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Briefing note March 2014

Update on the situation in Ukraine

Over the last few months, events in Ukraine have been changing rapidly. In recent days we have seen the people of the Autonomous Republic of Crimea voting in a referendum in favour of seceding from Ukraine and becoming a part of the Russian Federation and a declaration of independence by the Crimean Parliament (whose authority is not recognised by Ukraine). The referendum and declaration of independence have been categorised as illegal under Ukrainian law, as the Ukrainian Constitution does not allow Crimea to organise a referendum on the modification of the territorial configuration of Ukraine. Today, following an accession request by the Parliament in Crimea, we have seen the Russian President and the representatives of Crimea signing an agreement on the accession of Crimea to the Russian Federation, which is stated to take immediate effect and is due to be ratified by the Constitutional Court and the Parliament of the Russian Federation.

In response, we have so far seen the imposition of EU and US sanctions against certain Ukrainian and Russian individuals and the very real possibility that additional sanctions will be coming soon, including from Ukraine itself. In addition, there is a possibility that Russia may respond with its own sanctions as well, especially if the EU and the US proceed with imposing further sanctions.

While the political, diplomatic and security responses to these events will continue to play out, the legal implications need to be considered as well. In this briefing we summarise the current status of the EU and US sanctions and also set out some of the complex legal issues which have arisen, or may arise in the near future, as a result of these recent events. We also use this opportunity to provide an update on some of the other legal developments which have occurred in Ukraine, including the imposition of stricter currency controls. We also raise for thought some of the issues which Ukraine may face in the weeks to come, including issues with dealing with the country's current debt burden.

Sanctions

The EU imposed sanctions against Ukrainian officials associated with the former regime on 6 March 2014. On 17 March 2014, both the EU and the US announced the imposition of sanctions against certain Russian officials. Further, on 17 March 2014, the US imposed sanctions against certain Ukrainian persons associated with the situation in Crimea and the former President of Ukraine. We set out below some of the key issues that arise in the context of these sanctions.

In light of the sanctions that have already been announced (and any further sanctions that may be imposed as the situation develops), the priority will be for financial institutions and other corporations with exposure to Russia and Ukraine to identify whether they have dealings with designated targets, or with entities owned or controlled by them. Institutions should examine existing and imminent business to understand the nature of dealings with Ukrainian and Russian counterparties and to anticipate contractual issues that are or may be triggered by these sanctions, and others that may be imposed. There may also be an impact on existing investments and operations in Russia, if Russia decides to implement retaliatory sanctions in response.

EU Sanctions

EU Sanctions against certain Ukrainian officials

On 6 March 2014, the EU Council adopted a regulation (*Council Regulation (EU) No. 208/2014*) which imposed an asset freeze on former President Yanukovych and 17 other former Ministers and senior officials identified as being "*responsible for the misappropriation of Ukrainian state funds*".

The impact of these sanctions is likely to be limited, most directly affecting EU parties who have business or other dealings either with the designated targets themselves, or entities owned or controlled by those targets.

While the EU sanctions apply directly in all Member States, such Member States may implement measures at a national level, particularly to provide for the creation of offences and penalties for breach of EU sanctions, and setting out relevant reporting obligations of financial institutions, and licensing requirements. Accordingly, in the UK (also on 6 March 2014), *The Ukraine (European Union Financial Sanctions) Regulations (SI 2014/507)*) were enacted to make provision for the enforcement of the EU sanctions.

EU sanctions against certain Russian and other officials

On 17 March 2014 the EU's Foreign Affairs Council meeting announced the imposition of measures, including travel restrictions and an asset freeze, against "*persons responsible for actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine*" and persons and entities associated with them. These sanctions are set out in *Council Regulation (EU) No. 269/2014*, which includes an asset freeze against 21 Russian and other officials and military personnel who are deemed to be directly associated with the recent events in Ukraine. The EU Regulation does not, for now, target senior members of the Russian government. It is possible that the list will be expanded in the days and weeks ahead, as a result of any further developments in Crimea or the rest of Ukraine. *Council Decision 2014/145/CFSP* provided that, in order to maximise the impact of these sanctions, the EU will encourage third States to adopt similar measures.

As with the sanctions against Ukrainian officials, these new measures are immediately applicable across all EU Member States. Each Member State may however enact specific domestic measures in relation to matters such as offences and penalties for breach. Member States may also issue their own guidance on the interpretation of these sanctions and the measures that financial institutions and others in their territories are expected to take in order to comply with them.

In accordance with the usual formula used in EU Regulations to impose sanctions, the asset freeze has two components:-

1. a requirement to freeze all funds and economic resources belonging to or owned, held or controlled by a designated person; and
2. a prohibition on making funds or economic resources available, directly or indirectly, to or for the benefit of a designated person.

For these purposes, the terms "funds" and "economic resources" are both defined broadly. The term "funds" includes the full range of financial assets (such as balances in bank accounts, investments and securities) and financial instruments such as letters of credit. Economic resources are defined to include assets of every kind which are not funds, but which may be used to obtain funds, goods or services.

Although the sanctions are targeted against named individuals, financial institutions and other businesses can still face practical difficulties when deciding whether to freeze particular assets and deal with entities that may be related to the designated targets. One of the most common difficulties is deciding whether or not particular assets are owned or controlled by a designated person. Particular difficulties may arise if there is limited or contradictory intelligence as to the assets, if any, that such persons own. The EU Regulation states that institutions that freeze assets in good faith will not face civil claims from the parties affected (even if they are not linked to designated persons) so long as they have acted in good faith and have not been negligent. This may provide protection under the laws of EU Member States, but it will not necessarily offer protection to liabilities that may arise under the laws and jurisdictions of other countries.

Another common difficulty arises when deciding whether or not particular assets are being made available "for the benefit of" designated persons (rather than provided directly to them). One such scenario is where a designated person is believed to own part, but not all, of a particular business. Guidance issued by the EU indicates that a designated person will be presumed to own a business if he has a 50% or more interest in it. There is also a separate test of whether or not a designated person controls a

business, which has to be analysed on a case by case basis (by reference to factors such as the management structure). The equivalent guidance issued by HM Treasury in the UK also indicates that the question of ownership and control is something that must be assessed on a case by case basis. Similarly, the prohibition on making economic resources available "for the benefit" of a designated person can have an uncertain scope, but is likely to cover, for example, any steps to repay a loan or discharge any other financial obligation on behalf of a designated person.

The EU Regulation applies not only to steps taken within the EU, but to actions taken by EU persons anywhere in the world (this term includes not only individuals who are EU citizens, but also companies incorporated in the EU). In practice, this could create conflicts between the laws of different states, because EU persons who seek to freeze assets located outside the EU will not necessarily be entitled to do so under the applicable local laws. Similarly, parties should be cautious about relying on contractual provisions such as illegality and force majeure clauses, since their applicability may depend on whether the parties are required to comply with EU sanctions, the relevant place of performance of particular obligations, and the particular wording of specific contractual clauses.

In accordance with the usual template for EU sanctions, the Regulation includes various exemptions, including provisions that, in certain circumstances and under the terms of applicable licences, allow EU businesses to make payments for contractual obligations that they entered into before the sanctions came into force. The availability of a licence could also be relevant to an illegality analysis.

Under the laws of most EU Member States, it will be a criminal offence for any person to breach the sanctions not only knowingly, but also if they had reasonable cause to suspect that they are doing so. There is also a broadly worded circumvention offence. It would therefore be prudent for businesses within the EU to conduct due diligence before proceeding with transactions that might involve designated persons and to record such diligence. The imposition of financial sanctions can also sometimes overlap with the scope of anti-money laundering offences (for example in the UK, under the Proceeds of Crime Act 2002). In this case this could arise in relation to any Russian or Ukrainian officials who are alleged to have misappropriated public assets, but not to those who are accused only of human rights violations (which would not necessarily have led them to acquire any criminal property). In the former case, institutions should be mindful of their anti-money laundering reporting obligations, even in relation to persons who have not to date been named as sanctions targets.

In its statement of 17 March 2014, the EU Council has indicated that further restrictive measures could follow. The EU has a wide range of restrictive measures at its disposal. This means that it could, as a next step, consider asset freezes not only against individuals, but also against entities, and measures prohibiting certain types of transactions with Russia. The EU does not however tend to impose comprehensive trade embargoes against countries, of the type that the US has previously imposed against Cuba and Iran.

US Sanctions

Executive Order 13660

On 6 March 2014, the United States issued Executive Order 13660 ("**EO 13660**") authorizing an asset freeze and visa ban on individuals or entities determined to be responsible for, or complicit in, actions or policies that undermine democratic processes or institutions in Ukraine or that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine. EO 13660 also authorizes sanctions on individuals or entities determined to be involved in the misappropriation of Ukrainian state assets or that have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine.

The US Treasury Department's Office of Foreign Assets Control ("**OFAC**"), on 17 March 2014, designated four individuals as sanctions targets (Specially Designated Nationals or "**SDNs**") under EO 13660.[i] While the persons designated under EO 13660 thus far are individuals, future SDNs could include entities or organizations.

Separately, the US State Department has begun to impose US visa restrictions on certain individuals associated with the situation in Ukraine, who it has not publicly named.

17 March 2014 Executive Order

Following the referendum in Crimea, the United States issued a further Executive Order "*Blocking Property of Additional Persons Contributing to the Situation In Ukraine*" (the "**17 March EO**"). The 17 March EO authorizes an asset freeze and visa ban on named officials of the Russian government, any designated individual or entity that operates in the

Russian arms industry, and any designated individual or entity that acts on behalf of, or provides material or other support to, any senior Russian government official. The 17 March EO enables the Obama Administration to reach virtually anyone connected with the Russian Government in the event the United States decides to escalate pressure on President Putin in response to developments in Ukraine. Initially, as of 17 March 2014, OFAC has designated seven individual Russian officials under the 17 March EO to provide the Russian Government with an incentive to support a diplomatic resolution or face the prospect of additional designations. [ii]

Implications of US Sanctions

The OFAC sanctions impose compliance obligations on US persons and transactions occurring through the US financial system or that involve US persons. Once OFAC lists specific individuals or entities as SDNs, US persons cannot invest in or do any business with those SDNs and US banks cannot process payments to or from them and must block and sequester any of their funds in the bank's possession or control. In addition, under OFAC policies the same asset freeze and business prohibition would apply to all entities that are 50% or more owned by an SDN, directly or indirectly, including any such entities or their operations located in the United States or third countries. In order to complete transactions with or transfer property to/from such SDNs or entities owned 50% or more by them, US persons would first have to obtain a license or authorization from OFAC.

The OFAC sanctions do not prevent US persons from working on Russia-related deals or investing in Russia-related deals that do not involve any SDNs or entities owned 50% or more by an SDN, as long as the Russian participants in the deal are not acting as a front or intermediary for an SDN. US financial institutions and other risk averse investors and service providers are therefore likely to conduct additional due diligence of Russian/Ukrainian related transactions to confirm that no SDNs have indirect or concealed beneficial interests in the transaction.

In regard to future designations under the 17 March EO, the White House has issued a statement that: "*We recognize that the Russian leadership derives significant support from, and takes action through, individuals who do not themselves serve in any official capacity. Our current focus is to identify these individuals and target their personal assets, but not companies that they may manage on behalf of the Russian state.*" This statement seems to indicate that, at least in the immediate future, the US will not focus on designating large Russian conglomerates even if individuals who may become SDNs hold executive or senior management positions in those entities. We caution however that if an individual SDN uses a company that it does not 50% or more own as a front to engage in transactions on its behalf, then the sanctions would apply to such transactions due to the indirect role of the SDN. In contrast, the sanctions would not apply to a transaction with an entity that reportedly has links to an SDN where the transaction does not itself involve the SDN as a direct or indirect party and the entity is acting on its own behalf rather than as a front for the SDN. The Obama Administration has clearly indicated that they do not intend the current designations to preclude US persons from engaging in Russian-related transactions generally.

Potential Ukrainian Measures

Following the decision by the members of the Parliament in Crimea to seize all Ukrainian state properties located in Crimea, the Ministry of Justice of Ukraine has announced that Ukraine would use all available legal means to recover damages caused by this seizure, including by seizing Russian state properties located in the territory of Ukraine.

Legal issues in respect of Crimea

As the referendum in Crimea is categorised as illegal under Ukrainian law, Ukraine treats the events in Crimea as an unconstitutional attempt at secession by Crimea from Ukraine, and has taken a decision to dissolve the Crimean Parliament. Putting aside the legality of the event itself, the practical effect for those with businesses or assets located in Crimea, or for those who have granted loans to businesses or people, or who have security over assets there, is that there is now the very unusual situation whereby under Ukrainian law the territory is Ukraine while under Russian law the territory is Russia. Therefore, which law applies?

Unless a political compromise is reached, no international treaty is likely to be executed between Ukraine and the Russian Federation to settle the legal status of Crimea or to provide for a smooth transitional regime. At the same time, the agreement on accession of Crimea to the Russian Federation signed by the

Russian President and the representatives of Crimea today (the "**Accession Agreement**") provides for a transitional period until 1 January 2015 to regulate all the transitional issues of integrating Crimea and the City of Sevastopol into the Russian legal, political, economic and financial system. According to the Accession Agreement, the laws of the Russian Federation have immediate effect in the territory of Crimea and Sevastopol.

Given this background, we outline below some of the practical legal issues which now exist or may arise.

General Issues

One central issue is the question of what happens to contracts that relate to Crimea which are already signed and governed by Ukrainian law.

The Parliament in Crimea has resolved that all Ukrainian legislation adopted after 21 February 2014 does not apply in Crimea. The most logical interpretation of such a resolution seems to be that any Ukrainian law adopted before that date will continue to apply for the time being and that Ukrainian law will continue to govern contracts in Crimea. The Accession Agreement sets out that the laws and regulations of Crimea and Sevastopol shall apply to the extent they are not contrary to the laws of the Russian Federation and shall remain in effect until they are superseded by the relevant legislation of the Russian Federation.

Title to Real Estate

One of the most critical issues which will arise is the legal status of real estate located on the peninsula. Titles to real estate located in the territory of Ukraine, including Crimea, are registered with the State Registry of Property Rights to Real Estate (the "**Property Rights Registry**"). The Property Rights Registry is administered by the State Registration Service of Ukraine.

As of last week, local departments of the State Registration Service and Crimean notaries are no longer able to access or make any entries in the Property Rights Registry or produce extracts from the registry. In practical terms, this means that it is currently impossible to enter into a transaction (e.g. a sale or a mortgage) in respect of real estate located in Crimea, unless a new registration system is set up or the titles are re-registered in a Russian registry.

Security Interests

Another important issue will be the continuing validity and enforceability of security over assets located in Crimea. Under Ukrainian law, security interests in property located in Ukraine are registered with the Property Rights Registry (in the case of real estate) or the Movable Property Encumbrances Registry (in the case of movable property).

As with the Property Rights Registry, Crimea has been cut off from the Movable Property Encumbrances Registry. As opposed to a security interest in real estate, a security interest in movable property can be registered anywhere in Ukraine and not only at the location of the relevant movable property.

It is unclear whether Russian courts would recognise security interests which are registered in the Ukrainian registries and governed by Ukrainian law as, arguably, Ukrainian law on security interests may contradict certain mandatory provisions of Russian law. This is because under the Accession Agreement local Crimean legislation, including the resolution which provides for the recognition of the Ukrainian legislation adopted before 21 February 2014, applies only to the extent that such local legislation does not contradict the laws of the Russian Federation.

Tax

The applicable tax regime is also unclear, including the status of VAT refunds, liability for failure to continue to make payment of taxes under Ukrainian law and the application of any payments of advance corporate profit tax.

Green Tariffs

The future of various Ukrainian state initiatives, such as the renewable energy incentive, which includes, among other things, the purchasing by the state of electricity produced from renewable sources at a green tariff, will be very uncertain.

We would expect that the Government of Ukraine would refuse to purchase electricity from Crimean businesses at the green tariff rate following the annexation. If that were to occur, it would have a detrimental effect for both companies involved in the renewable energy business and their relevant creditors. It is unpredictable whether such companies (which often have foreign parents) would be able to receive any compensation from Ukraine (or Russia) if Ukraine refuses to purchase electricity at the green tariff as it is technically required to do so until 2030.

Regulated Entities

A significant number of issues will arise in relation to Ukrainian regulated entities, such as banks, insurance companies and financial institutions, which are currently regulated under

Ukrainian law and report to the relevant Ukrainian authorities. Each such regulated entity will need to discuss with the appropriate Ukrainian authority how to deal with the regulation of their branches or operations in Crimea

Currency Controls

The financial situation of Ukraine and its banking sector is fragile. In the last two weeks, five banks (namely, Brokbusinessbank (Ukraine's 18th largest bank), Real Bank, Daniel Bank, Forum Bank and Mercury Bank) have been placed into temporary administration by the National Bank of Ukraine ("**NBU**") due to concerns about their solvency.

In response to the current financial situation, to protect the banking system and to forestall capital flight, the NBU has imposed additional or extended existing currency control restrictions. These measures include the following:

1. 50% of all foreign currency proceeds (including the proceeds of loans) must be converted into local currency when received in Ukraine;
2. 100% of any foreign currency proceeds transferred to an individual from one bank account to another bank account within Ukraine must be converted into local currency;
3. no cash withdrawals greater than USD1,500 per day can be made from bank accounts in foreign currency and restrictions have been imposed on daily cash withdrawals from bank machines;
4. where money is to be paid from off-shore into Ukraine for services or goods, the money must be received in full within 90 days of the delivery of the services or the goods (otherwise significant penalties are imposed);
5. residents cannot purchase foreign currency for the purposes of:
   (a) prepaying (whether voluntarily or mandatorily) loans from non-resident lenders (they can use their own funds in foreign currency proceeds (if not borrowed funds)); and
   (b) making investments abroad; and
6. before being able to buy foreign currency to make a payment off-shore, Ukrainian entities must set aside with their bank the hryvnia equivalent for at least six business days and can only then make the purchase.

MAE Clauses in Loan Agreements

Lenders and borrowers will currently be considering whether the events in Ukraine would trigger an event of default under the Material Adverse Effect clauses in their facilities.

The position will depend on the specifics of the wording in the relevant documentation (and the business of the relevant company) and it should be noted that the exact terms of any MAE event of default (and indeed, whether one is included at all) is often hotly negotiated at the time of a deal's inception. In very general terms, we expect it would be difficult definitively to conclude that the current events in Ukraine (in and of themselves) would constitute an MAE under typical formulations customarily used in the loan market. This is because these clauses most often require a material adverse effect on the obligor itself. For example, under the definition of an MAE used in the LMA's recommended form of facility for use in developing markets jurisdictions lenders would need to show a likely material adverse effect on either:

1. the company or its business, operations, property, condition or prospects (i.e. some specific impact on the company itself rather than on the market/country in which the company operates).

   Given the current uncertainty regarding the outlook, we suspect that in many cases it might be difficult to be able to do this at this stage; or
2. depending on the options chosen at drafting stage, the company's ability to comply with its payment (or potentially other) obligations under the facility (e.g. due to exchange control restrictions).

   There have been some changes in the scope of currency controls in recent weeks but the magnitude of their impact will depend on the nature of the company's business.

If the company's business is located in Crimea, or assets used to secure the facility are located there, then the analysis could be quite different given the legal uncertainties raised in other parts of this client briefing and in these cases there might be a stronger case for an MAE having occurred (or, more likely, that other events of default have been triggered).

The above relates to the typical MAE event of default that is often seen in various guises across a broad range of documentation in the loan market. In Ukrainian deals (and other transactions in emerging markets generally), it is not uncommon to see events of default (like the one below)

which are triggered by adverse economic/political events in a specified jurisdiction generally (rather than company specific events).

"Political and economic risk

A deterioration occurs in the political or economic situation generally in [insert relevant jurisdiction(s)], or an act of war or hostilities, invasion, armed conflict or act of foreign enemy, revolution, insurrection, insurgency or threat thereof occurs in or involving [insert relevant jurisdiction(s)], ..."

Depending on the specifics of the relevant transaction, lenders and borrowers will need to consider whether clauses such as these have been triggered both in respect of Ukrainian and Russian borrowers.

In relation to facility commitment / mandate letters which have not yet made it to the stage of final documentation, then these types of transaction normally contain very broad market MACs, which are easier to trigger than the MAE discussed above.

At this time, market participants may also need to consider analysing more carefully any sanctions related language which may be included in loan or other financing documentation (e.g. representations and covenants as to sanctions and any related events of default and/or illegality provisions).

Derivatives arrangements

As a result of the various measures taken by the EU, the US and Russia, companies, investment firms and financial institutions may need to consider the impact of these on their obligations and their counterparties' obligations under ISDA and other derivatives documentation.

To the extent the measures result in parties being unable to perform obligations under derivatives arrangements, in particular preventing performance of payment obligations or collateral delivery obligations, the details of the measures will need to be considered alongside the terms of the derivative arrangements to establish the rights and obligations of the parties in such circumstances. While it is unlikely that the parties will have specifically contemplated the effect of such measures at the outset of their contractual arrangements, some industry documentation, including the ISDA Master Agreements does recognise that the obligations of the parties may become illegal or subject to a force majeure, or may need to be satisfied through other offices. Whether parties are caught by or can rely on such provisions (rather than being caught more generally by a failure to comply with their obligations under the agreement) will depend on exact terms of the sanctions and the agreements between the parties.

If any termination rights arise, parties will need to be prepared for the consequences: Are the obligations under the arrangements suspended, who will have the right to terminate, how in practice will a party terminate the arrangements (which may require local notices to be delivered), will the assistance of local courts be needed (for the pursuit of payment of termination amounts, or for the enforcement of security as discussed above)?

Sovereign Debt

It is currently too early to gauge how any sovereign debt restructuring exercise may develop in Ukraine and it seems reasonable to assume that the approach taken will be influenced by political considerations.

The Managing Director of the International Monetary Fund ("**IMF**"), indicated in a statement on 13 March 2014 that the IMF team currently in Kyiv will work with the Ukrainian authorities to develop an economic reform program that will result in sound economic governance and sustainable growth, while protecting the vulnerable in society, that can be supported by the IMF in accordance with its policies. The current expectation is that the mission will conclude its work by 21 March 2014. It therefore also seems likely that the way forward will include an agreed Programme with the IMF. There will inevitably be sensitive elements in such a Programme around required reforms and fiscal adjustment measures generally (and energy subsidies in particular) and the approach to be taken in relation to any currency, capital and exchange controls. At present the most likely approach would seem to be a package of measures provided by a number of interested parties under the umbrella of an IMF Programme. The European Commission has already decided on a short and medium term financial support and aid package in the region of EUR 15 billion, while the US is preparing a USD 1 billion loan guarantee programme. There may be direct participation by other countries as well as the World Bank, the European Bank for Reconstruction and Development and the European Investment Bank.

The agreed IMF Programme will include an assessment of the financing gap facing Ukraine during the years of the Programme. If this results in the decision to pursue a sovereign debt restructuring, which

could take the form of a re-profiling of claims, then a number of threshold issues will need to be considered at an early stage including:

1. the process employed, with or without a committee of creditors;
2. the stock of debt;
3. the approach in relation to the domestic banking sector; and
4. inter linkages with other creditors.

This approach of providing co-ordinated financial support through an IMF Programme has been used many times in the past. In some cases it has been used in conjunction with sovereign debt restructurings and in others it has not. Based on our experience advising on sovereign debt restructurings in more than 30 countries, we can say that while there are often common themes, all sovereign debt restructurings are different.

Going forward, state secession issues will need to be considered. Much of the analysis will be based on the legal form of measures implemented in Crimea and Russia, and such analysis will also need to take into account the Ukrainian Constitution as well as public international law. It is too early to comment on how they might evolve. We participated in a similar set of evaluations following the dissolution of the Former Soviet Union in late 1991 and in the breakup of the former Socialist Federal Republic of Yugoslavia. It is generally more difficult to regulate issues connected with secession where there is disagreement as to the international legal status of any of the "states" concerned.

Typically, agreements would be concluded to regulate, among other things, the division of ownership of assets and natural resources, and the apportionment of public debt and known liabilities. This is likely to be made more difficult by the fact that the independence of Crimea leading to the accession to Russia is unlikely to be widely recognised at an international level. In any event there is no universally accepted definition of state property in international law nor any set of universally accepted rules for the allocation or transfer of debt or assets, these have been negotiated as between the relevant parties in recent country cases (including as part of the dissolution of Czechoslovakia and the former GDR). The Vienna Convention on the Succession of States in Respect of State Property, Archives and State Debts of 1983 and its underlying principles of equity is seen by some as a helpful tool but is not yet in force and has been criticised for not providing clear or precise guidance on a number of key areas including on the distribution of assets.

Any transfer of liabilities would also be made more difficult by creditors not agreeing to a direct transfer of public debt from Ukraine to a Crimea that is part of the Russian Federation. Secession raises complex problems for corporate and sovereign entities with exposure to Ukraine and Crimea in light of the uncertainties and instability surrounding any prospective change to currency and monetary policy, differing tax positions and the potential implications for credit ratings.

If there is a need for a sovereign debt restructuring in Ukraine additionally the following areas will also need to be considered:

- *Credit derivatives*: These are likely to be a significant factor in relation to Ukraine, with Ukrainian legal and regulatory considerations important for any analysis.
- *Regulatory Matters*: The implications of any proposed restructuring for financial institutions (by way of parallel, the regulatory capital implications have been a key determining factor in the Eurozone sovereign debt crisis). There may be the need to advise on the implications of the interconnectedness between a sovereign debt restructuring and the banking sector. In Ukraine there are public listed instruments and so there is a need to cover market abuse and related considerations.
- *Litigation risk*: This is a reality of the current environment and the risk will need to be considered on a cross border basis.

[i] The names of the SDNs designated under EO 13660 are: Sergey Aksyonov and Vladimir Konstantinov (Crimea-based separatist leaders), Viktor Medvedchuk (former presidential chief of staff), and former President Viktor Yanukovych.

[ii] The names of the SDNs designated under the 17 March EO are: Vladislav Surkov (Presidential Aide), Sergey Glazyev (Presidential Adviser), Leonid Slutsky (State Duma deputy, including Chairman of the Duma Committee on CIS Affairs, Eurasian Integration, and Relations with Compatriots), Andrei Klishas (Member of the Council of Federation of the Federal Assembly of the Russian Federation and Chairman of the Russian Federation Council Committee on Constitutional Law, Judicial and Legal Affairs and the Development of Civil Society), Valentina Matviyenko (Head of the Russian Federation Council), Yelena Mizulina (State Duma Deputy), and Dmitry Rogozin (Deputy Prime Minister).

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