

New EU Ban on Selling Investment Funds to Russian or Belarusian Persons

From 13 April 2022, EU sanctions¹ prohibit EU investment funds (which invest in Euro denominated transferable securities²) from accepting new investments from Russian or Belarusian persons (unless they are EU nationals or have EU residency) ("Fund Investor Restriction").

In many cases, EU investment funds do not have any Russian or Belarusian investors or a distribution framework in Russia or Belarus. There will nonetheless be an expectation, for all EU investment funds, that appropriate measures are put in place, particularly investment funds with third party distributors.

This update examines the Fund Investor Restriction and gives some practical recommendations on how to comply.

Fund Investor Restriction

EU sanctions do not apply extra-territorially but must be complied with by all EU persons wherever they are located. All EU investment funds (i.e. collective investment undertakings) will therefore need to comply with the Fund Investor Restriction.

The restriction is confined to investment funds that provide exposure to transferable securities denominated in Euro or any other official EU Member State currency. There may, therefore, be cases where the investment scope of a

particular investment fund means that the Fund Investor Restriction will not apply.

In terms of investor scope, the restriction applies to any Russian or Belarusian national or natural person residing in Russia or Belarus or any legal person, entity or body established in Russia or Belarus (collectively "Prohibited Persons") but excludes cases where such persons are EU Member State nationals or natural persons having a temporary or permanent residence permit in an EU Member State.

The Fund Investor Restriction does not prevent Prohibited Persons from remaining invested in investment funds where the units / shares were issued on or before 12 April 2022. However, such investors cannot make additional investments.

The restriction may also have implications in the context of capital commitment arrangements previously entered into by Prohibited Persons in closed-ended funds and may prevent future capital calls. This should be assessed further in relevant circumstances.

Indirect Investments

European Commission guidance indicates that EU sanctions rules should be interpreted broadly, particularly in light of widely framed anti-circumvention provisions. The rules prohibit any attempt by a party to knowingly and intentionally act as a substitute for a person referred to in the Fund Investor Restriction provision.

¹ Article 5f of Regulation (EU) 833/2014, as amended and Article 1y of Regulation (EU) 765/2006 as amended.

² Or transferable securities denominated in any other official currency of an EU Member State.

Recently updated European Commission's sanctions guidance discusses the level of due diligence EU entities are expected to undertake to ensure sanctions are not evaded.

Practical Measures

Investment funds (and their managers and service providers) should have a robust sanctions screening programme in place.

New operational measures should be applied to ensure that the investment fund does not accept any new subscription requests from Prohibited Persons.

This should include consideration of measures at the level of a registered investor's ultimate beneficial owner.

Each investment fund's Anti-Money Laundering / Sanctions Policy should be reviewed in line with the enhanced operational measures being applied.

Fund Documents / Contracts

As well as enhancing policies and operational processes to adhere to this new restriction, it may be appropriate to review and, if appropriate, update fund documents and certain service provider contract terms to capture measures such as selling restrictions and powers to restrict share transfers and compulsorily redeem Prohibited Investors.

How Can the Maples Group Help?

Our Financial Services Regulatory Group are working with clients on a full range of advisory matters connected with EU restrictive measures, as well as coordinating with our colleagues in other jurisdictions internationally in relation to the impact of sanctions from other jurisdictions.

Specifically, we can assist with the review discussed above and the preparation of new / amending provisions for relevant documents where appropriate.

Further Information

If you would like further information, please liaise with the below or your usual Maples Group contact.

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