Mansour, Othman, Aba (9) ABAHUSSEIN, Mansour, Osman (10) ABAHUSSEIN, Mansour, Othman, M (11) ABAHUSSEIN, Mansur, Othman, M (12) ABU HUSEYN, Hussein, Mansour, Othman, Aba (13) ABU HUSEYN, Mansour, Osman (14) ABU HUSEYN, Mansour, Othman, M (15) ABU HUSEYN, Mansur, Othman, M (16) ABU HUSSEIN, Hussein, Mansour, Othman, Aba (17) ABU HUSSEIN, Mansour, Osman (18) ABU HUSSEIN, Mansour, Othman, M (19) ABU HUSSEIN, Mansur, Othman, M (20) ABUHUSSAIN, Hussein, Mansour, Othman, Aba (21) ABUHUSSAIN, Mansour, Osman (22) ABUHUSSAIN, Mansour, Othman, M (23) ABUHUSSAIN, Mansur, Othman, M Nationality: Saudi Arabia Passport Number: S059033 Other Information: (UK Sanctions List Ref):GHR0028. (UK Statement of Reasons):Mansour Othman M Abahussain held the position of Major General and worked in the office of the Crown Prince. He was involved in the unlawful killing of Jamal Khashoggi in Istanbul on 2 October 2018, as part of the 15 man team sent to Turkey by Saudi authorities. He was involved in the concealment of evidence at the Saudi Consul General's residence following the killing. (Gender):Male Listed on: 06/07/2020 UK Sanctions List Date Designated: 06/07/2020 Last Updated: 09/10/2020 Group ID: 13861.
2. Name 6: AL ASIRI 1: AHMAD 2: HASSAN 3: MOHAMMED 4: n/a 5: n/a.
DOB: 12/02/1952. POB: Mahayel, Asir Province (unconfirmed), Saudi Arabia Nationality: Saudi Arabia Other Information: (UK Sanctions List Ref):GHR0043. (UK Statement of Reasons):Ahmad Hassan Mohammed Al Asiri held the position of Deputy Head of the Saudi Intelligence services (General Intelligence Presidency, GIP) in Saudi Arabia. He was involved in the unlawful killing of Jamal Khashoggi. He was a senior official involved in commissioning the 15 man team sent to Turkey to kill Jamal Khashoggi. (Gender):Male Listed on: 06/07/2020 UK Sanctions List Date Designated: 06/07/2020 Last Updated: 09/10/2020 Group ID: 13894.
3. Name 6: AL BALAWI 1: FAHAD 2: SHABIB 3: A. 4: n/a 5: n/a.
DOB: 24/01/1985. POB: Arar, Saudi Arabia Nationality: Saudi Arabia Passport Number: N163990 Position: Member of the Royal Guard Other Information: (UK Sanctions List Ref):GHR0026. (UK Statement of Reasons):Fahad Shabib A. Albalawi was a Royal Guard in Saudi Arabia. He was directly involved in carrying out the unlawful killing of Jamal Khashoggi at the Saudi Consulate in Istanbul on 2 October 2018, as part of the 15 man team sent to Turkey by Saudi authorities. (Gender):Male Listed on: 06/07/2020 UK Sanctions List Date Designated: 06/07/2020 Last Updated: 06/07/2020 Group ID: 13855.

The Challenges of De-Listing Applications

Listing and De-listing Processes by Jurisdiction (cont.)

- EU Sanctions
 - The **EU Consolidated Sanctions List**: contains those listed under EU restrictive measures, with reasons outlined in the relevant Council Decision / Regulation
 - A difference between the UN sanctions (imposed by the UN Security Council) and the EU autonomous sanctions
 - De-listing requires a request to the Council of the EU, and can also be challenged before the General Court of the European Union
- US Sanctions
 - The **OFAC SDN List**: the main list under US sanctions
 - Listing reasons often in press releases or designations by Executive Order / statute
 - De-listing pursued by submitting a request for removal to OFAC, often involving a detailed petition / legal arguments demonstrating change in circumstances or mistaken listing

The Challenges of De-Listing Applications

Right to a Defence and Access to Justice

- Article 6 ECHR: Right to fair trial
- Designation without effective challenge breaches rights
- De-listing is complex, slow, and often opaque

The Challenges of De-Listing Applications

Case Study – *Kadi v Council* (C-402/05 P)

- UN designation implemented by EU
- No means for Kadi to challenge
- ECJ: EU must ensure fundamental rights – listing annulled
- Contrast with the UK / Potential Article 6 breach
- Highlighted lack of remedy in UN process

The Challenges of De-Listing Applications

UK Context – Post-Brexit Challenges

- SAML 2018: UK sanctions regime
- Some sanctions measures apply through other legislation, such as the Immigration Act 1971, Export Control Order 2008, and Terrorist Asset-Freezing Act 2010
- Review of UK sanctions possible, but: closed material, classified evidence
- Procedural fairness issues remain

The Challenges of De-Listing Applications

Burden of Legal Challenges

- High cost: lawyers, time, evidence
- Frozen funds limit access to representation (ability of lawyers to accept money as well)
- Psychological stress, reputational harm

The Challenges of De-Listing Applications

Case Studies – Russian Sanctions

- Fridman & Aven (EU, 2024): Sanctions annulled for lack of evidence
- Usmanov (Germany, 2023): Searches ruled unlawful by court
- UK courts: Most challenges (e.g., Shvidler, Khan, Phillips) unsuccessful so far

The Challenges of De-Listing Applications

Case Studies – Russian Sanctions (UK de-listings)

- Oleg Tinkov: De-listed after condemning the invasion and renouncing Russian citizenship
- Farkhad Akhmedov: UK government provided no detailed public explanation

* While most legal challenges to UK sanctions have failed, these cases show that the government itself can and does revise listings

The Challenges of De-Listing Applications

Case Study – Syria Sanctions

- March 2025: UK lifts sanctions on Syria's central bank and oil companies
- Aimed to support economic recovery and political transition
- UK was first Western nation to unfreeze Syrian assets

The Challenges of De-Listing Applications

Key Takeaways from Russia and Syria Examples

- UK courts defer more to government on sanctions
- De-listing can be legal (via challenge) or political (via foreign policy)
- Due process concerns remain in both listings and failures to list as well
- No option to challenge UN sanctions in UK Law (but potential to make submission to UN directly or through Minister)

The Challenges of De-Listing Applications

Personal Experience

- Making applications under the UK Human Rights Sanctions Regulations regarding designating individuals and applications against unofficial sanctions (Refinitiv)
- Decisions are hard to challenge
- Process is vulnerable to political influence and lacks sufficient safeguards against misuse

The Challenges of De-Listing Applications

Recommendations and Potential Legal Reforms

- Improve de-listing: transparency, fair hearing
- Increased ease of access to frozen funds for legal assistance
- Parliamentary Committees in relation to sanction designation decisions
- International cooperation for due process standards

Q&A
Any questions / comments?

