

OFSI Issues a “Prior Obligations” General License

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On 22 May 2023, the United Kingdom’s Office of Financial Sanctions Implementation (“OFSI”) issued General License INT/2023/302420 (the “Prior Obligations Licence”).

The Prior Obligations Licence authorises UK persons to receive funds or economic resources owed to them by any person targeted by UK asset freeze sanctions (a “Designated Person”), including entities owned or controlled by targeted persons, provided that the relevant contractual obligation arose before the designation was imposed and the other conditions set out in the Prior Obligations Licence are met.

The Position before the Prior Obligations Licence. UK sanctions prohibit any dealings with funds or economic resources owned, held or controlled by a Designated Person, which includes receiving payments or other funds or economic resources from a Designated Person. To date, OFSI has had the power to grant individual “prior obligations” licences, but only in response to individual licence applications.

One of the new features of the post-Brexit UK autonomous sanctions regime is that OFSI can issue general licences in relation to financial sanctions. Broadly speaking, these allow OFSI to create a general authorisation for conduct that would otherwise require individual licences, subject to certain conditions. To date, this power has primarily been used by OFSI to issue general licences allowing the “winding down” of transactions with a particular Designated Person for a limited period of time, which could (depending on the scope of the licence) involve authorising the receipt of outstanding payments from the Designated Person in question. The Prior Obligations Licence represents a significant move by OFSI to allow a category of common transactions involving Designated Persons to be covered by a general licence.

The Limitations of the Prior Obligations Licence. The Prior Obligations Licence allows UK persons to receive funds or economic resources from a Designated Person provided that (i) the amount was owed under a contract predating the relevant designation, and (ii) the total value of the transfer does not exceed £200,000 (allowing for market currency fluctuations). The pre-existing contractual obligation must be “clear, demonstrable, and enforceable” in order for the Prior Obligations Licence to apply. Only a single UK person may use the Prior Obligations Licence to receive funds or economic resources under a particular pre-existing contractual obligation.

The Prior Obligations Licence also authorises any UK bank or other financial institution to process the exempt payments and allows the transfer of exempt payments via a bank or other financial institution that is itself a Designated Person.

However, the Prior Obligations Licence will not apply to payments or transfers under the following pre-existing contracts and financial instruments entered into with or issued by a Designated Person, regardless of the outstanding amount:

- Bonds, derivative contracts, derivatives, credit default swaps and repo transactions;
- Professional legal services and expenses;
- Ongoing prior obligations, i.e., where payment obligations arise out of contracts executed prior to the designation, but where services continue (or continued) to be provided under the contract after the designation; and
- Bank accounts in a bank that is itself a Designated Person, or a contract involving the discharge of an obligation using funds held in an account with such bank.

The exclusion of professional legal services fees and remittances of funds from designated banks is unsurprising, given that OFSI has already issued general licences authorising these types of payments and transfers.¹ It is as yet unclear, however, why OFSI decided to exclude bonds and derivatives from the scope of the Prior Obligations Licence and whether this means that a separate general licence dealing with these financial instruments is on the way.

The Prior Obligations Licence will expire on 21 November 2023. However, as with other general licences, OFSI may decide to extend the Prior Obligations Licence for a longer period of time.

¹ See General Licences INT/2023/2954852 and INT/2022/1919908

Reporting and Recordkeeping. A UK person must, within one month of receiving any payments under the Prior Obligations Licence, send the following documents and information to OFSI:

- The relevant contract with the Designated Person;
- Any other documents, communications or other records that set out the obligation pursuant to which payment is made and received;
- The relevant invoice(s) that are being paid, the amount received and the date on which the funds were transferred and received; and
- Confirmation that no other UK person will use the Prior Obligations Licence to receive funds or economic resources arising from the same contractual obligation.

The Prior Obligations Licence imposes the requirement to keep records of any activities under the Prior Obligations Licence for a minimum of six years.

Consequences for Business. While helpful for many smaller transactions, given the limits of the Prior Obligations Licence, many businesses will find that it is still necessary to seek individual “prior obligations” licences for out-of-scope transactions. Nonetheless, the Prior Obligations Licence underlines that OFSI typically sees receipt of payments from Designated Persons as in line with the objectives of UK financial sanctions.



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