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Appeal Nos: CA-2026-000295
Case No: AC-2025-LON-001421

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT
Mrs Justice Collins Rice
[2025] EWHC 3359 Admin

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/10/2026

Before:
SIR GEOFFREY VOS, MASTER OF THE ROLLS
LORD JUSTICE BEAN, VICE-PRESIDENT OF THE COURT OF APPEAL (CIVIL DIVISION)
and
LORD JUSTICE ZACAROLI

B E T W E E N:

PJSC VTB BANK

Claimant/Appellant

-and-

HM TREASURY

Defendant/first Respondent

-and-

VTB CAPITAL PLC (IN ADMINISTRATION)

Interested Party/second Respondent

Tim Owen KC, William Day and Tim James-Matthews (instructed by PCB Byrne LLP) for the Claimant (the Bank)

Sir James Eadie KC, Mr Thomas Munby KC and Tom Rainsbury (instructed by the Government Legal Department) for the Defendant (HMT)

Daniel Bayfield KC, Maya Lester KC, Malcolm Birdling KC and Alastair Richardson (instructed by Weil Gotshal & Manges (London) LLP) for the Interested Party (the Subsidiary)

Hearing dates: 7 and 8 October 2026

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JUDGMENT

This Judgment was handed down remotely at 10:00am on Friday 30 October 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Sir Geoffrey Vos, Master of the Rolls, Lord Justice Bean, Vice-President of the Court of Appeal (Civil Division), and Lord Justice Zacaroli:

Introduction

1. This case raises issues that are at the intersection of administrative and insolvency law. As a result, we have heard two sets of somewhat compartmentalised submissions from each of the parties. It was common ground before Mrs Justice Collins Rice (the judge) that she had no need to resolve contested issues of insolvency law. Indeed, she and we are unable to do so because arguments were not addressed to us on the basis that we should. As will appear, this state of affairs has, in some ways, been problematic.

2. On 24 February 2022, the Bank was designated under the Russia (Sanctions) (EU Exit) Regulations 2019/855 (the Russia Regulations), made under the Sanctions and Anti-Money Laundering Act 2018 (SAMLA). The Bank's designation followed Russia's invasion of Ukraine. It is and was the second largest bank in Russia, and majority owned by the Russian Government.

3. The Subsidiary is a UK company which is majority owned by the Bank, and which, as a result of the sanctions against the Bank, went into administration in December 2022 (the Administration). The Joint Administrators (the JAs), through whom the Subsidiary now acts, were appointed at that time. The objective of the Administration was to achieve a better result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration. It is important to note, however, that the Administration order was only made **after** the Office of Financial Sanctions Implementation (OFSI), a part of HMT, and its US equivalent, the US Office of Foreign Asset Control (OFAC), had granted licences to allow the Subsidiary to be able to make and receive payments in the course of its business whilst its affairs were under the control of licensed insolvency practitioners and were being conducted principally for the benefit of the company's creditors (see [11] of Fancourt J's judgment on the first application for the appointment of administrators on 6 April 2022 in *Re VTB Capital PLC* [2022] EWHC 1106 (Ch), [2022] BCC 1049).

4. The Bank is a major creditor of the Subsidiary. Its proof of debt exceeded £205 million. Many of the Subsidiary's assets (estimated at some £180 million) and debts were situated in Russia, which made it practically impossible for the JAs to recover them. The JAs' difficulties were compounded by the enforcement action taken by the Bank against the Subsidiary's assets in Russia following the Administration.

5. At an early stage, the JAs formed the view that the objectives of the Administration could best be achieved by a creditors' scheme of arrangement under Part 26 of the Companies Act 2006 (Part 26).

6. The JAs' attempts to achieve a scheme of arrangement for the Subsidiary followed a tortuous course and necessitated several amendments to the licence that OFSI had originally granted (the General Licence). Ultimately, on 5 September 2024, the Bank voted against the scheme, which meant that it was not approved. As a result, the JAs asked OFSI to amend the General Licence so as to create a "sanctions solution" to their inability to secure approval for the scheme. The JAs wanted to allow the Administration to proceed so that those of the Subsidiary's creditors, who were unaffected by sanctions, could be paid.

7. On 8 January 2025, OFSI amended the General Licence again. It is that final amendment that is challenged in these proceedings. We will refer to that amendment as the "Licence Amendment".

8. The substance of the Licence Amendment was in the new [5.3A] which imposed **a condition** on the existing [5.3]. [5.3] provided that no funds or economic resources should be made available to or for the benefit of a designated person, save as specified in [5.3] (relating to the Holding Period Trust (see [34] below) and the NSD Trust. The new condition imposed by [5.3A] was that "no funds or economic resources shall be made available, including the making of any provision with a view to making a payment of funds or a transfer of economic resources [to the Bank] at a later date" without deducting: (a) the recoveries made by the Bank from its enforcement action, and (b) the debts owed to the Subsidiary in Russia (relating to the VTB Group Receivables referred to at [31] below). As will appear, the most controversial new requirement in [5.3A] was the purported prohibition on making an insolvency **provision** for monies that might later (after sanctions were lifted) become due to the Bank without deducting the recoveries it had made. The Bank submitted that that requirement improperly usurped the function of the Insolvency Court.

9. On 19 December 2025, the judge dismissed the Bank's application to set aside the Licence Amendment under section 38 of SAMLA. She rejected each of the Bank's four administrative law grounds of complaint. Those grounds are repeated before us as the Bank's grounds of appeal as follows.

10. First, the Bank says that the judge was wrong to conclude that OFSI acted for a purpose that was consistent with its statutory discretion. The Bank submits that the judge should have concluded that OFSI had acted for the improper purpose of substantively prejudicing the Bank's rights as a creditor in the Administration (the *Padfield* ground) (see *Padfield v. Minister of Agriculture, Fisheries & Food* [1968] AC 997).

11. Secondly, the Bank says that the judge ought to have held that, in making the Licence Amendment, OFSI unlawfully interfered with the Bank's right to a fair hearing under Article 6 of the European Convention on Human Rights (ECHR) (the Article 6 ground).

12. Thirdly, the Bank says that the judge ought to have concluded that the Licence Amendment was unreasonable and irrational because: (i) it required the value of the deductions to be converted to Sterling at rates applicable on 6 December 2022, and (ii) it precluded the JAs from making provision for the Bank's claims without deducting the Bank's recoveries and set-offs (the irrationality ground).

13. Fourthly, the Bank says that the judge ought to have held that the failure to allow the Bank to make representations before the Licence Amendment infringed: (i) common law procedural fairness, and (ii) OFSI's published policies (the representations ground).

14. It is worth pointing out at this early stage in our judgment that these four grounds operate, in one sense, to disguise the Bank's real case. The Bank's real case, in effect on each of the grounds, is that the "sanctions solution" purportedly permitted by the Licence Amendment was an improper use of the sanctions legislation. Licences granted under SAMLA and the Russia Regulations cannot lawfully impose a scheme of arrangement and a distribution of the Subsidiary's assets that can properly only be authorised by the Insolvency Court. The Licence Amendment has, according to the

Bank, improperly deprived it of its lawful insolvency and restructuring rights that can and should only be decided upon by the Insolvency Court. SAMLA allows the assets of designated persons to be frozen, but it does not, the Bank submits, allow its property rights to be finally extinguished. The Bank submits that, if the arrangements envisaged by the Licence Amendment are implemented, that will be the outcome. It can now be seen why the parties' approach to the submissions has created difficulty. We have not been asked to decide any disputed issue of insolvency law. Accordingly, we cannot finally decide whether the outcome envisaged by the Licence Amendment might or might not be lawfully approved by the Insolvency Court. We are, instead, invited to decide the administrative law issues raised by the four grounds in an insolvency law vacuum.

Summary of our conclusions

15. We have decided to dismiss the appeal.

16. As already explained, the Bank's essential complaint is that it is unlawfully prejudiced by the Licence Amendment. That prejudice results from the Bank's claim to have rights in the Subsidiary's insolvency, which would result in it being able to receive (but for the sanctions) a significant distribution. Those rights are disputed, but that dispute can only be decided by the Insolvency Court. The Bank contends that the Licence Amendment dictates or materially influences the outcome of that dispute. The Bank says that it will ultimately (after sanctions are lifted) receive substantially less than it is entitled to under insolvency law by way of distribution from the Subsidiary's estate. Thus, the Bank says that some or all of its property rights are being extinguished by the Licence Amendment. The critical questions are, therefore, whether the Licence Amendment really does go beyond what is permitted by SAMLA and the Russia Regulations and improperly imposes an expropriatory insolvency distribution on the Bank. Those questions, in effect, underlie all the Bank's arguments.

17. In our judgment, there are two conclusive answers to the Bank's case. The first answer is that the Licence Amendment is permissive. It decriminalises conduct that would otherwise be a breach of sanctions but it does not, in itself, affect any substantive rights the Bank may have in the insolvency of the Subsidiary or determine what those rights are. It has not yet been acted upon. When, and if, it is acted upon by the Insolvency Court, the Bank will, if it has insolvency or other grounds, be able to challenge the Insolvency Court's decision. The second answer is that the wide purposes of SAMLA and the Russia Regulations are quite broad enough to allow OFSI lawfully to amend the General Licence it has granted to relax the blanket freeze on the Bank's assets in this limited way. As the UK Supreme Court emphasised at [213] in *Shvidler v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] UKSC 30, [2026] AC 607 (*Shvidler SC*) "sanctions often have to be severe and open-ended if they are to be effective", and "designation has to hurt those who are subject to it". When the Insolvency Court comes to consider the Licence Amendment, it will need to decide how the circle is to be squared. We suggest later in this judgment how that might be possible under insolvency law, but since we have not had full argument on the point, we cannot go further.

18. In the light of these two answers to the Bank's case, none of its four grounds of challenge can succeed.

19. On the *Padfield* ground, OFSI acted for the purpose of making the sanctions effective against the Bank. That was well within the broad scope of the sanctions' legislation. The Licence Amendment cannot, as we have said, be said actually to have affected the Bank's substantive rights in the Subsidiary's insolvency. Even the part of [5.3A] concerning the insolvency provision that can be made for the Bank's claims is only an indication of what would be acceptable by way of a carve-out from the blanket freeze imposed by sanctions.

20. On the Article 6 ground, the Bank has made a full court challenge to the Licence Amendment. There will still have to be an insolvency hearing when and if the JAs seek to put the Licence Amendment into effect.

21. The irrationality ground is answered by what we have already said. If the Bank's substantive rights are affected as they submit (but is by no means clear) the Licence Amendment envisages, the substantive question will only arise when the Insolvency Court decides how, under insolvency law, the Licence Amendment should be given effect.

22. On the representations ground, we have concluded that procedural fairness did not in this situation require prior consultation with the Bank about the terms of the Licence Amendment. The Licence Amendment was, as we have now said several times, purely permissive. Were such consultation required, all creditors affected by the Licence Amendment would have had to be consulted, which would have been wholly impracticable. This is a classic case in which it is obvious that: "the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity" (see Lord Neuberger at [179] in *Bank Mellat v. HM Treasury (No 2)* [2013] UKSC 39; [2014] AC 700 (*Bank Mellat*)).

23. We shall now deal with the issues in the following order: (i) the essential facts, (ii) the statutory framework, (iii) the breadth of sanctions, (iv) the grounds of challenge to the decision to make the Licence Amendment, (v) the judge's judgment, (vi) the central point in this appeal, (vii) the Bank's insolvency law rights, (viii) the impact of sanctions on the Bank's rights in the insolvency of the Subsidiary, (ix) the impact of the Licence Amendment on the Bank's rights, (x) conclusions on the Bank's challenges to the decision to make the Licence Amendment, (xi) can Insolvency Law provide a solution, and (xii) conclusion.

The essential facts

24. As a result of the designation of the Bank under the Russia Regulations, the assets of the Subsidiary were frozen from February 2022. A prohibition was placed on any person making funds or economic resources available to or for the benefit of the Bank.

25. On 1 March 2022, OFSI granted the General Licence to the Subsidiary under Regulation 64 of the Russia Regulations, to permit it to make payments for its basic needs, routine holding and maintenance charges and legal fees.

26. The Subsidiary was unable to continue trading and, on 1 April 2022, its directors applied for an administration order under Schedule B1 (Schedule B1) of the Insolvency Act 1986 (IA 1986). The Subsidiary's application for an administration order, on 1 April 2022, was made on the basis that the statutory objective of "achieving a better

result for the company's creditors as a whole than would be likely if the company were wound up without first being in administration" ([3(1)(b)] of Schedule B1) was likely to be met.

27. Also on 1 April 2022, OFSI made an amendment to the General Licence enabling payments to be made in the course of the Administration provided that no funds or economic resources were made available to or for the benefit of the Bank.

28. OFSI amended the General Licence on the same day to include the following new provision:

> Permissions: [the Subsidiary's] payments related to Insolvency Proceedings
>
> 5. Under this licence, subject to the conditions below:
>
> 5.1 Subject to paragraph 5.3 below, any Person (including, for the avoidance of doubt, [the Subsidiary]) may make, receive or process any payments, or take any other action, in connection with any Insolvency Proceedings relating to [the Subsidiary], whether prior to or after the commencement of such proceedings, including, without limitation, an insolvency practitioner for the purposes of his or her functions under or in connection with Insolvency Proceedings.
>
> 5.2 Insolvency Proceedings includes, without limitation, all those set out in the Insolvency Act 1986 and the Banking Act 2009.
>
> 5.3 No funds or economic resources shall be made available to or for the benefit of a person designated under the Russia Regulations including any entity owned or controlled by such a person, except for [the Subsidiary].

29. Fancourt J was satisfied that the conditions for the making of an administration order under the IA 1986 were satisfied. First, as a consequence of the freeze on its assets, the Subsidiary was unable to pay its debts as they fell due. OFSI had previously refused to amend the General Licence to enable the Subsidiary to pay its debts as they fell due outside an insolvency process. Secondly, the statutory purpose was likely to be achieved on the basis that a "better result" for creditors included having their debts paid more quickly than would be the case in a winding-up. Fancourt J was minded to make an administration order. In the exercise of his discretion, however, he deferred doing so until there was evidence that: (i) a further licence from OFAC was obtained, and (ii) the current form of the General Licence from OFSI remained in force. Without these, he said, the appointment would in practice be pointless. The OFAC licence was granted on 11 November 2022. The General Licence remained in place. Accordingly, on 6 December 2022, Sir Anthony Mann made an order appointing the JAs.

30. At the time that the Administration order was made, the Subsidiary was considered to be balance sheet solvent. It faced a number of issues which would have prevented, or

seriously delayed, its ability to realise its assets and make distributions to its ordinary, non-sanctioned, creditors.

31. First, the Subsidiary had assets (at the time considered to be valued at approximately £180 million) located in Russia which it was unable to realise. Secondly, the Subsidiary was owed substantial sums by other subsidiaries of the Bank which could not in practice be recovered, partly as a consequence of both UK and Russian imposed sanctions. These are referred to as the VTB Group Receivables. Thirdly, in the months following the making of the Administration order, the Bank in its capacity as a creditor of the Subsidiary (whose proof of debt lodged in May 2024 was in excess of £205 million) took enforcement action against the Subsidiary's various assets in Russia, and continued to do so. Fourthly, although no distribution could be made to sanctioned creditors, provision had to be made for their claims. Interest at the statutory rate of 8% would continue to accrue on those claims in the event that there was a surplus available after paying all the Subsidiary's debts.

32. To address these difficulties, the JAs set about formulating a Part 26 scheme of arrangement. Under Part 26, a company may propose an arrangement or composition with its creditors, or with any class or classes of its creditors, including an arrangement that provides for distributions to those creditors otherwise than in accordance with the statutory scheme under the IA 1986 and the Insolvency (England and Wales) Rules 2016 (the IR 2016). Such an arrangement is binding on all the creditors (or all classes of creditors) if the creditors (or all the classes) approve the scheme by a majority of 75% by value and more than half in number, and if the scheme is then sanctioned by the Insolvency Court. Given the size of the Bank's debt, the success of the scheme depended on its support. Without ever formally agreeing to the proposed scheme, the Bank initially indicated its willingness to defer its claims in favour of other creditors.

33. The scheme of arrangement proposed by the JAs included the following provisions:

    i) The Bank would be deemed to elect to defer its claims against the Subsidiary to all other creditors' claims (but it could opt out of that election);

    ii) If creditors initiated enforcement action against the Subsidiary's assets, the JAs would be entitled to deem the enforcement action successful and deduct the value of the relevant assets from any distribution that would otherwise be payable to that creditor;

    iii) The Bank would be deemed to have elected to accept a distribution to it of the VTB Group Receivables *in specie* (but it could opt out of that election); and

    iv) Distributions to sanctioned creditors would be transferred into a trust for the benefit of those creditors, with the effect that statutory interest (in the event of a surplus) would cease to be payable after the transfer of assets into the trust.

34. On 31 May 2024, OFSI amended the General Licence so as to facilitate the proposed scheme of arrangement. Specifically, it amended [5.3] of the General Licence so as to permit the establishment of a trust (the Holding Period Trust) into which funds or economic resources for the benefit of sanctioned persons, including the Bank, could be transferred. The Bank takes no issue with this amendment to the General Licence.

35. The JAs engaged with the Bank over the proposed scheme from January 2023 to September 2024. On 1 July 2024, Sir Anthony Mann gave permission to convene a meeting of creditors to consider the proposed scheme, which was scheduled for 5 September 2024. On the day before the scheme meeting, however, and out of the blue from the JAs' perspective, the Bank indicated that it would vote against the scheme, which it duly did. The Bank's vote against the scheme meant that it could not be approved by the requisite majority of creditors. The meeting was adjourned to enable discussions to take place with the Bank. In the meantime, the Bank continued its process of enforcement against the Subsidiary's assets in Russia.

36. The JAs were concerned that the Bank's actions in Russia would frustrate the purpose of the Administration. The JAs emailed OFSI on 25 November 2024. They referred to the continuing enforcement action by the Bank, and the risk that, because of its timing, in the absence of the scheme of arrangement being approved, the value of the assets already seized might be deducted from the gross value of the Bank's provable debt and not (via the hotchpot rule, the operation of which we explain at [93] below) from the value of the dividend to be paid to the Bank out of the insolvent estate. The JAs observed that it was unclear how the Bank could be forced to accept a distribution of the VTB Group Receivables *in specie*, but that it was highly unlikely that the Subsidiary itself would be able to recover payment of the VTB Group Receivables.

37. The JAs proposed two alternative "sanctions solutions" to these difficulties. The first was an amendment to the General Licence to prohibit the Bank from voting on the scheme of arrangement, on the basis that OFSI had confirmed in May 2024 that the General Licence permitted sanctioned creditors to vote. The second proposed solution was the following suggested amendment to the General Licence:

    i) No distributions should be paid on the Bank's claim, nor provision made for it in the administration, without first deducting the value of the Bank's enforcement efforts and the VTB Group Receivables [we will refer to these together as the "Deductions"];

    ii) In order to prevent the Bank from making a profit in Roubles from the UK insolvency process, the proceeds of the Bank's enforcement efforts and the VTB Group Receivables should be converted to Sterling at the exchange rate applicable on the date when the Subsidiary went into administration, which is the date that applies to the conversion of creditors' claims to Sterling for the purposes of proof in the administration; and

    iii) In order to prevent the Bank profiting from the calculation of statutory interest in the administration, no statutory interest would be paid or provided for on the Bank's claim with respect to any period of time over which distributions are not paid as a result of the Deductions.

38. On 2 December 2024, Adam Johnson J made an order, under [65(3)] of Schedule B1, permitting the JAs to make distributions to the Subsidiary's unsecured, non-preferential creditors in accordance with Part 14 of IR 2016. The JAs made that application so that they could, if necessary, effect a distribution to the ordinary unsecured creditors of the Subsidiary.

39. On 2 January 2025, OFSI's licensing team prepared a submission to their decision-makers (the Decision Memorandum) recommending that: (i) the Holding Period Trust should remain, but distributions could only be made into it if the Deductions were made, (ii) statutory interest should not be paid for any period of time over which distributions were not paid because of those deductions. The Decision Memorandum referred to the JAs' alternative suggestion that the Bank be precluded from voting. It recommended against that suggestion on the basis that voting should be regulated by insolvency law, and because it was not clear that voting would be a breach of the Russia Regulations. The Decision Memorandum included the following advice:

> The policy aim of the Russia Regulations is to encourage Russia to cease actions destabilising Ukraine or undermining or threatening Ukraine's territorial integrity, sovereignty, or independence. Making the suggested amendments is in keeping with these policy aims since it will ensure that [the Bank], a state-owned Russian bank, does not: i) make a double recovery, ii) benefit from taking enforcement action which would lead to it stepping ahead of non-sanctioned creditors (over 50% of which are UK persons) meaning these creditors may not receive distributions, iii) unduly profit from statutory interest.

40. On 3 January 2025, OFSI emailed the JAs' solicitors indicating that they had received decision-maker approval to amend the General Licence. In the first numbered paragraph of the email, it is said that the amendment would state that "no distributions on the Bank's claim should be made or provided for …" without making the Deductions. The proposed wording of the amendment, however, prohibited funds or economic resources being "made available" to the Bank without making the Deductions. The JAs' solicitors responded on 6 January 2025 suggesting revised wording to cater for the decision-makers' approval of an amendment which prohibited making distribution of **or provision for** the Bank's claim without making the Deductions. Those changes were in substance accepted by OFSI on 7 January 2025 and, on 8 January 2025, OFSI made the Licence Amendment. The Licence Amendment retained the Holding Period Trust mechanism in [5.3], but added the following new [5.3A]:

> Paragraph 5.3 above is subject to the condition that no funds or economic resources shall be made available, including the making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date, in each case to [the Bank] or any person to whom [the Bank] have transferred, or in the future, transfer their claim in [the Subsidiary's] Insolvency Proceedings ("a Transferee"):
>
> a. Without first deducting the value of:
>
> i. any of [the Subsidiary's] assets over which [the Bank] or a Transferee has taken or is taking enforcement action; and
>
> ii. the VTB Group Receivables;
>
> such values to be reduced by the value of any provision or distribution made with or from such assets or the VTB Group Receivables; in each case valued at their nominal amount (plus any

> interest) in the case of receivables, other debts and cash, and at their market value in the case of other assets, in each case as determined by [the Subsidiary]; and in each case (including any aforementioned reduction in value made in respect of such assets or the VTB Group Receivables) converted to Sterling at the conversion rates applicable as at 6 December 2022 for the purposes of converting creditors' claims to Sterling in [the Subsidiary's] Insolvency Proceedings.
>
> b. With respect to any statutory interest that might otherwise be due to [the Bank] or a Transferee with respect to any period of time over which distributions are not paid as a result of (a) above.

41. On 10 January 2025, the JAs proposed a revised scheme of arrangement giving effect to the Licence Amendment. A further scheme meeting was held on 30 January 2025. The Bank voted against the amended scheme but, on the basis that the value of the Bank's debt for voting purposes was reduced by reason of the Licence Amendment, the amended scheme was approved by the requisite majority of creditors. It may be noted that the voting rights of a creditor in a scheme of arrangement reflect the value of that creditor's rights against the company absent the scheme. The reduction in the value of the Bank's claim for voting purposes in the scheme was thus premised on its rights in the insolvency of the Subsidiary, in the absence of the scheme, having been affected by the Licence Amendment.

42. On 10 March 2025, the JAs issued an application in the Business and Property Courts seeking permission to make distributions in accordance with the Licence Amendment (the Parallel Distribution Application). In particular, the order sought would have enabled the JAs to make distributions to the ordinary unsanctioned creditors on the basis that the Deductions were made from any provision in respect of the Bank's claims.

43. In March 2025, the Bank wrote a letter before action to OFSI. On 8 May 2025 these proceedings were issued challenging OFSI's decision to make the Licence Amendment.

44. No hearing has yet taken place to sanction the scheme, and the Parallel Distribution Application has yet to be heard, pending the outcome of these proceedings. The question whether, under insolvency law, distributions or provisions in the administration in respect of the Bank's claim could be made on the basis of the Deductions has, therefore, yet to be addressed by the Insolvency Court.

The statutory framework

SAMLA

45. Section 1(1) of SAMLA gives the power to impose sanctions. It provides that an appropriate Minister may make "sanctions regulations" where that Minister considers that it is appropriate to make the regulations for the purposes of compliance with a United Nations, or any other international, obligation, or for a purpose within section 1(2) of SAMLA. A purpose is within section 1(2) if the appropriate Minister making the regulations considers that carrying out that purpose would, among other things, be in the interests of national security, or of international peace and security, or promote the resolution of armed conflicts or the protection of civilians in conflict zones. Section

1(3) of SAMLA provides that regulations must state those purposes. Section 1(5) of SAMLA provides that "sanctions regulations" mean regulations which do one or more of a variety of things, relevantly: (a) impose "financial sanctions", and (g) make supplemental provision in connection with any provision of the regulations or other regulations made under section 1.

46. Section 3(1) of SAMLA provides that, for the purposes of section 1(5)(a), regulations "impose financial sanctions" if they "impose prohibitions or requirements for one or more of the following purposes", the relevant ones for present purposes being: "(a) freezing funds or economic resources owned, held or controlled by designated persons"; and "(d) preventing funds or economic resources being made available to, or for the benefit of … designated persons".

47. Section 38 of SAMLA allows a person named by the designation to apply to the High Court to set aside a licensing decision. Section 38(4) of SAMLA provides that, in determining whether a licensing decision should be set aside, the court "must apply the principles applicable on an application for judicial review".

The Russia Regulations

48. The purpose of the Russia Regulations is expressly set out in them as follows:

> **Purposes**
>
> 4. The regulations contained in this instrument that are made under section 1 of [SAMLA] are for the purposes of —
>
> (a) encouraging Russia to cease actions destabilising Ukraine or undermining or threatening the territorial integrity, sovereignty or independence of Ukraine;
>
> (b) promoting the payment of compensation by Russia for damage, loss or injury suffered by Ukraine on or after 24th February 2022 as a result of Russia's invasion of Ukraine.

49. Regulation 5 of the Russia Regulations empowers the Secretary of State to designate persons for the purposes of, among other things, the asset-freeze provisions in Regulations 11 to 15. Each of those Regulations precludes a person from taking a specific action, if they know or have reasonable cause to suspect that they are taking it. Regulations 11 to 15 are sometimes referred to collectively as imposing an "asset freeze". Strictly, however, it is only Regulation 11 that imposes an asset freeze, prohibiting a person from "[dealing] with funds or economic resources owned, held or controlled by a designated person". Regulations 12 to 15 do something slightly different, prohibiting a person making funds or economic resources available (directly or indirectly) to or for the benefit of a designated person.

50. The Bank was designated on 24 February 2022, with the following sanctions being imposed:

> Asset freeze, Director Disqualification Sanction, Prohibition on Correspondent banking relationships and processing payments, Trust Services Sanctions

51. OFSI has power to grant licences, the purpose and effect of which is to ameliorate the effects of sanctions, in substance by de-criminalising conduct which would otherwise be prohibited by sanctions. Regulation 64(1) of the Russia Regulations provides that the prohibitions in (among other things) Regulations 11 to 15 of the Russia Regulations "do not apply to anything done under the authority of a licence issued by the Treasury under this paragraph". Regulation 64(1A) provides that a licence may, in particular, authorise acts which would otherwise be prohibited by Regulations 11 to 18c.

52. Regulation 66 of the Russia Regulations provides that a licence under Regulation 64 must specify the acts authorised by it. It may be general or may authorise acts by a particular person or persons of a particular description. It may contain conditions, and may be of indefinite or a defined duration. It may at any time be varied, revoked or suspended by the person who issued it.

The breadth of sanctions

53. The language of Regulations 11 to 15 of the Russia Regulations is deliberately broad. The aim of limiting and deterring Russian aggression in Ukraine is "one of the most vital aims that the UK government has been called upon to pursue in recent years": (see *Shvidler SC* per Lord Sales and Lady Rose at [173]).

54. As mentioned at [17] above, Lord Sales and Lady Rose said this at [213] in *Shvidler SC*:

> … sanctions often have to be severe and open-ended if they are to be effective. The object of the designation in relation to Mr Shvidler is that he should so far as possible be disabled from enjoying his assets and pursuing his wealthy lifestyle. The designation contributes to the cumulative effect of the sanctions regime. If the strategy of imposing sanctions on individuals is to have any hope of being effective, designation has to hurt those who are subject to it. In our opinion, in light of the importance of the policy objective in issue and the connection between the designation of Mr Shvidler and that objective, the issue of fair balance in relation to his designation is, again, straightforward.

55. In *Khan v. Secretary of State for Foreign, Commonwealth and Development Affairs* [2025] EWCA Civ 41, [2025] 1 WLR 2009 at [106], Singh LJ referred to the underlying philosophy behind sanctions as being that "the state concerned must come to appreciate that 'innocent' persons will suffer unpalatable consequences and so that state should change its behaviour". Russian state ownership of the Bank engages that philosophy to the fullest extent (see also *UniCredit Bank GmbH v. Constitution Aircraft Leasing (Ireland) 3 Ltd* [2026] UKSC 10, 1 WLR 1522 at [57] and [77], and *R (Fridman) v. HMT* [2023] EWHC 2657 (Admin), [2023] WLUK 280 at [13] and [77]).

56. We endorse the following passage at [J86] of the judge's judgment in this case, emphasising the potentially serious consequences which may legitimately and purposefully flow from the imposition of sanctions:

> These sanctions are, and are intended to be (and, according to the caselaw, need to be) a severe interference with each designated organisation's financial rights and freedoms – one recognised as being capable of 'prolonged and potentially devastating' effects. Wealth, not least in the hands of financial institutions, is a

> time-sensitive asset. Where a relevant sanction applies, the sanctioned entity cannot do business, or maximise or protect its economic interests in the UK, including by investing and disinvesting, by paying its debts or being paid by its debtors, by meeting its contractual obligations or enforcing its contractual rights – unless licensed to do so. The effects of sanctions such as these may in time prove irreversible or irremediable. The sanctions imposed in the present case reduced [the Subsidiary] to insolvency, and no purpose challenge is or could be made to that in law. All of this is lawful and congruent with (or indeed demanded by) the statutory purposes.

The grounds of challenge to the decision to make the Licence Amendment

57. The Bank challenged the decision to make the Licence Amendment before the judge on three procedural grounds and three substantive grounds. The judge rejected all these grounds. The three procedural grounds before the judge are now wrapped up in the fourth ground of appeal – the representations ground (see [13] above). The three substantive grounds are maintained before us as we have explained at [10]-[12] above. The four grounds argued were, therefore, the *Padfield* ground, the Article 6 ground, the irrationality ground and the representations ground. We deal with them in a slightly revised order.

The Padfield ground

58. The Bank complains that there was a breach of the *Padfield* principle because OFSI acted contrary to the purpose for which the discretion was conferred. The Bank submits that OFSI acted for the purpose of prejudicing the economic interests of the Bank and defeating the Bank's legitimate claims in the administration of the Subsidiary.

59. The Bank submits (as it did before the judge) that it was clear from the Decision Memorandum (see [39] above) that OFSI's purpose was to ensure that the value of the Bank's enforcement action in Russia and the value of the VTB Group Receivables was deducted from the amounts that would be distributed to the Bank (e.g. under the proposed scheme) and not from the value of its proof of debt. That would (on the Bank's case in relation to the disputed insolvency issues) amount to the extinguishment of its otherwise valuable claim in the insolvency of the Subsidiary. The Bank said that this was the inevitable consequence of the Licence Amendment. It was, therefore, proper for the court to infer that this was OFSI's purpose. That purpose was improper, because the purpose of the sanctions regime is to **freeze** assets of a designated person and not to **expropriate** them (or to defeat legitimate claims of the Bank).

The irrationality ground

60. The Bank submits that the Licence Amendment is unreasonable and irrational in that it: (a) arbitrarily imposes historic exchange rates (as at 6 December 2022), resulting in the **over-valuation** of the Deductions to be made from the Bank's claim in the insolvency of the Subsidiary, and (b) prohibits the JAs from making **provision** in respect of the Deductions. The Bank says that imposing these two changes to the General Licence pre-determined that its proof in the Subsidiary's insolvency would be improperly reduced contrary to insolvency law, and that no provision would be made for its claim to the Deductions.

61. In many ways, these points simply express the *Padfield* ground in a different form. They both depend on showing that the Licence Amendment went beyond what was permissible under SAMLA and the Russia Regulations. Whether expressed as an improper purpose or an act of irrational decision-making, the question in each case is whether the Licence Amendment went beyond the legitimate objective of the sanctions legislation and improperly expropriated or interfered with the Bank's vested property rights in a way that only the Insolvency Court could have done.

The Article 6 ground

62. The Bank submits that the Licence Amendment was an unlawful interference with its right to have its interest in the insolvency determined according to insolvency law and ultimately by the Insolvency Court. The point that is being made is that the Licence Amendment predetermines the Bank's rights in the Subsidiary's insolvency and, therefore, prevents the Bank's insolvency rights being determined by an independent and impartial insolvency tribunal according to insolvency law. Put that way, it can be seen why the argument is, once again, another way of putting the *Padfield* and irrationality grounds. The Bank put the matter on the basis that Article 6 was engaged because there was a genuine and serious dispute between the Bank and the JAs that could only be resolved by the Insolvency Court. Put another way, that question is perhaps really whether the Licence Amendment actually improperly determines the Bank's rights in the Subsidiary's insolvency, circumventing the Insolvency Court.

The representations ground

63. The Bank focused, as we have said at [13] above, on the lack of consultation with the Bank prior to making the Licence Amendment. The Bank sensibly accepted that if it could not succeed on that basis, then it could not be saved by its subsidiary point that OFSI failed to comply with its own policy in relation to the granting of licences, so far as engagement with relevant stakeholders is concerned.

The judge's judgment

64. The judge's careful judgment dismissed all the grounds on which the Bank relied. In the light of the approach we have adopted, only a brief summary of her conclusions is needed.

65. In relation to the *Padfield* ground, the judge noted at [J105] that the Bank had made no *vires* challenge, and that it had been correct not to do so. She observed (at [J107]-[J108]) that the purposes of the Licence Amendment were correct and relevant statutory purposes. These were: (a) the overarching purpose of the Russia Regulations (i.e. encouraging Russia to end its aggression in Ukraine); (b) the purpose of the designation of the Bank and the imposition of sanctions; (c) the purpose of the licensing power as exercised (namely enabling an orderly insolvency administration and limiting the impact of the sanctions on undesignated creditors); and (d) to address the fact that the existing licence was or might be facilitating the undermining of the policy objectives of the sanctions in unforeseen and unintended ways. She rejected the contention that the stated purposes were not the **true** purposes [J109].

66. The judge also rejected the Bank's argument that an improper purpose was to be inferred from the fact that the **consequence** of the Licence Amendment was to

expropriate the Bank's rights. She noted the Bank's acceptance that the *Padfield* principle was not concerned with consequences or outcomes [J111]. The judge addressed at [J112] the Bank's contention that the Licence Amendment had crossed the line between asset freeze and effective diminution or extinction of the Bank's rights as a creditor in the Subsidiary's insolvency. She concluded:

> The contemporaneous documentation indicates that – whether or not that was the outcome or consequence – the purpose of the Amended Licence was to limit what might be described as any unintended and unforeseen consequences of not making more restrictive licensing provision sooner and relying instead on the effects of the terms of the proposed scheme. It was, in other words, purposed by its decision-maker as an anti-avoidance measure to support the statutory purposes rather than have them thwarted.

67. The judge then noted at [J113] that sanctions are "always capable of having the effect of wasting, diminishing or even extinguishing financial and economic assets – up to and including precipitating insolvency".

68. In relation to the Article 6 ground, the judge held that the Licence Amendment did not usurp any role of the Insolvency Court. She explained at [J128] as follows:

> It enabled, subject to tight conditions designed to protect the interests of the unsanctioned creditors, the participation of the Bank in the [Subsidiary's] administration in respects which would otherwise have been a breach of sanctions, by a limited measure of decriminalisation. Decriminalisation is the only thing a licence can achieve.

69. At [J129], the judge held that it was not the Licence Amendment that was "directly decisive" of any civil right of the Bank: "The legally operative administrative decision affecting rights was the anterior *sanctioning* decision".

70. At [J132], the judge said, in effect, that the Licence Amendment was something that OFSI was entitled to make. It was not "an inherent usurpation of the functions of the Insolvency Court", or "inherently unsuitable to be taken otherwise than by that Court". But that did not make Article 6 irrelevant to its decision-making. Parliament had made a bespoke provision in the form of section 38 of SAMLA for access to the court in relation to the **operative** decision-making that was challenged in these proceedings (see [47] above). That was the mechanism Parliament has provided for ensuring court oversight of decisions relating to sanctions, and for ensuring compliance with Article 6 [J140]. On that basis, the challenge based on Article 6 failed.

71. The judge dealt fully with the irrationality ground at [J142]-[J168]. There is no complaint about her recitation at [J142]-[J143] of the legal principles relating to the two aspects of rationality, namely process rationality and outcome rationality (which she took from Chamberlain J's judgment in *R (KP) v. SSFCDA* [2025] EWHC 370 (Admin), 1 WLUK 370 at [55]-[63]).

72. The judge recorded at [J154] that the context of the challenged decision was the Bank's sudden and unforeseen veto of the proposed scheme of arrangement and the emergence of information about the Bank's enforcement action in Russia.

73. At [J158]-[J160], the judge found no process irrationality in relation to the exchange rate decision. She concluded that the JAs had specifically identified a risk that using different exchange rates for the Bank's provable claim and the Deductions would allow the Subsidiary to obtain a profit. OFSI needed only to understand the existence of the risk and its incompatibility with the deductions mechanism, not the details of the dispute as to insolvency law around that issue.

74. The judge similarly found no process irrationality in relation to the provisioning issue at [J162]-[J163]. She regarded it as a drafting point rather than a matter of distinct policy. She addressed separately the point that the language in relation to provisioning had been added after the decision-maker had approved the recommendation in the Decision Memorandum. She concluded that the provisioning language did not require the principal decision-makers' attention because the decision they were asked to take was that OFSI might amend the General Licence to prevent the Bank from making double recovery, stepping ahead of other creditors or profiting from statutory interest in the Administration. The issue of how these decisions were to be implemented was a matter for the drafters.

75. As to outcome rationality, the judge concluded that "both provisions were sensibly tailored to dealing with the dangers flagged and effective to do so" [J167]:

> There was no case, consistent with the purposes for which the licensing power had to be exercised, for permitting any 'profit in roubles' to be made from the deductions mechanism to which the sanctions regime would otherwise apply. There was no such case for permitting any 'provisioning' as an alternative to the deductions.

76. The judge addressed the representations ground at [J169]-[J199]. She applied the principles enunciated by Lord Neuberger in *Bank Mellat* at [178]-[179]: namely, that persons who would foreseeably be detrimentally affected should be given the opportunity to make representations in advance unless: (1) the statutory provisions concerned expressly or impliedly provide otherwise or (2) it would be impossible, impractical or pointless to do so.

77. The judge found that the Russia Regulations imposed no express duty to consult before varying a General Licence. Any such duty was highly dependent on the particular context.

78. In the light of the full consultation of the Bank in relation to the proposed scheme of arrangement, the Bank's sudden decision to vote down the scheme, its lack of engagement thereafter and the time sensitive urgency of the insolvency proceedings, it was not apparent that fairness required a fresh consultation process with the Bank [J191]. That was reinforced by the facts that OFSI was under an implied duty to keep the exercise of its licensing powers under review and that the decriminalisation was limited, conditional and prospective, meaning that there was the opportunity for a meaningful "return date" review allowing for amendment if fairness and effectiveness required it.

The central point in this appeal

79. As explained at [14] and [16] above, the Bank's essential case is that it was unlawful for OFSI, in purporting to exercise its power to grant or amend a licence, to extinguish or materially alter to the Bank's detriment, the Bank's insolvency law and property rights in the administration of the Subsidiary. By the mechanism of the Licence Amendment, OFSI had, according to the Bank, extended the scope of the sanctions beyond an asset freeze and a prohibition on making funds or economic resources available to a designated person, into an expropriation of rights.

80. HMT contended that it was not open to the Bank, which has not made a *vires* challenge, to make this complaint within the parameters of a *Padfield* challenge. *Padfield* required a two-stage analysis: first, the court must identify the purpose of the legislation; secondly, it must ask whether the statutory discretion has been exercised to promote, rather than to frustrate, that purpose (see Lambert J's summary of the approach at [98]-[99] in *R (BMA) v. General Medical Council* [2025] EWHC 960 (Admin)).

81. HMT supported the judge's approach. It submitted that, even if the effect of a licence was permanently to remove or diminish the rights of the designated person, and thus went beyond imposing an asset freeze or prohibiting making funds available to a designated person, that was irrelevant provided that OFSI's purpose was consistent with that of the Russia Regulations, namely to put pressure on Russia as regards its aggression in Ukraine.

82. The Bank contended that a *Padfield* challenge was itself a species of *vires* challenge and it is not helpful to distinguish between the two. The Bank cited Lord Wilson at [22] in *R (Palestine Solidarity Campaign Ltd) v. Secretary of State for Housing, Communities and Local Government* [2020] UKSC 16, [2020] 1 WLR 1774: "For those who continue to insist on Latin, an inquiry by reference to the principle in the *Padfield* case is an inquiry into whether the provision is *ultra vires*: de Smith's Judicial Review, 8th ed (2018), para 5-018".

83. It is, in our view, unnecessary to resolve this debate. HMT accepted that, if a decision-maker knows that its decision has a particular consequence, then it is permissible to infer that achieving that consequence forms part of its purpose. A purpose "can be judged by reference to its inevitable or likely effects". In our judgment, if the Licence Amendment does have the effect of extinguishing the Bank's rights, then it is apparent from the terms of the JAs' solicitors' communications on and after 25 November 2024 that OFSI was made aware that that was its intended effect.

84. As we have said at [16] above, the critical questions, which underlie all the Bank's arguments, are whether the Licence Amendment: (i) really does go beyond what is permitted by SAMLA and the Russia Regulations, and (ii) improperly imposes an expropriatory insolvency distribution on the Bank. It is most logical to deal with these questions in reverse order, because the proper meaning and effect of the Licence Amendment will inform the question of whether the Licence Amendment goes beyond the scope or purpose of the sanctions legislation.

85. In our view, the question of whether the Licence Amendment improperly imposes an expropriatory insolvency distribution on the Bank turns on three more questions as follows:

i) What are the Bank's rights in the insolvency of the Subsidiary and to what extent would it be inconsistent with those rights if the JAs and the Insolvency Court were required to follow the terms of the Licence Amendment?

ii) To what extent were the Bank's rights impacted by the imposition of sanctions under the Russia Regulations?

iii) Does the Licence Amendment actually extinguish or materially alter the Bank's rights in the insolvency of the Subsidiary?

The Bank's insolvency law rights

86. It is common ground that, upon the making of an administration order, whilst the creditors do not have a proprietary interest in the assets of the company, they have the statutory right to have the company's assets dealt with in accordance with the statutory scheme in the IA 1986 and the IR 2016, as supplemented by the common law (for a recent reiteration of this right, see Miles J at [200] in *Re Sova Capital Ltd* [2023] EWHC 452 (Ch), [2024] 1 All ER (Comm) 69).

87. In broad terms, the statutory scheme of administration requires, at least from the date that the administrators give notice of intention to distribute to unsecured creditors, that the company's assets are realised and the proceeds – after payment of secured and preferential debts – are divided *pari passu* among all the unsecured creditors. The essential right of a creditor, therefore, is to be paid a dividend equal to its share of the assets of the company in accordance with the statutory scheme.

88. It is often impracticable to pay a dividend to all creditors at the same time, for example where some creditors' claims are subject to a dispute which is yet to be resolved. That is the case in relation to the Bank's claim because: (a) sanctions preclude it being paid, and (b) the JAs have disputed its claims. In such cases, the administrators **can** pay a dividend to some of the creditors. But they may only do so if sufficient assets are retained for the purpose of paying the same rate of dividend to the remaining creditors in the event that they turn out to have good claims. See Rule 14.39 of the IR 2016 which provides as follows:

> In an administration or winding up, in the calculation and distribution of a dividend the office-holder must make provision for – (a) any debts which are the subject of claims which have not yet been determined; and (b) disputed proofs and claims.

89. A creditor's right to have the assets administered in accordance with the statutory scheme and to receive its *pro rata* share is not, however, an absolute right. It can be overridden, for example, by a scheme of arrangement. It is permissible for a scheme to provide for distribution to creditors otherwise than on a *pari passu* basis provided that it does not result in a creditor being worse off than in the relevant alternative. The same is true even if the creditor concerned has sufficient voting power to block a scheme of arrangement. A restructuring plan under Part 26A of the Companies Act 2006, which can be imposed by the court on such a creditor, makes it a condition of such a plan being sanctioned that creditors are "no worse-off": see section 901G(3) of the Companies Act 2006, and Snowden LJ at [166] in *Re AGPS Bondco plc* [2024] EWCA Civ 24, [2025] 1 All ER (Comm) 26.

90. In general terms, however, it is correct to say that the *pari passu* principle is implemented by the detailed provisions of the IA 1986 and the IR 2016 and the common law that supplements them.

91. The Bank's claim that the Licence Amendment is inconsistent with its insolvency law rights is based on the following propositions of insolvency law. The Bank claims that its propositions are correct, but they are disputed by HMT and the JAs. The Bank says that its insolvency law rights cannot be overridden by the Licence Amendment. These propositions were not the subject of detailed argument before us.

92. The first disputed insolvency law proposition relates to the ability to distribute property *in specie* where that property is unrealisable (i.e. cannot be obtained and sold by the JAs). Rule 14.13 of the IR 2016 provides that an administrator "may with the required permission divide the property in its existing form among the company's creditors according to its estimated value". The Bank contends, however, that this does not permit an administrator to force an *in specie* dividend on only one creditor. The Bank contends that, to the extent that the Licence Amendment envisages any distribution or provision in respect of the Bank's claim being reduced by the value of the VTB Group Receivables, it is inconsistent with this aspect of insolvency law.

93. The second disputed insolvency law proposition relates to the hotchpot rule. The hotchpot rule applies both in liquidation and administration, and has effect where a creditor of the company receives a dividend from a foreign insolvency proceeding in relation to the company. It precludes that creditor from receiving a dividend from the liquidation or administration in this country until the dividend he would have received equals the amount of the foreign dividend: see Lord Scott at [18] in *Cleaver v. Delta American Reinsurance Co* [2001] UKPC 6, [2001] 2 AC 328 (who refers to the hotchpot principle), and Stanley Burnton LJ at [24] in *Bloom v. Harms Offshore AHT "Tauris" GmbH & Co KG* [2009] EWCA Civ 632, [2010] Ch 187 (which, while not specifically addressing the hotchpot rule, establishes the principle that the English court has jurisdiction to protect the assets of a company in administration from foreign executions as much as it has in the case of a company in liquidation). The Bank accepts that the hotchpot rule applies to certain recoveries made from foreign enforcement action against the Subsidiary's assets. The Bank contends, however, that insofar as the Licence Amendment envisages distributions or provisions in relation to the Bank's claim being reduced by the amount of: (a) recoveries made before the administration became a distributing administration, or (b) anything other than actual recoveries, it is inconsistent with how hotchpot is to be applied in the context of an administration.

94. The third disputed insolvency law proposition also relates to the hotchpot rule. It focuses on the date for converting into Sterling any recoveries in respect of the Subsidiary's assets made in a foreign currency. A *pari passu* distribution generally requires that the claims of all creditors are converted into Sterling at the same date which, in administration, is the date of its commencement. The Bank contends, however, that where it has made recoveries in Roubles, insolvency law requires that they are converted into Sterling as at the (later) date on which the recovery was made. In the circumstances of this case, where the Rouble has weakened against Sterling in the intervening period, the value of the Bank's claim is significantly enhanced if the recoveries/VTB Group Receivables are converted into Sterling at the later date.

95. As we have said, the JAs and HMT dispute the three propositions stated at [92]-[94] above. They nevertheless accept that they are at least arguable. All parties have proceeded on the basis that the judicial review proceedings are not the appropriate place to determine issues of insolvency law. Accordingly, neither the judge nor this Court has been asked to do so and, as we have observed above, we have not heard detailed argument on them.

96. In short, if the terms of the Licence Amendment were to govern how distributions or provisions are to be made in respect of the Bank's claim, we are asked to proceed on the basis that this arguably extinguishes the Bank's rights, in that it reduces the amount to which the Bank would otherwise be entitled by way of distribution pursuant to insolvency law by an amount equal to the Deductions.

97. We can now answer the first question stated at [85(1)] above. It will be recalled that the Bank has proved in the Subsidiary's insolvency for more than £205 million (see [4] and [31] above). If the Bank is right about some or all of the three disputed insolvency law propositions, and if the Insolvency Court were required to follow the terms of the Licence Amendment, the Bank would obviously lose some or all of the distribution that it would otherwise be entitled to. That would be because no adequate provision would be made by the JAs for a distribution to the Bank in the event that sanctions are lifted. The Licence Amendment provides that no provision is to be made without first deducting the Deductions (see [40] above).

How do the sanctions imposed by the Russia Regulations affect the Bank's rights in the Subsidiary's administration?

98. The sanctions imposed by the designation of the Bank are those set out in Regulations 11 to 15 of the Russia Regulations (see [49] above). The Subsidiary is consequentially affected. These regulations are intended to be of broad and damaging effect. But they cannot go further than their express terms. Their express terms impose (i) an asset freeze, and (ii) a prohibition on making funds or economic resources available to a designated person. Put simply, these regulations preclude anyone from making any funds or economic resources available, directly or indirectly, to or for the benefit of the Bank or the Subsidiary.

99. There is nothing in Regulations 11 to 15 of the Russia Regulations removing the Bank's rights as a creditor of the Subsidiary under insolvency law. The freeze on assets and economic resources may, of course, have an effect on the economic activity of both the Bank and the Subsidiary. The one obvious impact on the Bank's rights is that it cannot receive any payment from the Subsidiary. It could not receive such payment prior to the Subsidiary entering insolvency, and it cannot receive, while sanctions remain in place, any dividend on its proof of debt within an administration or winding-up of the Subsidiary.

100. In principle, however, the Bank's right to a proportionate share of the assets of the Subsidiary (after sanctions are lifted) and its right to have those assets administered in accordance with the statutory scheme arising on the Subsidiary's insolvency are not extinguished by the sanctions.

101. It was established in *PJSC National Bank Trust v. Mints* [2023] EWCA Civ 1132, [2024] KB 559 (*Mints*) that the Russia Regulations do not prevent a designated person

from bringing civil proceedings and from obtaining a judgment in those proceedings. In that case, the claimants were designated persons under the Russia Regulations, and the appellants contended that the Russia Regulations precluded judgment being entered in their favour. Sir Julian Flaux C (with whom Newey and Popplewell LJJ agreed) said this at [178]:

> The right of access to the court is a fundamental common law right. It comprises not only the right to open the court door by commencing proceedings, since if the right ended there, it would be a hollow one. It encompasses the right in the case of a civil claim such as in the present case, to have the claim adjudicated upon by the court, in other words, where the cause of action is a valid one, to obtain a judgment in one's favour. That the right includes the right to adjudication and thus judgment is clear from all the authorities … The right is not limited to litigants of whom the court approves or who satisfy some objective moral standard. The court system in England and Wales does not have outlaws or, as they were described in *Taruta* (BVIHC (Com) 2014/0062) 22 March 2022, pariahs.

102. Sir Julian Flaux explained at [179] that the principle of legality means that fundamental common law rights, such as the right of access to the court, can only be curtailed if that is clearly authorised by primary legislation. That was not the case in *Mints* (see [181]-[187]).

103. Sir Julian Flaux addressed (at [200]-[202]) an argument to the effect that the entry of judgment was prohibited by Regulation 12, because upon entry, the cause of action merged in the judgment debt, and (i) amounted to "funds", so that (ii) entry of the judgment was "making available" funds in breach of Regulation 12. That argument was rejected for two reasons. First, the fund does not come into existence until judgment, so that entry of the judgment could not be making available funds. Secondly, the words "make funds available" are "simply not apt to describe the exercise by the court of one of its prime judicial functions in administering justice, of entering judgment on a valid cause of action" (see [202]). These conclusions were reached without having regard to the principle of legality, but when that principle was applied, "the suggestion that entering judgment is making funds available becomes unarguable" (see [203]). At [205]-[207], Sir Julian Flaux rejected the appellant's alternative argument that entering judgment was prohibited by Regulation 11 on the basis that it was a "dealing" with a fund or economic resource.

104. In *Re KRF Services (UK) Ltd* [2024] EWHC 2978 (Ch), [2025] Bus LR 202 (*KRF Services*), Andrew Twigger KC (as he then was), sitting as a deputy judge of the High Court, applied *Mints* to conclude that the Russia Regulations did not prevent the court making an administration order in respect of the subsidiary of a sanctioned entity. We agree.

105. We, therefore, conclude that, as a matter of principle, the sanctions imposed on the Bank by the Russia Regulations do not affect its rights in the Subsidiary's administration, provided that none of the Russia Regulations is breached by its assertion of those rights.

The impact of the Licence Amendment on the Bank's rights

106. The final question posed at [85(3)] above is whether the Licence Amendment (as opposed to the sanctions imposed by the Russia Regulations) actually extinguishes or materially alters the Bank's rights in the insolvency of the Subsidiary. This question actually involves a consideration of the Licence Amendment from two different angles: first as to the effect of the Licence Amendment as a matter of principle, secondly as to the proper interpretation of the Licence Amendment.

The effect of the Licence Amendment as a matter of principle

107. The Bank's case is that the Licence Amendment has the effect of expropriating its rights in the Subsidiary's administration. It premised that submission on the contention that the Licence Amendment dictates, or at least substantially influences, the answers to the disputed questions of insolvency law that we have described at [92]-[94] above.

108. HMT and the JAs made different submissions on this point. The JAs' submission was that they would be bound to act in accordance with the terms of the Licence Amendment, even though that would arguably contradict the Bank's insolvency law rights. The JAs submitted that the essential rationale for asking OFSI to provide a "sanctions solution" was to achieve an outcome that was (at least arguably) one that was not available under insolvency law.

109. In substance, in our view, the Bank's case depends upon the JAs' approach being correct. If there is, in fact, nothing in the Licence Amendment which requires or permits the JAs to act contrary to insolvency law, then the whole foundation of the Bank's objections is removed. The same applies if there is nothing in the Licence Amendment which requires or permits the Insolvency Court to override the Bank's rights in the insolvency of the Subsidiary.

110. Conversely, HMT submitted in its skeleton that the Licence Amendment: "does not (and cannot) extinguish [the Bank's] underlying rights as a matter of insolvency law, bind the insolvency court or displace the role of that court". Mr Thomas Munby KC (who made submissions on the insolvency related issues on behalf of HMT) confirmed that position in argument, submitting that the General Licence, including the Licence Amendment, is only permissive in nature. He accepted that: "OFSI can never do more than [take the Bank and the Subsidiary] back to the position where there's no licence and the sanctions just take effect as they do … that is an ultimate envelope that OFSI obviously can't go outside of because … a licence just can't carry you beyond the point at which there's no licence at all". Mr Munby also reiterated HMT's position that the Licence Amendment does not do more than prevent certain action being taken. It would prevent the JAs, and the Insolvency Court, from taking such steps as the General Licence prohibits, but no more. The Licence Amendment does not control the Insolvency Court and cannot compel it to do anything.

111. HMT's evidence confirmed the position we have described at [110] above by citing [6.5] of OFSI's UK Financial Sanctions General Guidance: "A licence is a written permission from OFSI allowing an act that would otherwise breach prohibitions imposed by financial sanctions. It does not compel any party, including the financial institutions involved in the payment route, to take any action. It confirms, solely, that the act(s) specified in the licence are allowed by OFSI".

112. Mr Drake's witness statement on behalf of HMT included the following:

> OFSI's position in respect of the ongoing insolvency proceedings is that the General Licence does not displace the role of the Court or the JAs. **The sanctions regime operates separately from and "on top of" the insolvency process, rendering unlawful certain actions which the JAs might otherwise take (or which the Court might otherwise direct them to take) as a matter of insolvency law or process. But the Court retains full jurisdiction to resolve any disputes as to [the Bank's] or any other creditors' entitlement under insolvency law**; and the JAs and the Court retain in full their respective roles in determining how the insolvency process should accommodate itself to the constraints of the sanctions regime. The role of the General Licence is to enable any action the JAs decide to take (or which the Court is minded to direct them to take) to be made consistent with the UK sanctions regime, insofar as this is appropriate within OFSI's discretion and the policy purpose of the sanctions regime. **Consequently, the General Licence amendment is permissive in nature**. **It sets out the conditions under which OFSI currently considers it appropriate that any distributions which would otherwise be made may lawfully be made in compliance with the sanctions regime, but it does not compel the JAs or the Court to carry out any actions**. Should the insolvency court determine that a different approach is appropriate as a matter of the insolvency process (subject to a further licence amendment being made), OFSI would of course carefully consider that, in deciding whether further amendment of the General Licence can be made in way which is consistent with the policy of the sanctions regime [emphasis added].

113. We did not understand Sir James Eadie KC (who made submissions on the administrative law issues on behalf of HMT) to be saying anything different. He emphasised on a number of occasions the **decriminalising** effect of the General Licence. Sir James continued by submitting that it was open to OFSI to use its licensing power in a way which restricted a sanctioned creditor's rights in an insolvency of a debtor company like the Subsidiary. He went so far as to submit that a General Licence could **permit** the JAs to distribute the Subsidiary's assets to unsanctioned creditors, leaving nothing to satisfy the sanctioned creditor's right to a *pari passu* distribution from those assets. He did not, however, gainsay the basic submission made by Mr Munby that the Licence Amendment did not **require** the JAs or the Insolvency Court to take any specific actions whatsoever. We will, however, return at [133]-[139] to Sir James's argument that a General Licence could lawfully override the Bank's insolvency rights.

114. The Decision Memorandum at [8] said that if the proposed amendments were made to the General Licence, the JAs would apply to the Insolvency Court for permission to make distributions in accordance with the amended requirements "to avoid any conflict between sanctions law and insolvency law". That suggests that OFSI did not think that the Licence Amendment would itself require the Insolvency Court to make any particular order.

115. On the other hand, at [11] of the Decision Memorandum, the point is made that OFSI had concerns as to whether the amendment would have any practical benefit since it was unclear whether the Bank would support the revised scheme. The Decision Memorandum continued: "However, the [JAs] advised that if OFSI made such an

amendment, this would not require [the Bank] to support the scheme. The amendment itself, combined with a direction from the court to make distributions in accordance with the amendment, would have an effect similar to the hotchpot and distribution *in specie* provisions of the scheme, even if the scheme were not approved". It seems that the JAs anticipated that the Insolvency Court could, once the Licence Amendment was in force, give directions that accorded with it. That is consistent with the approach taken by the JAs to the Bank's vote in the revised scheme of arrangement following the Licence Amendment (see [41] above).

116. In our view, HMT is clearly right, as a matter of principle, on the question of whether the Licence Amendment **requires** the JAs and the Insolvency Court to act as it envisages. The Licence Amendment, in our judgment, is only permissive. Its purpose is limited to creating an exception to the primary sanctions. It authorises (and thereby decriminalises) conduct which would otherwise be prohibited by Regulations 11 to 15 of the Russia Regulations. The Licence Amendment does not displace or override any other legal impediment to taking the action it permits. The Licence Amendment simply means that, if the permitted actions are taken, they will not be a breach of the Russia Regulations. As the judge put it at [J128]: "[d]ecriminalisation is the only thing a licence can achieve". Specifically, the Licence Amendment does not override any impediment that may exist under insolvency law to the JAs taking the actions it permits. The General Licence, and each of the amendments to it, must be understood in this light.

117. We turn now to explain the proper meaning and effect of the Licence Amendment. To do so, it is necessary to consider first each of the prior amendments, before turning to the parties' submissions as to the apparent requirement in [5.3A] only to make a provision in favour of the Bank after making the Deductions.

The proper interpretation of the Licence Amendment

118. The General Licence, following its amendment in April 2022, permitted at [5.1] and [5.2] the Subsidiary's insolvency practitioner to make payments, other than to designated persons, for the purposes of their functions under or in connection with insolvency proceedings. There is no question of that amendment removing any of the Bank's rights in the insolvency of the Subsidiary. The General Licence at that stage in April 2022 merely meant that paying creditors, other than the Bank, would not constitute a breach of the Russia Regulations.

119. The amendment in May 2024 was similarly permissive in nature. It started from the position that no funds or economic resources could be made available to the Bank. It introduced an exception in [5.3] to permit funds or economic resources to be transferred into the Holding Period Trust. That was – at least arguably – a relaxation of the prohibition in Regulations 12 to 15, because the Bank was a beneficiary of the Holding Period Trust. Even though the Bank could not receive the assets in the Holding Period Trust whilst sanctions remained in place, it could have been said that the assets were being "made available" for its benefit. There was again no question of any inconsistency with insolvency law. The amendment was made in order that the scheme of arrangement, if approved by the requisite majority of creditors and if sanctioned in accordance with the general law, could be implemented.

120. The General Licence, following the Licence Amendment, retains the permission to make payments in connection with the insolvency proceedings, subject to the [5.3] prohibition on the Subsidiary making funds or economic resources available to or for the benefit of the Bank, excepting the Holding Period Trust. [5.3A] then makes [5.3] subject to a further condition, namely that any payments made to the Holding Period Trust (and any provision made with a view to making a payment to the Bank at a later date) **must** be subject to the Deductions. Insofar as this relates to the Holding Period Trust, all it means is that it will not be a breach of the Russia Regulations if the JAs transfer assets on this basis into the Holding Period Trust. It does not purport to remove any rights the Bank has under insolvency law, including rights which would have the effect of entitling it to a distribution in a greater sum.

121. It is the reference to "the making of any provision" which is, perhaps, more difficult. It will be recalled that [5.3A] actually says that [5.3] "is subject to the condition that no funds or economic resources shall be made available, **including the making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date** … to [the Bank] … [w]ithout first deducting …" (emphasis added).

122. [5.3A] is called a "condition" to the application of [5.3]. But it is seemingly not a "condition" on the payment of monies into the Holding Period Trust. Instead, it is a clarification or expansion of the prohibition on making funds or economic resources available in [5.3]. It makes clear that the prohibition includes making any provision for the Bank's proof of debt in the Subsidiary's administration without making the Deductions.

123. Mr Munby for HMT contended that making provision for the Bank's claim was already within the concept of making funds or economic resources available to the Bank. He pointed to the wide meaning of "making available", referring to *LLC EuroChem North-West-2 v. Société Générale* [2025] EWHC 1938 (Comm), [2025] 7 WLUK 697 at [250] where Bright J cited the following passage from the decision of the Court of Justice of the European Union (CJEU) in *SH v. TG* Case-168/17 (ECLI:EU:C:2019:36):

> [51] It should be noted that the prohibition laid down in that provision on making funds or economic resources available to any person on the list of persons targeted by the restrictive measures is framed in particularly broad terms, as evidenced by the use of the words 'directly or indirectly', and therefore encompasses all the acts necessary under the applicable national law if that person is in fact to obtain full power of disposal in relation to the funds or economic resources concerned (see, to that effect, judgments of 11 October 2007, *Möllendorf and Möllendorf-Niehuus*, C-117/06, EU:C:2007:596, paragraphs 50 and 51; of 29 June 2010, E and F, C-550/09, EU:C:2010:382, paragraphs 66 and 74, and of 21 December 2011, *Afrasiabi and Others*, C-72/11, EU:C:2011:874, paragraphs 39 and 40).
>
> [52] The broad and unambiguous terms of that provision apply to any mode of making available an economic resource and therefore also to any act which flows from the execution of a contract imposing mutual obligations and which has been agreed in exchange for payment of pecuniary consideration (judgment of 11 October 2007, *Möllendorf and Möllendorf-Niehuus*, C-117/06, EU:C:2007:596, paragraph 56).

124. Mr Munby submitted that "making available" funds encompassed not merely putting them into the hands of a designated person, but also all acts necessary under the applicable national law if the person was in fact to obtain full power of disposal in relation to the funds or economic resources concerned. Mr Munby also relied on Regulation 13(4), which limits the meaning of the phrase "made available for the benefit of a designated person" to the case where a person thereby obtains, or is able to obtain, a significant financial benefit. He submitted that a significant financial benefit could extend to a case where, even though the funds were not put into the hands of the designated person, that person was provided with the ability to borrow against the funds that might later be provided to them, or the ability to give the funds a more favourable accounting treatment, and so to borrow or raise investment.

125. Finally, Mr Munby referred to an *obiter* passage at [99] of the judgment of the deputy judge in *Re KRF Services* (see [102] above), in which he made the point that the mere appointment of administrators did not involve funds being made available for a designated person, but that this might occur when administrators "deploy them in some way".

126. In response, and after we had reserved judgment, the Bank drew our attention to a decision handed down by the CJEU on 15 October 2026 in *DNO Yemen AS v. Petrolin Trading Limited* Case C-842/24 at [59] and [73], where the CJEU suggested that funds and resources are only made available to a designated entity where it obtains "a power or means of disposal of the funds".

127. In our judgment, none of these authorities comes close to establishing that making provision within the administration for the possibility that a sum might be owed to the Bank amounts to making funds or economic resources available directly or indirectly to or for the benefit of the Bank.

128. Rule 14.39 of the IR 2016 says that provision must be made "in the calculation and distribution" of a dividend. All that means is that sufficient assets are **retained** – i.e. **not** dealt with or deployed – within the insolvency estate, in order to meet the possibility that they would be required to meet the claims of creditors to whom a dividend is not currently being paid. The making of a provision gives the creditor nothing. It does not give the creditor any interest in any assets within the insolvency estate, and it is difficult to see how it provides any financial advantage, or even the ability to borrow, that could be equated with making funds available to the creditor. The extent to which the creditor accounts for the debt will be dictated by the creditor's view of the solvency of the company, and the likelihood of a dividend ultimately being paid if and when sanctions are lifted. The creditor already has the right under insolvency law to receive its *pro rata* share of the assets, and making provision means no more than that right is not taken away or reduced by the administrators causing the insolvency estate to be denuded of assets.

129. In *KRF Services*, the deputy judge said nothing about what kind of "deployment" of assets by administrators might breach Regulations 11 to 15. His *dictum* provides no support for HMT's contention that making a provision for the Bank's claims would breach the Russia Regulations.

130. Moreover, to the extent that making provision within an administration is said to confer an intangible advantage because it enables the Bank to make some different accounting

provision in respect of its claim, that is no more – and indeed far less – than the consequence of entering judgment in respect of the claim, but *Mints* (see [101]-[103] above) makes it clear that the latter is not prohibited.

131. The crucial words in [5.3A] purport to include the **"**making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date … to [the Bank] … [w]ithout first deducting [the Deductions]" within the "funds or economic resources" that cannot be "made available" to the Bank. But as we have explained above at [127]-[130], the term "making available" in the Russia Regulations does **not** include an insolvency practitioner making provision for a claim by a designated entity. Accordingly, it seems to us that those words of [5.3A] can have no legal effect, save perhaps to suggest a direction of travel to the JAs.

132. Even if that interpretation of [5.3A] were to be wrong, and effect were to be given to the relevant wording, it still would not have the consequence of overriding insolvency law or extinguishing the Bank's rights. The whole of [5.3], including the further condition in [5.3A], is an exception to the permission to make payments contained in [5.1] (which is expressed to be "[s]ubject to [5.3] below"). Thus, the Licence Amendment **permits** the JAs to make distributions to creditors while **prohibiting** them from making a provision without making the Deductions. As explained above at [116], however, the Licence Amendment only decriminalises conduct which would otherwise be a breach of the Russia Regulations. Specifically, the Licence Amendment, on this analysis, would only mean that the JAs were permitted to pay creditors, whilst making a reduced provision for the Bank's debts, without being in breach of sanctions. The Licence Amendment does **not** permit the JAs to violate insolvency law or **require** the Insolvency Court to allow such payments to be made with the reduced provision that the Licence Amendment envisages.

133. Before finally answering the question posed at [85(3)] above as to whether the Licence Amendment actually extinguishes or materially alters the Bank's rights in the insolvency of the Subsidiary, we need to deal with the way Sir James Eadie dealt with the Court's direct questions about whether the Licence Amendment could have the effect of removing the Bank's property rights in the Subsidiary's insolvency.

HMT's argument as to the circumstances in which the Licence Amendment might remove the Bank's property rights in the Subsidiary's insolvency

134. The Court put a stark example to Sir James. If a company in administration had two creditors, one of which was designated (creditor A) and one of which was not (creditor B), the Court asked whether a licence under the Russia Regulations could authorise the distribution of all the company's assets to creditor B, leaving nothing for creditor A. Sir James said that a licence could achieve that result, though he cautioned that that was not this case. He said that: "[a]ll this is doing is decriminalising".

135. Sir James's oral argument, applied to the facts of this case, involved the following steps:

i) The sanctions themselves prohibit making any distribution to the Bank.

ii) The nature of sanctions is that they can and do interfere with existing legal relations in a variety of serious ways, including precluding the performance of contracts, interfering with the value of assets and the operation of companies (as

with the Subsidiary). They can also be economically damaging in intent and effect, such as where they cause the designated entity irretrievably and irremediably to miss business opportunities.

iii) The impact of the General Licence and the Licence Amendment should, therefore, be assessed against a counterfactual where the sanctions were simply left in place, with no exercise of the licensing power. That would, Sir James said, have created the same irremediable effects of which the Bank now complains because the sanctions would be in place and "all other events would unfold". By that he meant that, on one view, there could be "no distribution, there could be no provision and there could be no payment out", and "yet the [insolvency] scheme would have finished; there would have been no assets left in the pot" so the Bank would get nothing at all.

iv) The licensing power exists so as to alleviate the effect of sanctions in a variety of ways, including by the addition of conditions to a licence.

v) OFSI is under no obligation, whether expressly or by reference to the underlying purposes, not to do anything which might impinge on the mechanisms, rules or principles by which distributions within an insolvency operate. Nothing in the Russia Regulations requires OFSI to decriminalise any particular action at any particular time.

vi) The harm to the Bank envisaged by the Licence Amendment is consistent with the purpose of the Russia Regulations.

136. The argument is attractive, but, for the reasons we have given at [106]-[132] above, it cannot be correct. The Russia Regulations do not permit OFSI validly to authorise a distribution of an insolvent company's assets to one creditor without making any provision for a debt owed to a designated entity. We do not rule out the possibility that an insolvency law solution, imposed by an Insolvency Court, could go some way towards such an outcome (see [153]-[159] below). But the Russia Regulations do not allow OFSI to use its licensing power to achieve that outcome.

137. We only take issue with steps (3) and (5) in Sir James's argument. As to step (3), Sir James suggests the wrong counterfactual. On the premise that **no licence** had been granted, the Subsidiary's insolvency would **not** have run its course with distributions being made to other creditors, leaving nothing for the Bank. Without a licence, the Subsidiary could have made no payment to anyone. Even if that restriction had been removed, and all that remained was the prohibition on making funds available to the Bank, the JAs would still have had to make provision for the debt to the Bank, unless an insolvency law solution allowed otherwise. As to step (5), it is true that OFSI is not required to decriminalise anything, and that the Russia Regulations can and will impinge on insolvency mechanisms and processes. It is even true to say, as we shall explain below at [150] that a licence can purport to **authorise** steps that would or might be in conflict with insolvency law in pursuance of the wide purposes of the sanctions. It is not, however, right to suggest that OFSI can **require** the JAs or the Insolvency Court actually to take any steps without having regard to the principles of insolvency law.

138. Sir James was right to protest that the Court's example at [134] above was not this case. But all parties before us have proceeded on the basis that, if the Insolvency Court were required to follow the terms of the Licence Amendment, it might have the effect of distributing assets to unsanctioned creditors which would, potentially at least, cause the Bank ultimately (if and when sanctions are removed) to recover less than the proportionate share to which it would otherwise have been entitled.

139. We, therefore, conclude that Sir James's argument at [134]-[135] above does not take HMT any further than the evidence and submissions of Mr Munby recorded at [110]-[112] above.

Conclusions on the impact of the Licence Amendment on the Bank's rights

140. Our conclusions as to the question of whether the Licence Amendment actually extinguishes or materially alters the Bank's rights in the insolvency of the Subsidiary, are as follows:-

i) The Licence Amendment is only permissive. Its purpose is limited to creating an exception to the primary sanctions. It authorises (and thereby decriminalises) conduct which would otherwise be prohibited by Regulations 11 to 15 of the Russia Regulations. The Licence Amendment does not displace or override any other legal impediment to taking the action it permits.

ii) The Licence Amendment specifically does not override any impediment that may exist under insolvency law to the JAs taking the actions it permits.

iii) If the JAs were to make provision within the Administration for the possibility that a sum might be owed to the Bank, that would **not** amount to making funds or economic resources available directly or indirectly to or for the benefit of the Bank.

iv) The crucial words in [5.3A] purporting to include the **"**making of any provision with a view to making a payment of funds or a transfer of economic resources at a later date … to [the Bank] … [w]ithout first deducting [the Deductions]" within the "funds or economic resources" that cannot be "made available" to the Bank can have no legal effect, save perhaps to suggest a direction of travel to the JAs.

v) Even if that interpretation of [5.3A] were to be wrong, the Licence Amendment would still not have the consequence of overriding insolvency law or extinguishing the Bank's rights.

vi) Sir James's argument at [134]-[135] above does not take HMT any further than the evidence and submissions of Mr Munby recorded at [110]-[112] above.

141. As we have explained, therefore, the Licence Amendment cannot and does not actually purport to extinguish or materially alter the Bank's rights in the insolvency of the Subsidiary.

Conclusions on the Bank's challenges to the decision to make the Licence Amendment

The Licence Amendment is permissive in nature

142. It will be clear from what we have said already that we have concluded that the Bank is wrong to have submitted that the Licence Amendment improperly imposes an expropriatory insolvency distribution on the Bank. The Licence Amendment is permissive in nature. Neither the JAs nor the Insolvency Court is obliged by the Licence Amendment to implement the arrangements envisaged in [5.3A]. The Licence Amendment has not yet been acted upon, save in the limited respect concerning the approval of the revised scheme of arrangement (which is not and could not have been challenged before us) (see [41] and [115] above). When, and if, the Licence Amendment is acted upon by the Insolvency Court, the Bank will, if it has insolvency or other grounds, be able to challenge the Insolvency Court's decision.

143. These conclusions provide answers to each of the specific challenges made by the Bank to OFSI's decision to make the Licence Amendment. If the Licence Amendment is only permissive and only removes the sanctions consequences of the actions permitted by it, then the Bank's rights in the insolvency of the Subsidiary are not extinguished or reduced, save to the extent that they were by the original designation of the Bank.

144. The *Padfield* ground is based on the contention that the Licence Amendment has the effect of damaging the Bank's rights, so that must be its purpose. In fact, as we have held, the Licence Amendment does not have the effect of damaging or infringing the Bank's rights in the Subsidiary's insolvency. The Licence Amendment is entirely permissive. This accorded very largely with what the judge said at [J128]-[J129].

145. It may be that OFSI acted, as the Bank submits, in one sense for the purpose of prejudicing the economic interests of the Bank. As the authorities we have mentioned at [53]-[56] above emphasise, sanctions are intended to be broad and open-ended. It is not a valid complaint that the Licence Amendment, which was entirely permissive in effect, was intended to make the sanctions imposed on the Bank effective and to suggest ways in which the Insolvency Court might proceed within the Administration alongside the implementation of the sanctions.

146. So far as the irrationality ground is concerned, the Bank is wrong to submit that the Licence Amendment either (a) **imposes** the historic exchange rates complained of, or (b) **prohibits** the JAs from making provision in respect of the Deductions. As we have already explained, the Licence Amendment was not able validly to direct the JAs or the Insolvency Court as to how they should apply insolvency law in respect of making a provision or as to the exchange rates to be utilised to calculate that provision. The Licence Amendment can, as we have also said, point the JAs and the Insolvency Court towards a course of action, but cannot tell them what to do. Of course, neither the JAs nor the Insolvency Court can or will take any step that breaches the sanctions imposed on the Bank. Specifically, the Bank was wrong to submit that imposing these two changes to the General Licence pre-determined that its proof in the Subsidiary's insolvency would be improperly reduced contrary to insolvency law, and that no provision would be made for its claim to the Deductions. It had no such effect for the reasons we have given.

147. So far as the Article 6 ground is concerned, the Licence Amendment was, for the reasons already given, not an unlawful interference with either the Bank's right to have its interest in the insolvency determined according to insolvency law or by the Insolvency Court. The Licence Amendment is permissive and does not predetermine the Bank's rights in the Subsidiary's insolvency. It does not, therefore prevent the Bank's insolvency rights being determined by an independent and impartial insolvency tribunal according to insolvency law. In addition, we support the judge's reasoning as to section 38 of SAMLA at [J121].

148. So far as the representations ground is concerned, the challenge fails for the same reasons. Procedural fairness did not in this situation require prior consultation with the Bank about the terms of the Licence Amendment, because the Licence Amendment was purely permissive, and did not decide anything finally against the Bank. In addition: (a) if such consultation were required, all creditors affected by the Licence Amendment would have had to be consulted, which would have been wholly impracticable, and (b) this is a classic case in which it is obvious that: "the circumstances in which the power is to be exercised would render it impossible, impractical or pointless to afford such an opportunity" (see Lord Neuberger in *Bank Mellat* at [179] at [22] above).

The broad purposes of SAMLA and the Russia Regulations make the Licence Amendment lawful

149. Bearing in mind the permissive nature of the Licence Amendment, it is hard to see how it can be challenged on the premise that it purports to restrict the exemption originally granted by the General Licence. We accept HMT's submission that the powers granted by SAMLA and the Russia Regulations are broad and open-ended (see [53]-[56] above). Even if the Licence Amendment had the effect that the Bank contends for, it would no doubt be consistent with the **purpose** of the sanctions imposed by the Russia Regulations. Any prejudice caused to the Bank would help to increase pressure on Russia to cease its aggression in Ukraine. The fact that it would serve that purpose does not, however, mean that OFSI can, through granting or amending a licence, the function of which is to decriminalise certain actions, dictate how the JAs or the Insolvency Court should resolve disputed issues of insolvency law.

150. Moreover, the provisions of [5.3A] of the Licence Amendment, correctly interpreted as we have explained at [131] and [132] above, are in no way inconsistent with the purposes of the sanctions imposed by the Russia Regulations. The wide purposes of SAMLA and the Russia Regulations are quite broad enough to allow OFSI lawfully to amend the General Licence it has granted to amend the blanket freeze in the way it has done, even if the amendments do not force the JAs or the Insolvency Court to implement the solution suggested.

151. It is perhaps unfortunate that this major challenge has been raised to the decision to make the Licence Amendment, when it is inevitable that, if the Bank's rights are to be affected, they will be affected by the orders made by the Insolvency Court, rather than by the Licence Amendment itself. The Insolvency Court will need to decide whether, and if so how, to accede to the suggested approach in [5.3A] of the Licence Amendment. Our judgment will, at least, give it some guidance as to the proper interpretation of the Licence Amendment. The Insolvency Court will know in advance what the Licence Amendment achieves (some limited relaxation of the freeze on

making funds available to the Bank) and what it does not achieve (an absolute prohibition on making provision for the Bank's claims).

152. We are conscious that our decision demonstrates that the Licence Amendment has not exactly achieved what the JAs wanted, namely a "sanctions solution" to the problem they faced (see the correspondence between the JAs and OFSI of November 2024 referred to at [36] above).

Can insolvency law provide a solution?

153. Nothing we have said thus far addresses the question of whether or not insolvency law might be able to provide a solution to the problem faced by the JAs. The challenges before us do not allow us to address that question in any definitive way. We do, however, think that some general remarks may be of assistance.

154. An insolvency procedure in the UK is intended to have global effect, so that the office holder is charged with realising so far as possible all the assets of the company, both here and abroad, and using the proceeds to pay the claims of all creditors, wherever situated. The problem in this case is that substantial assets of the Subsidiary are trapped in Russia or consist of the VTB Group Receivables. The Bank is refusing to cooperate, even though it has the practical capability of enforcing against those trapped assets and of procuring payment of the VTB Group Receivables. On the JAs' analysis, the value of those assets is sufficient to meet the Bank's claim in full.

155. Mr Daniel Bayfield KC, for the JAs, pointed to various arguments they could deploy (whether in the Parallel Distribution Application or by making use of a restructuring plan) to achieve an outcome which in effect earmarks the Russian assets and VTB Group Receivables for the Bank's claim, leaving the proceeds so far realised available to meet the claims of unsanctioned unsecured creditors. The disputed insolvency law propositions (see [92]-[94] above) were not fully argued. We can therefore reach no concluded view on them. We confine ourselves to making the following three further observations.

156. First, the Administration order in this case had only one purpose from the outset, namely to enable, notwithstanding the imposition of sanctions on the Bank, a distribution to creditors sooner than in a winding-up. Moreover, albeit by way of fiction, the process of collective enforcement implemented by an insolvency proceeding such as winding-up or administration generally proceeds on the basis of a notional assessment of claims and distribution of assets as at the date of the commencement of the insolvency proceedings.

157. Secondly, in those circumstances, we can see force, for example, in the proposition that the outcome sought by the JAs might be achieved either through an application of the hotchpot rule or through provision for the Bank's claims being made by way of the Russian assets and the VTB Group Receivables.

158. If provision were, however, to be made for the Bank's claims, we would observe that it might be necessary, to ensure that the current terms of [5.3A] do not cause misunderstanding or uncertainty, to make a further amendment to the General Licence given that, as we noted above, it purports on its face to prohibit making provision in that way (see [131]-[132] above).

159. Thirdly, we would emphasise that whilst sanctions are intended to impose temporary restrictions on action (however long they remain in place), those temporary restrictions may – indeed are intended to – cause serious and possibly permanent damage to the designated person's economic interests. It was the designation of the Bank that put a halt to the orderly wind-down of the Subsidiary. The particular relevance of this in the present case is that if an insolvency solution, reached many years after that process was halted by sanctions, involves, contrary to the Bank's position, the value of the Russian assets used to meet its claim being determined at an earlier date, before the reduction in the value of the Rouble, the Bank cannot be heard to complain that the delay in administering the assets of the Subsidiary has caused it prejudice.

Conclusion

160. For the above reasons, we have concluded that the appeal should be dismissed.