

Morgan Lewis

informed



New EU sanctions

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EU Regulations 825/2014 and 826/2014 – 30 July 2014

- Additional 11 persons and companies – total freeze of assets.
- Prohibition on debt or equity financing, or JVs, for (1) transport, telecoms or energy infrastructure in Crimea or (2) exploitation of oil, gas or minerals in Crimea.
- Prohibition of supply of listed technology to Crimea (and technical assistance and financing).

EU Regulation 833/2014 – 31 July 2014

- Prohibition on shares and bonds (maturity exceeding 90 days) for:
 - Sberbank
 - VTB Bank
 - Gazprombank
 - VEB
 - Russian Agricultural Bank
 - Non-EU subsidiaries (direct or indirect?).
- Guarantees/on-loans/LPNs prohibited.
- Deposits/payment services/loans permitted.
- Derivatives?
- Anti-avoidance language.
- Contrast with US financial sanctions.

Export Bans

- Dual-use goods and technology for military use.
- Listed technologies to use in deep water oil E&P, Arctic oil E&P or shale oil.
- Military equipment.
- Approval needed from exporting government - may only be given if export is under existing contract.
- No financing or technical assistance.

Contracts

- No claim for breach of contract, because of compliance with EU sanctions by:
 - Five Russian banks
 - Non-EU subsidiaries of banks
 - Any Russian person
- Need to rely on contract law for other breaches of contracts (e.g. supply of technology to EU company in Russia).
- Events of defaults and prepayment clauses in existing loans and bonds – often not designed for sectoral sanctions.
- Anti-avoidance.

Effect of Sanctions on Loan Documentation (1/3)

- The Loan Market Association (LMA) has published the following documents:
 - Guidance Note (15 July 2014) addressing some issues arising from sanctions for loan transactions
 - Memorandum (30 June 2014) analysing implications of sanctions under facility documentation
 - African document templates containing some recommended sanctions language (limited to the use of loan proceeds)
- No standard recommended wording on sanctions yet exists. Sanctions provisions are being negotiated on a case-by-case basis.

Effect of Sanctions on Loan Documentation (2/3)

- The following provisions are usually being added to facility documentation on ongoing deals:
 - Concepts of “Sanctions Authority”, “Sanctions Regulations”, “Sanctioned Person”, “Sanctions Restricted Country”
 - Borrower’s representations and covenants:
 - use of proceeds (not to finance Sanctioned Persons, etc.);
 - not to use proceeds received from a Sanctioned Person to repay the loan;
 - to comply with Sanctions Regulations;
 - doing “ordinary” business with Sanctioned Persons (if sanctions regulations are not mandatory for the borrower)?

Effect of Sanctions on Loan Documentation (3/3)

- mandatory prepayment event or event of default if the borrower becomes a Sanctions Restricted Person or breaches Sanctions Regulations
- These provisions are unlikely to capture an event when the borrower becomes subject to sectoral sanctions.
- In existing deals (executed before the Ukrainian crisis), lenders may try to seek protection under illegality and material adverse effect clauses.
- The loan documentation is unlikely to help in the event that the borrower becomes subject to sanctions, as the lenders may not accept funds for repayment of the loan from a sanctioned person.

Questions?



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