

UKRAINIAN STATUTORY FRAMEWORK FOR IMPOSING SANCTIONS ON COMPANIES, INDIVIDUALS AND FOREIGN STATES

On 14 August 2014, the Verkhovna Rada of Ukraine (the "**Parliament**") passed the new Law of Ukraine "On Sanctions" (the "**Law**"). It establishes a statutory framework for imposing specific economic and other restrictive measures in Ukraine (the "**Sanctions**"). The Law will become effective after it is signed by the President of Ukraine and following official publication. The Law will prevail in the case of discrepancies between the Law and any other Ukrainian legislation already adopted. In this briefing, we set out a summary of the Law.

Targets of the sanctions

Ukraine will be able to apply the Sanctions against:

- particular foreign states (the "**State-Directed Sanctions**");
- individually designated foreign or Ukrainian companies or individuals or other entities (the "**Individual Sanctions**"); or
- certain sectors of business without specifying particular persons being sanctioned (the "**Sectoral Sanctions**").

Grounds for imposing the sanctions

The state of Ukraine may impose the Sanctions in the following cases:

1. If a foreign state, a company or an individual (each such state or person being referred to here as an "**Entity**") takes action against Ukraine or any foreign state which:
 - (a) threatens its national interests, national security, sovereignty, territorial integrity or aids terrorist activity;

Key issues

- A framework statutory mechanism imposing sanctions for hostile actions against Ukraine
- The sanctions are wide-ranging and may apply to foreign states, entities, individuals or sectors of the economy
- The National Security Council decides to impose sanctions to be enacted by a presidential decree
- The Parliament must ultimately approve sanctions against foreign states and sectors of the economy

- (b) breaches the rights and freedoms of its citizens and the interests of society and the state;
- (c) results in occupation of its territory, expropriation of, or imposition of restrictions on, property, creates property losses or creates barriers to its stable economic growth; or
- (d) breaches the Universal Declaration of Human Rights or the United Nations Charter.

2. If any of the United Nations General Assembly, the United Nations Security Council, or the Council of the European Union imposes international sanctions against an Entity.

Types of the sanctions

The Law contemplates a non-exhaustive list of the Sanctions. The final list of the Sanctions will become available to public upon promulgation of the Law and contains possible measures, restrictions and sanctions which, in order to become effective, must be imposed according to a separate procedure as described below. The list of the Sanctions is wide-ranging and it includes the following limitations and restrictions:

1. Temporary limitation of the ability to use, or dispose of, assets.
2. Limitation of trade operations.
3. Limitation of, or ban on, transportation, including transit of natural resources, flights, etc.
4. Ban on repatriation of capital.
5. Suspension of performance of economic and financial obligations.
6. Ban on transactions with securities issued by an Entity.
7. Suspension or cancellation of licenses and permits including special permits for use of natural resources; ban on issuance of new licenses and permits.
8. Ban for foreign Entities or other Entities acting in the interests of a foreign state on participating in the privatisation or lease of public assets.
9. Limitation or termination of providing postal and telecommunication services.
10. Ban on using any Ukrainian radio-frequency.
11. Limitation of, or ban on, access to Ukrainian airspace and territorial waters, ports and airfields.
12. Limitation of amounts of cash that may be obtained by foreign individuals using bank cards.
13. Ban on the National Bank of Ukraine registering an Entity as a participant in the international payment system.
14. Ban on increasing the share capital of a Ukrainian company in which an Entity owns or controls ten per cent or more of the share capital.
15. Termination of trade and cooperation agreements, industrial programmes in certain areas.
16. Ban on activity of political parties and civil movements.
17. Denial in issuance or cancellation of Ukrainian visas; ban on travels to Ukraine.

18. Termination of international treaties to be approved by the Parliament.

Who imposes the sanctions

Under the Law, the National Security and Defence Council of Ukraine (the "**National Security Council**")¹ will have the power to impose the Sanctions. The President of Ukraine must enact by a decree the decisions of the National Security Council. The State-Directed Sanctions and the Sectoral Sanctions will also require approval by the Parliament no later than 48 hours after the issuance of the Presidential decree.

The Parliament, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine or the Security Service of Ukraine will have the right to apply to the National Security Council with a request to impose Sanctions.

Duration of the sanctions

A decision on imposing the Sanctions must specify the duration of the Sanctions save for those cases when the Sanctions are connected with termination of rights or may be imposed only permanently (for example, cancelling a license, termination of an international treaty, or ban on activity of political parties).

Changes to and cancellation of the sanctions

The National Security Council will have the right to change any Sanctions which have been imposed.

The National Security Council may change the Sanctions on its own initiative or on the basis of an application of the Parliament, the President of Ukraine, the Cabinet of Ministers of Ukraine, the National Bank of Ukraine or the Security Service of Ukraine.

The National Security Council must cancel the Sanctions if the goal for which they were imposed has been achieved.

Sanctions against the Russian Federation and other entities

The Cabinet of Ministers of Ukraine announced on 8 August 2014, that it has prepared a list of 172 nationals of the Russian Federation and other countries and a list of 65 companies mainly owned by the Russian Federation or its nationals, who have allegedly financed terrorism, supported the annexation of Crimea, encroached on the territorial integrity and independence of Ukraine, and/or are related to crimes committed in Ukraine.

It is expected that the Cabinet of Ministers of Ukraine will submit such lists to the National Security Council after the Law becomes effective. The lists are not yet publicly available.

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ⁱ Apart from the President of Ukraine who is a chairman of the National Security Council, there are 14 other members of the National Security Council including the Secretary of the National Security Council, the Prime Minister of Ukraine, the Chairman of the Parliament, the Attorney General of Ukraine, the Minister of Defence of Ukraine, the Minister of Internal Affairs of Ukraine, the Head of the Security Service of Ukraine, the Minister of Foreign Affairs of Ukraine, the Chairman of the Board of the National Bank of Ukraine, the Minister of Justice of Ukraine, the Minister of Finance of Ukraine, the Head of the Foreign Intelligence Service of Ukraine, the Head of the Administration of the President of Ukraine and the Chief of General Staff of Ukrainian Armed Forces.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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*Linda Widyati & Partners in association with Clifford Chance.