

C L I F F O R D
C H A N C E

RUSSIAN COUNTERSANCTIONS: WHAT'S GOING ON IN LAW AND PRACTICE

LEGAL FRAMEWORK FOR RUSSIAN COUNTERSANCTIONS

- Federal Law on Special Economic Measures dated 30.12.2006:
 - Legal basis for the 2014 “food import” ban
- Article 19.1 of the Law on National Payment System restricts e-money transfers to the Ukraine
- On 4 June 2018 Russia has adopted Law on Countermeasures Against Unfriendly Actions of the U.S. and Other Foreign States
 - The power to take decisions on introduction of the sanctions is delegated to the President of Russia
 - The power to determine the exact scope of sanctions is granted to the Government of the Russian Federation
- On 22 October 2018 Vladimir Putin signed Presidential Decree №592 On Introduction of Special Economic Measures In Connection With Unfriendly Actions of the Ukraine Against introduces first set of sanctions against the Ukraine
- On 1 November 2018 Government issued Order №1300 which sets out the exact scope of sanctions (as amended on 25.12.2018 and 18.04.2019)
- On 29 December 2018 Government issued Order №1716-83 establishing a list of goods, which may not be imported into Russia, if the country of origin, dispatch or transit is Ukraine

SANCTIONS AGAINST UKRAINE: OVERVIEW

➤ WHO ARE THE SANCTIONS TARGETS (SANCTIONED PERSONS)?

- 564 individuals (but no Kolomoyskiy)
- 75 legal entities
- Any organisations controlled by individuals and legal entities referred to above

➤ WHO HAS TO COMPLY WITH THE SANCTIONS?

- Russian governmental authorities (federal, regional) and also municipalities;
- Organisations and individuals who are under the jurisdiction of the Russian Federation

➤ WHAT ARE THE PROHIBITIONS ESTABLISHED BY THE SANCTIONS?

- blocking of funds, securities and other property of Sanctioned Persons in the territory of the Russian Federation;
- prohibition on transfer of funds (moving of capital) belonging to Sanctioned Persons from the territory of the Russian Federation; and
- prohibition on import of goods as per the list established by the Government (includes food items, construction materials, turbines, and other specified goods), and transit is allowed only subject to certain conditions being met

➤ HOW CAN SANCTIONS REGIME BE MODIFIED/EXEMPTIONS GRANTED?

- Any decisions on amendment of the list of Sanctioned Persons, cancellation of the sanctions regime in case of cancellation of the sanctions by the Ukraine, and granting any specific exemptions from the sanctions regime can be taken by the Government of Russia upon proposal of the Ministry of Finance

SANCTIONS AGAINST UKRAINE: OVERVIEW (CONT'D)

➤ WHAT IS THE EXACT SCOPE OF SANCTIONS?

- Do they also capture Russian subsidiaries of the sanctions targets?
- Do they also capture off-shore transactions of Russian entities with the sanctions targets?
- What about transit through Russia of goods that are not on the restricted list, but are transported in the context of transactions involving Russian sanctions targets?

➤ WHO CAN ISSUE CLARIFICATIONS IN RESPECT OF THE SANCTIONS?

- Sanctions are introduced by the Government upon initiative of the President;
- Changes to the sanctions regime made by the Government based on the recommendations of the Ministry of Finance; but ...
- ... who do we go to for guidance and clarifications???

➤ WHAT IS THE LIABILITY FOR THE SANCTIONS BREACH?

➤ FIRST JURISPRUDENCE EMERGES:

- Decision of the Arbitrazh Court of Moscow District № A40-221976/2018 dated 11 February 2019: enforcement of Ukrainian arbitral award rejected on the grounds of public policy, and the court took into consideration that the CEO of the Ukrainian claimant was on the Russian sanctions list;
- Decision of the Supreme Court of the Republic of Crimea №33-9519/2018 dated 13 November 2018: claim of a Ukrainian citizen who is not on the Russian sanctions list may not be declined merely because of his nationality
- 27 September 2019: the Supreme Court of Russia has accepted an appeal as to whether foreign sanctioned products may be transited into Ukraine through Russia

OTHER POSSIBLE SANCTIONS RELATED LAWS AND INITIATIVES

➤ LAW ON NON-DESIRABLE FOREIGN ORGANISATIONS (FEDERAL LAW No. 129-FZ OF 29.05.2015)

- The attorney general in coordination with the Ministry of Foreign Affairs can designate a foreign or international organisation a “non-desirable in Russia”;
- After the date of such decision, all accounts of, and payments to such organisations have to be frozen by Russian banks;
- The conduct of such activity after the designation may, depending on circumstances, constitute administrative or criminal offence

➤ DRAFT LAW ON CRIMINALISING SUPPORT FOR FOREIGN SANCTIONS

- The draft law (Draft law No. 710099-7) seeks to criminalise assistance to implementation of sanctions against Russia;
- The Government has issued official negative feedback on the draft law due to excessively vague and uncertain wording of the draft law.

➤ DRAFT LAW ON CREATING REGISTER OF BAD FAITH SUPPLIERS

- Draft law No. 734964-7 suggests to prohibit provision of financial services in Russia by entities that have ever refused to provide informational and technological (processing) services to Russian banks due to anti-Russian sanctions introduced by foreign states.

➤ DRAFT LAW ON EXCLUSIVE JURISDICTION OF RUSSIAN COURTS IN SANCTIONS RELATED DISPUTES

- Draft law No. 754380-7 suggests to allow Russian entities and individuals targeted by the foreign sanctions to unilaterally modify any dispute resolution provisions in their contracts with foreign entities and to submit the disputes to Russian courts;

CONTACTS

SUBTITLE



Alexander Anichkin
Partner

T +7 495 258 5089

E alexander.anichkin@cliffordchance.com

C L I F F O R D
C H A N C E

Clifford Chance, Ul. Gasheka 6, 125047 Moscow, Russia
© Clifford Chance 2018
Clifford Chance CIS Limited

WWW.CLIFFORDCHANCE.COM