



INSOL EUROPE

The leading European organisation of
professionals who specialise in insolvency,
business reconstruction and recovery

Offering solutions – When sanctions and insolvency cross paths



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Russia's aggression against Ukraine has been met with an unprecedented level of sanctions by a number of countries, including the EU.

- Sanctions adopted as amendments to acts already in force (since 2014; illegal annexation of Crimea)
- EU adopted new “package of sanctions” following Russia's recognition of the (so-called) Donetsk and Luhansk republics on 23 February 2022
- Quickly followed by further sanctions on 25 February 2022 immediately after the Russian armed invasion of Ukraine (referred to as the second package of sanctions)
- Matters escalated from there; latest (the eleventh) package introduced on 23 June 2023



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Eight sanctions package extended existing sanctions regime by banning the provision of certain business-relevant services, including legal advisory services to the Russian Federation

- Council Regulation (EU) 2022/1904 of 6 October 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine
- It is prohibited to provide, directly or indirectly, provide certain services to
 - the Russian government, as well as to
 - legal persons such as companies and other entities or bodies established in Russia.

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Article 5n of Council Regulation (EU) 2022/1904 of 6 October 2022 as amended:

1. [...]
2. It shall be prohibited to provide, directly or indirectly, architectural and engineering services, **legal advisory services** and IT consultancy services to:
 - (a) the Government of Russia, or
 - (b) legal persons, entities or bodies established in Russia.
3. [...].
4. [...].
5. Paragraphs 1 and 2 **shall not apply** to the provision of services that are strictly necessary for the exercise of the right of defence in judicial proceedings and the right to an effective legal remedy.
6. Paragraphs 1 and 2 **shall not apply** to the provision of services which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, or for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State, [...].



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Recital 19 of Council Regulation (EU) 2022/1904: ‘Legal advisory services’ covers:

- the provision of legal advice to customers in non-contentious matters, including commercial transactions, involving the application or interpretation of law;
- participation with or on behalf of clients in commercial transactions, negotiations and other dealings with third parties; and
- preparation, execution and verification of legal documents.



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Recital 19 of Council Regulation (EU) 2022/1904: ‘Legal advisory services’ does not include

- any representation, advice, preparation of documents or verification of documents in the context of legal representation services, namely in
 - matters or proceedings before administrative agencies,
 - courts or other duly constituted official tribunals, or
 - in arbitral or mediation proceedings.



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**Cyprus
Boris Mints and others case**



Corporate Recovery & Insolvency Specialists



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Boris Mints and O1 Group Limited

- Russian Oligarch, Boris Mints, was a shareholder of Otkritie Bank which is now a designated entity pursuant to EU and UK sanctions.
- He was also the owner of O1 Group Limited, Nori Holding Limited and Centimila Services Ltd, which all entered insolvent voluntary liquidation in 2019.
- Otkritie and National Bank Trust (“NBT”), Russian state owned banks, claim that Boris Mints conspired with others in defrauding Otkritie Bank by replacing valuable security for worthless bonds.



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An application was filed in the UK court by Boris Mints and others seeking to halt legal action taken by Otkritie and NBT on the following grounds:

- i. The entry of a money judgement in favour of a sanctioned person is unlawful under the Russia (Sanctions) (EU Exit) Regulations 2019 (the “Regulations”) and the Sanctions and Anti Money Laundering Act 2018 (“SAMLA”).
- ii. Litigation steps such as payment of adverse and favourable costs orders, payment of security for costs and payment of damages pursuant to a cross-undertaking are also unlawful and there were no licensing grounds under the Regulations by which such acts can be authorised by the Office of Sanctions Implementation (“OFSI”).
- iii. NBT is caught by the Regulations because it is controlled by designated persons in particular Vladimir Putin or the Governor of the Central Bank of Russia.



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The first instance court rejected the application for an indefinite stay of the proceedings against Boris Mints, holding that:

- i. a court could lawfully enter judgment for a designated person by the English court following a trial and OFSI could license certain litigation steps.
- ii. A designated person, specifically Vladimir Putin or the Governor of the Central Bank of Russia, did not control NBT (99% owned by Central Bank of Russia) within the meaning of the Regulations. The rationale for this is that it was not a personal asset of the designated person, although the designated person could exert influence over it by virtue of their political office.



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Court of Appeal dismissed the appeal on 6/10/2023 and held that:

- The “fundamental” common law right of access to the courts, including entry of judgment, was not excluded or curtailed by SAMLA or the Regulations.
- Control can be established by whatever means including political and corporate office, accordingly NBT was controlled by Mr Putin and/or Ms Nabiullina because they were able to exert influence over it by virtue of their political office, such that it too is subject to sanctions.

Implications on the courts’ decision that NBT is effectively sanctioned:

- Obiter – not legally binding but persuasive authority
- Potentially widens the scope of the Regulations
- How should professionals proceed?



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Sanctions against Cypriot professionals

In April of this year the US authorities sanctioned Cypriot professionals, their firms and family members for being “oligarch enablers”.

An example of the impact of these sanctions and how they are benefiting NBT:

- NBT brought a substantial claim for damages against a number of respondents including several BVI companies, previously liquidated and dissolved in the BVI Court.
- A number of the BVI companies’ directors and shareholders are nominees providing corporate services, following sanctions against them they have been unable to defend themselves in the proceedings despite that the beneficial owner is not a sanctioned entity.

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The Netherlands Amsterdam Trade Bank case



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Shareholder Structure





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Balance Sheet

BALANCE SHEET ATB PER 22/4/2022 (in 1,000 euro's)			
Assets		Liabilities	
Cash and cash equivalents ¹	€ 247.098	Due to banks ⁹	€ 14
Trading securities	€ -	Customer accounts ¹⁰	€ 715.811
Due from banks ²	€ 662	Other borrowed funds	€ -
Loans and advances to customers ³	€ 573.054	Other liabilities and payables ¹¹	€ 21.826
Provision for impairment of loans and advances to customers ⁴	€ -41.027	Intercompany payables	€ -
Investments ⁵	€ 152.129	Total liabilities	€ 737.651
Investment property	€ -	Shareholder's equity	
Other assets and receivables ⁶	€ 11.006	Share capital	€ 310.772
Premises and equipment ⁷	€ 10.507	Fair value reserve for investments available for sale	€ 204
Intercompany receivables ⁸	€ 396	Revaluation reserve for premises and equipment	€ -
		Retained earnings and other reserves	€ -94.801
		Total shareholder's equity	€ 216.175
TOTAL ASSETS	€ 953.826	TOTAL LIABILITIES + EQUITY	€ 953.826

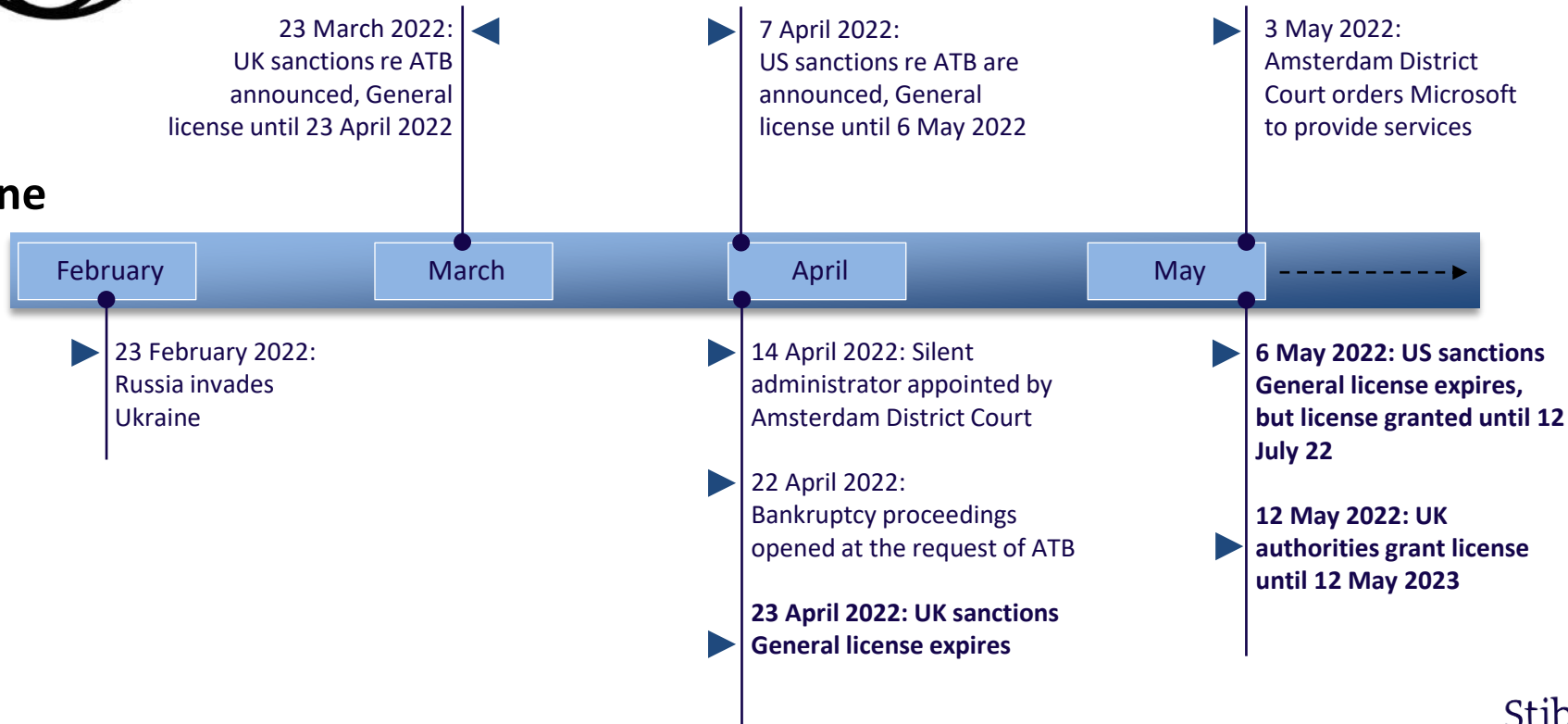
*Mainly
Dutch &
German
individuals*



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Timeline

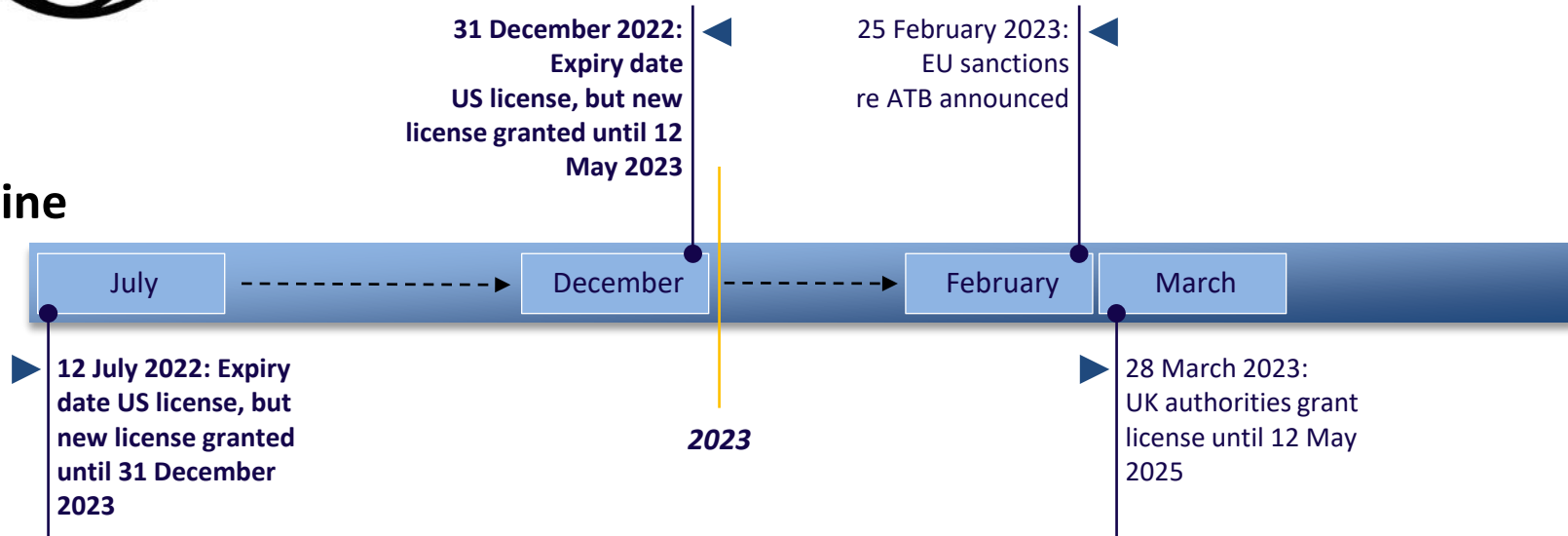




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Timeline



*Current US license expires on 11 December 2023
and UK license on 12 May 2025*



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Current Situation

- Majority of assets liquidated
- Creditors repaid ~ EUR 695m
- Assets remaining:
 - Loans and others assets with face value of ~ EUR 50m
 - Cash in the amount of ~ EUR 105m
- Question what should happen after end of bankruptcy because:
 - (i) ATB currently under EU sanctions; and (ii) a surplus is likely



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**Ireland
GTLK case**



Damien Murrán
Teneo
Dublin, Ireland





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Teneo – Sanctions related insolvencies



Special
Administration

Date of
appointment
3 March 2022



Special
Administration

Date of
appointment
1 April 2022



Administration

Date of
appointment
6 April 2022



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Background

Geopolitical Events / Sanction Events

- EU, UK and US introduced economic sanctions to dissuade Russia from its action.
- Sanctions resulted in:
 - 1) an asset freeze on all funds and economic resources of certain Russian individuals and entities; and
 - 2) no funds or assets of any kind shall be made available directly or indirectly to that individual / entity.

GTLK Structure and Scale

- Portfolio of passenger and freight aircraft and sea vessels leased to customers worldwide, including in Europe, Russia, the Middle East and Asia.
- Ultimate parent - JSC GTLK - is wholly owned by the Russian Federation.
- JSC GTLK named in Sanction listings:
 - EU - 8 April 2022
 - UK - 21 April 2022
 - US - 2 August 2022.
- GTLK Europe DAC and GTLK Europe Capital DAC are registered in Ireland and though not named individually in the list of sanctioned entities, fall under the impact due to the UBO.



GTLK - Impact of Sanctions

- Advisors – auditors, lawyers etc no longer able to act for the entities.
- Lessees started to issue termination notices.
- Payment agencies and banks froze all assets or returned attempted payments.
- Unable to make payments due under the bonds held by four non-Russian entities – ultimately unable to pay their debts as they fell due.
- The non-Russian entities were thus collateral damage.



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Sanctions & Insolvency crossover

- Freeze assets owned by the Russian Federation.
- EU directive dictates that approaches between member states is to be consistent when dealing with sanctioned entities.
- Use an insolvency process to recoup some value for non-Russian Creditors?

Key to unlocking success

- Leverage Teneo global experience of sanctioned entities such as **Sova Capital, VTB UK, Sberbank.**
- Engage sector skills across the global Teneo team.
- Senior led execution.



Liquidators Duties

- Can we take the appointment?
- Does liquidation sever the control relationship of shareholders and directors with the Company?
- Can we deal with the assets that were frozen by sanctions?

Practical Aspects

- Three key sanction bodies and the different approaches taken.
- Requirement for detailed applications to regulators for each transaction?
 - crippling administrative burden,
 - inordinate delays and
 - unreasonable costs.

Key Insolvency Practitioner Concerns



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Teneo Strategy

GTLK Europe DAC and GTLK Europe Capital DAC are registered in Ireland - Central Bank of Ireland ("CBI") is the principal authority to engage with. Until such time as we had licences, or equivalent, it was not possible to move forward with the liquidation. Needed the regulators onboard.



- Wrote to CBI well in advance of the appointment – nearly 12 months in this case.
- In order to satisfy all parties, applied to have the “Asset Freeze” rebutted via a directions motion in the Irish High Court. This order was granted on the 31 July 2023. [pdf \(courts.ie\)](#). Milestone judgment.
- Requirement to undergo enhanced DD on potential asset purchaser/s agreed with CBI.
- Key outcome – appropriate to accept appointment and protect assets.



- Arranged for CBI and OFSI to engage directly.
- General licence granted on the 1 August 2023.
- Requirement to provide written notice of any payments made.
- Key outcome – Teneo staff in multiple jurisdictions engaged across workstreams.



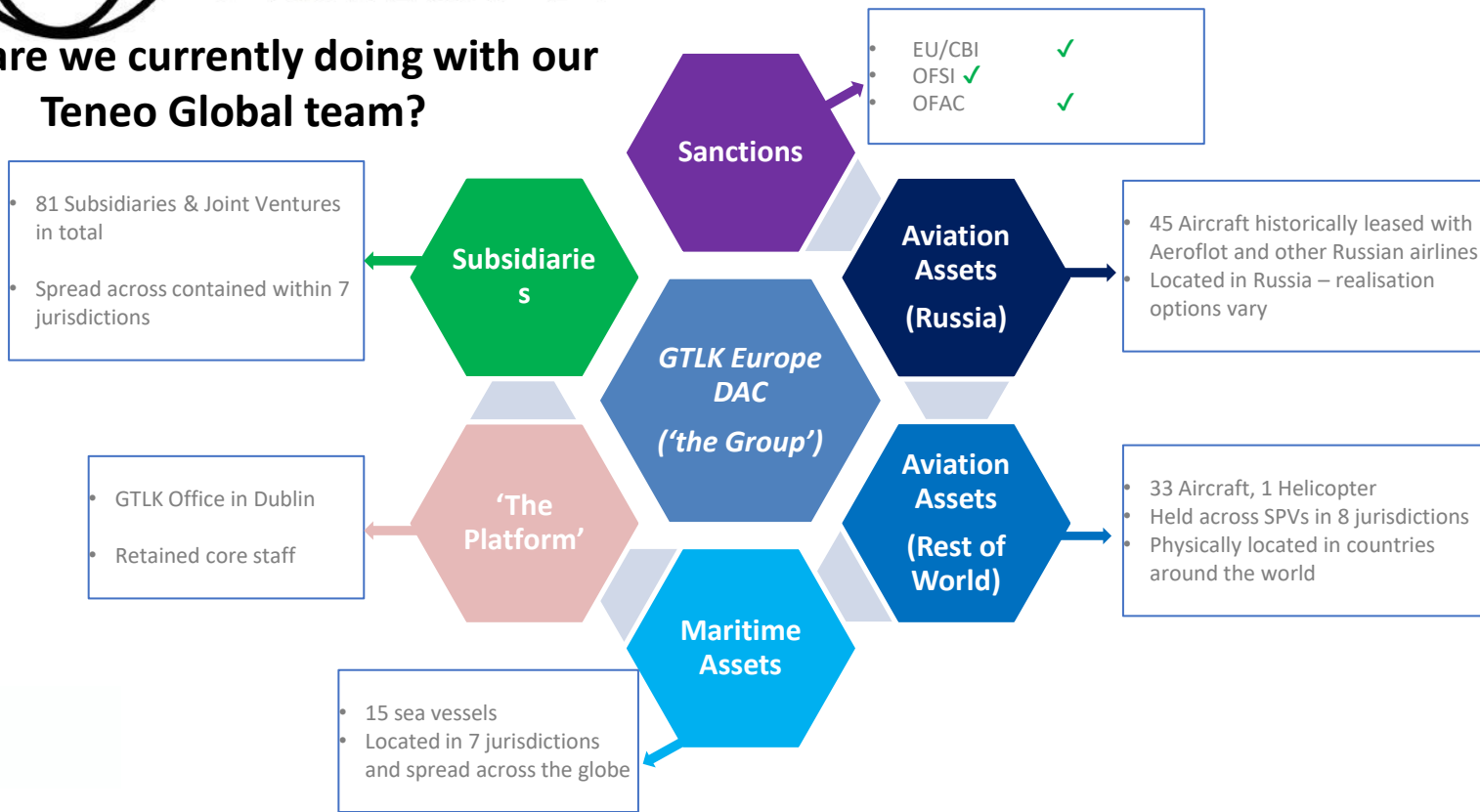
- Lawyers leveraged relationships with other regulators to speak with OFAC on our behalf.
- Licence was granted 18 September 2023.
- Requirement to provide quarterly reports to Department of the Treasury.
- Key outcome – Cash, engage with US nationals.



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What are we currently doing with our Teneo Global team?





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Key Learnings / Takeaways

1. Insolvency processes can protect the integrity of sanctions while providing a solution for capital locked up in sanctioned structures.
2. Partner well – the sanctions and insolvency crossover is highly complex – not for the faint hearted.
3. Initiate dialogue with Sanctioning Authorities as early as possible, prior to appointment, if possible. Educate, build trust and rapport.
4. Open and transparent conversations (face-to-face if possible) with Sanctioning Authorities. When you don't have the answer call it out.
5. Relate the issues in the insolvency to the integrity and purpose of the regulation.
6. Continued and regular dialogue post the granting of licences.



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