

This client alert gives an overview of some of the new sanctions that have already been implemented in the UK, EU, US and Australia at this time and what clients can do now with regard to their existing and prospective contracts.

EU Sanctions

On 23 February 2022, the EU Council announced actions in response to the declaration of independence of the Donetsk and Luhansk regions and subsequent incursion of Russian troops.

The EU announced restrictive measures on all **351 members of the Russian State Duma**, who unanimously authorized Putin's recognition of the "independent republics." The EU Council announcement references targeted restrictive measures on an additional 22 "high profile individuals and entities" and generally describes certain government officials, oligarchs, senior military officers, and individuals responsible for disinformation. The EU Council also includes **four entities** (Internet Research Agency, Bank Rossiya, Promsvyazbank and Vnesheconombank) to the list of persons, entities and bodies subject to restrictive measures as set out in Annex I to Regulation No 269/2014. The restrictive measures on these individuals and entities include an asset freeze, a prohibition from making funds available, and a travel ban.

The EU also imposed **import bans into the EU** on goods originating from the non-government controlled areas of the Donetsk and Luhansk regions, as well as restrictions on the direct or indirect provision of financing and insurance and reinsurance of the goods. It is also prohibited to acquire new, extend existing participation in ownership of real estate or entities located in the specific territories, or to provide loans or credits, create a joint venture or provide investments services directly to Donetsk and Luhansk regions. Restrictive measures also include the prohibition to sell, supply or transfer or export goods and technology within the key sectors (transport, telecommunications, energy, the prospecting, exploration and production of oil, gas and mineral resources) to the mentioned regions. Providing tourism services directly in the specified regions is also prohibited. Annex II provides a list of the goods and technology subject to restrictive measures.

Lastly, the EU announced the introduction of a sectoral prohibition to restrain "the ability of the Russian state and government to access the EU's capital and financial markets and services."

The EU did not provide the specifics of the prohibition that would attain those goals in its announcement. Prohibitions include the purchase, sale, provision directly or indirectly of investments services for or assistance in the issuance of or deal with transferable securities and money-market instruments issued by Russia and its government, the Central Bank of Russia or a legal person, entity or body acting on behalf of or at the direction of the Central Bank of Russia. The issuance of new loans or credits to entities referred to before is also prohibited.

On 25 February 2022, the European Union published further sanctions, including the [asset freeze of Vladimir Putin and Sergey Lavrov, Minister of Foreign Affairs](#). Further restrictions on exports of dual-use goods/technology and the provision of related services were imposed. The sale, supply, transfer or export to Russia of specific goods/technologies for use in oil refining, together with restrictions on the provision of related services is also prohibited. An export ban was introduced, covering goods and technology suited for use in aviation/space industry and the prohibition on the provision of insurance and reinsurance and maintenance services in relation to those goods and technology.

The existing financial restrictions were expanded, in particular those related to the access by certain Russian entities to the capital markets. It also prohibits the listing and provision of services in relation to shares of Russian state-owned entities on Union trading venues. In addition, new measures were introduced which significantly restrict the financial inflows from Russia to the Union by prohibiting (i) the acceptance of deposits exceeding certain values from Russian nationals or residents, (ii) the holding of accounts of Russian clients by the Union central securities depositories (iii) the selling of euro-denominated securities to Russian clients.

Finally, the EU imposed restrictive measures on the Russian airspace, prohibiting Russian air carriers, any Russian-registered aircraft, and any non-Russian-registered aircraft, which is owned or chartered, or otherwise controlled by any Russian natural or legal person, entity or body from landing in, taking off from, or overflying, the territory of the Union.

UK Legislation

In the UK, on 10 February 2022, the UK Government amended the Russia (Sanctions) (EU Exit) Regulations 2019 (S.I. 2019/855) with the Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (SI 2022/123) (the "Regulations") expanding the definition of "involved persons," with the intention of implementing harsher sanctions against Russia if it continues its activities in Ukraine.

On 22 February 2022, the UK Government sanctioned three individuals (Gennadiy Nikolayevich Timchenko, Boris Romanovich Rotenberg and Igor Arkadyevich Rotenberg) and five banks (Bank Rossiya, Black Sea Bank for Development and Reconstruction, Joint Stock Company Genbank, IS Bank and Public Joint Stock Company Promsvyazbank). The UK Government has said that this is to be a starting point with the UK ready to implement further sanctions against Russia. The [consolidated list of financial sanctions targets in the UK can be found here](#).

In its Financial Sanctions Notice, OFSI instructs UK persons as follows:

1. Check whether they maintain any accounts or hold any funds or economic resources for the persons set out in the Annex to this Notice
2. Freeze such accounts, and other funds or economic resources and any funds which are owned or controlled by persons set out in the Annex to the Notice
3. Refrain from dealing with the funds or assets or making them available (directly or indirectly) to such persons unless licensed by the Office of Financial Sanctions Implementation (OFSI)
4. Report any findings to OFSI, together with any additional information that would facilitate compliance with the Regulations
5. Provide any information concerning the frozen assets of designated persons that OFSI may request. Information reported to OFSI may be passed on to other regulatory authorities or law enforcement.

On 24 February 2022, Prime Minister Johnson announced an upcoming comprehensive set of economic sanctions, export controls, and Russia-related anti-money laundering enhancements following the Russian invasion of Ukraine. Some of the announced measures as described by Prime Minister Johnson will require legislation or multilateral cooperation.

- An immediate freeze against the Russian bank VTB, with upcoming asset freezes against “all major Russian banks”
- Legislation that will as of 1 March 2022 prevent all major Russian companies from raising finance on UK markets, and also prohibiting the Russian state from raising sovereign debt on UK markets
- Sanctions on over 100 individuals, entities and their subsidiaries
- Imminent ban on Aeroflot (the largest Russian airline) planes landing in the UK
- Immediate ban on exports of dual-use goods
- Legislation within days to prohibit a range of “hi-tech exports” (e.g., semiconductors, aircraft parts, goods for the extractive industries)
- Legislation to limit the amount of deposits Russian nationals can hold in UK bank accounts
- Application of all Russia-related sanctions to Belarus
- Accelerate passage of an economic crime bill to target illicit Russian money in the UK

US Sanctions

The US has also implemented new sanctions against Russia. [Please see briefing here](#).

Australian Sanctions

Between 24 and 25 February 2022, Australia amended the Autonomous Sanctions Regulations 2011 to impose sanctions against hundreds of “designated persons and entities” who are responsible for, or are assisting with, the Russian invasion of Ukraine.

In the first tranche of amendments, which commenced on 24 February 2022, the Australian government added eight members of the Security Council of the Russian Federation, four Russian manufacturers/suppliers of military equipment and four Russian banks to the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Ukraine) List 2014 (List). On 25 February 2022, a second tranche of amendments was made expanding the scope of persons and entities that may be sanctioned. This resulted in over 300 persons and entities being added to the List (now renamed the “Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Russia and Ukraine) List 2014”), including key members of the Russian Federation, such as President Putin, the Defence Minister, the Minister of Internal Affairs and members of the Russian Duma, as well as other persons and entities supporting the invasion (e.g. the Belarusian Minister of Defence, the State Secretary of Security Council of Belarus, members of the self-proclaimed “People’s Republic of Luhansk” and members of the self-proclaimed “People’s Republic of Donetsk”). After being declared by the Australian Minister for Foreign Affairs as a designated person or entity, Australian persons or entities are prohibited from dealing with the designated person or entity or with their assets, and a designated person may be prevented from travelling to, entering or remaining in Australia.

The Australian government has indicated that further sanctions measures will commence on 28 March 2022 to extend the existing sanction regime applicable to the Crimea and Sevastopol regions, which targets all commercial activity impacting transport, telecommunications, energy and the exploitation of oil, gas and mineral reserve sectors in those locations, to the Donetsk and Luhansk regions. Commencement of sanctions relating to Donetsk and Luhansk have purposely been delayed to allow Australians/Australian entities with interests in those regions to consider whether their activities are captured by the sanctions measures, and if they are, to cease their activities or apply to the relevant Minister for a sanctions permit to continue their activities.

What steps can be taken now?

1. Contract review

Careful review of existing sanctions and force majeure clauses in contracts will be necessary to consider whether the imposition of sanctions will enable the parties to a transaction to suspend performance without liability and/or terminate the contract.

This may involve not only looking at the scenario where the law directly prohibits performance, but also the scenario where the parties may be faced with the risk of the imposition of sanctions.

In the last fifteen years, the US has adopted legislation authorizing the imposition of secondary sanctions on foreign institutions which are not subject to US law but engage in dealings which are declared “sanctionable” by US law. For example, in September 2019 the US imposed sanctions against the arm of COSCO that owns and operates tankers for transporting Iranian crude oil from Iran to China, despite the fact that none of COSCO, the Iranian seller of the crude nor the transaction itself were subject to US law. Spot rates for tankers spiked in the subsequent days. Would your contract offer protection where there is a risk of secondary sanctions from the US?

Clauses should also be reviewed to make sure appropriate comfort is provided with reference to the range of different sanctions that may be implemented. For example, possible sanctions include restrictions on Russian trade in USD, EURO and GBP as well as Russian financial entities, the public sector and energy companies.

A carefully drafted force majeure clause will be required to provide protection in the event of an imposition of sanctions. Sanctions would not be considered an act of God. Review of a force majeure clause should not only consider whether sanctions prohibit performance of a contract, but also whether continued performance may expose a party to the potential imposition of US secondary sanctions.

More generally, is a force majeure clause really the best way to prospectively address possible sanctions-related risks? Typically, force majeure clauses continue a contract in effect but temporarily relieve the parties of their obligation to perform. Moreover, the non-performing party may be subject to an obligation to take measures to cure the force majeure event. How likely was it that COSCO could have lobbied the US government to lift the sanctions that had been imposed on its tanker-owning subsidiary for transporting Iranian crude.

Rather than addressing sanctions risks in a force majeure clause, we recommend that contracts going forward instead structure contracts to address such risks in carefully drafted contract termination provisions as well as a clear arbitration clause defining a convenient arbitration seat and choice of law. Such decisions can be decisive to avoid sanction countermeasures or the rerouting of the dispute – under certain circumstances- to the local courts of one of the parties.

Sanctions cases turn on their facts. Under English law the doctrines of illegality and frustration may only offer limited assistance. As a general principle, where the parties to an English law agreement, intend to rely on foreign law illegality (e.g. US sanctions), illegality under foreign law does not frustrate or otherwise relieve a party from performance. There are limited exceptions to this general rule, and that is where there is illegality in the place of performance (i.e. *Ralli Brothers doctrine*). To rely on this doctrine, the party must show that there was nothing he could have done to bring about valid performance and failed to do so.

By way of illustration, in the case of *Banco San Juan Internacional Inc v Petroleos de Venezuela SA* [2020] EWHC 2937 (Comm) the Court had to determine whether repayment under a loan contract was rendered illegal by US Sanctions. The contract clause stated that the terms of the relevant loan agreements, properly construed,

suspended payment obligations on the imposition of relevant US sanctions. The contracts were governed by English law. The Court found that **“It follows that even if it were the case that the sanctions prima facie rendered the performance of PDVSA’s payment obligations necessarily illegal at the place of performance, PDVSA cannot avail itself of the defence because it has failed to show that had it discharged its obligation to apply for a licence, that application would have failed.”**

In a rapidly changing sanctions landscape, careful review of existing contracts and consideration of future contractual clauses, could be a useful risk mitigation tool in the coming months.

2. Review of Insurance Policies

A number of our clients in the commodity trading, shipping, or storage and processing industries started several weeks ago reviewing all of their insurance policies and made determinations as to which locations, assets or inventories were covered by wartime insurance clauses, which were not, and what actions might be necessary. Other clients have been reviewing potential coverage under business interruption, political risk and cyber insurance policies.

3. Review of other impacts and contingencies:

We have been talking to clients that are attempting to stay ahead of rapidly moving developments, and these clients are trying to proactively anticipate other legal and operational issues that will or may come up, for example:

- Contingency plans for movement of employees and management staff out of facilities that may be in war-affected areas
- Design and implement ring fence mechanisms and standard operating procedures in multinational companies, to continue working – when legally possible- with sanctioned countries / entities
- Implement effective screening mechanisms and KYC protocols to detect, prevent and mitigate potential sanctions exposure
- Plans for ongoing protection or security to safeguard facilities that may lie in affected territories, or in the event that certain regions are sanctioned (similar to situation several years ago in Crimea)
- Evaluation of the potential impact of sanctions on other countries in the region (notably, operations in the Black Sea – especially Romania, Bulgaria and Turkey).

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How We Can Help

We have a dedicated team of commodities, shipping and sanctions experts with a track record of successfully advising clients of the legal and commercial issues arising out of such events. For further queries, please get in touch with your SPB contact or any other persons listed.

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