LAW "ON SANCTIONS" ENACTED

The Law of Ukraine "On Sanctions" (the "Law") adopted by the Verkhovna Rada under legislative initiative of the Cabinet of Ministers of Ukraine took force on 12 September 2014. The adoption of the above Law as well as introduction of relevant sanctions is a part of the "Ukraine's Restoration" Action Plan, a set of priority-oriented actions of Ukrainian government, called to stabilize the situation in the country.

The Law designates a number of restrictive measures. If introduced, such measures will affect economic relations between residents and non-residents of Ukraine, as well as their possibility to execute business transactions and activity in Ukraine. Among sanctions, which might be imposed in order to protect national interests, security, sovereignty and territorial integrity of Ukraine, are the following: assets freezing; restriction of trade operations; prevention of capitals withdrawal; suspension of fulfillment of economic and financial obligations; abolishment or suspension of licenses and other permits for commercial activities; full or partial prohibition of execution of transactions regarding securities; prohibition of issue of separate types of permits and licenses by the National Bank of Ukraine; prohibition of charter capital increase in companies; termination of trade agreements, joint projects and industrial programs in specific areas, etc.

Sanctions may be imposed onto foreign state, foreign legal entities, legal entities controlled by foreign entities or individuals, foreign individuals, apatrides, persons engaged in terrorist activities. The Cabinet of Ministers of Ukraine has allegedly submitted to the Council of National Security and Defense the list of 172 individuals and 65 legal entities privy to terrorism financing and commitment of crimes within Ukraine's territory.

The Law "On Ensuring the Citizen's Rights and Freedoms and the Legal Regime on the Temporarily Occupied Territory of Ukraine", enacted on 27 April 2014 was one of the first laws called to address the situation in the country. The law regulated legal relations within territories of Ukraine, temporarily occupied due to military aggression (Autonomous Republic of Crimea and the city of Sevastopol). In particular, the law on temporarily occupied territory addresses the issues of jurisdiction of cases considered by courts located within temporarily occupied territory, acquisition and termination of title to immovable property located within the mentioned territory, etc. At that, the above law does not directly settle specific issues of business activity within temporarily occupied territory of Ukraine.

You will find detailed information on the abovementioned legislative acts below in annexes to this newsletter.

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We hope that the above information will be helpful for you. Please do not hesitate to contact us, should you have any questions.

Oleksandr Kurdydyk  Rodion Ignatenko
Partner, Head of Finance & Projects  Senior Associate
T +380 (44) 490 95 70  T +380 (44) 495 92 82
F +380 (44) 490 95 77  F +380 (44) 490 95 77
M +380 (67) 507 73 68  M +380 (67) 691 81 94
E oleksandr.kurdydyk@dlapiper.com  E rodion.ignatenko@dlapiper.com
On 14 August 2014 the Verkhovna Rada of Ukraine adopted the Law of Ukraine "On Sanctions" (the "Law") establishing the list of restrictive measures which may be applied by Ukraine to subjects privy to terrorism financing and commitment of appropriate crimes within Ukraine's territory.

The Law introduces the following types of sanctions:

1. asset freezing;
2. limitation of trade operations;
3. restriction, partial or full cessation of transit of resources, flights and transportation through Ukraine;
4. prevention of withdrawal of capitals from Ukraine;
5. suspension of fulfillment of financial and economic obligations;
6. cancellation or suspension of licenses and other permits, including special permits for subsoil use;
7. prohibition to participate in privatization, lease of state property for residents of a foreign state and for persons who are directly or indirectly controlled by foreign residents or act on their behalf;
8. prohibition to use radio frequency resources in Ukraine;
9. restriction or termination of media or other information resources including Internet;
10. prohibition to participate in public procurement of goods, works or services for state-owned business entities that are foreign residents, for business entities where the equity shares in charter capital are owned by a foreign state and for other business entities that sale goods, provide services and carry out works with an origin from a foreign state to which sanctions are imposed;
11. prohibition or restriction to enter into the territorial waters of Ukraine, its inner waters, ports for foreign civil vessels and military ships, to enter into the airspace of Ukraine or to land on the territory of Ukraine for aircrafts;
12. partial or complete prohibition of transactions in securities emitted by a person subjected to these sanctions;
13. prohibition of issuance of permits, licenses of National Bank of Ukraine (the "NBU") for investing in foreign state, deposing of currency assets on the accounts and deposits on the territory of a foreign state;
14. cessation of issuance of permits and licenses for bringing on in and out of Ukraine of currency assets and limitation on cash withdrawal using a payment card emitted by a foreign resident;
15. prohibition of registration of participant of the international payment system which payment organization is a resident of a foreign state by the NBU;
16. prohibition to increase the chapter capital of business entities, companies in which a foreign resident, a foreign state, a legal entity, where non-resident or a foreign state is a shareholder, owns 10 % of equity shares in chapter capital or has decisive influence on management or activities of business entity;
17. establishment of additional measures in the spheres of ecological, sanitary, phytosanitary and veterinary control;
18. termination of trade agreements, joint projects and industrial programs in certain spheres, in particular, defense and security;
19. prohibition to transfer technologies, intellectual property rights;
20. cessation of cultural exchanges, scientific cooperation, educational and sport contacts, entertainment programs with the foreign states and foreign business entities;

21. denial of issuance visas and abolition of visas for foreign residents, implementation of other prohibitions to enter Ukraine;

22. termination of international treaties which have been approved by the Verkhovna Rada of Ukraine;

23. cancellation of official visits, sessions, negotiations concerning conclusion of treaties or agreements;

24. deprivation of state awards and other honors;

25. other sanctions in accordance with the principles of its application, envisaged by the Law.

Sanctions may be imposed by Ukraine on foreign state, foreign legal entities, legal entities controlled by foreign entities or individuals, foreign individuals, stateless individuals, other persons exercising terrorist activity.

Despite the fact that the Law does not specify the list of legal entities and individuals which fall under sanctions, the grounds for being sanctioned are the following:

- acts of foreign state, foreign legal entities or individuals, other subjects posing real and potential threats to national interests, national security, sovereignty and territorial integrity of Ukraine, its economic independence and/or violate rights and freedoms of individuals and citizens, interests of society and the state, which result in occupation of territory, expropriation or deprivation of property, infliction of damages, obstacles for sustainable economic development, opportunities for citizens to fully enjoy the rights envisaged by the Ukrainian laws;


- decisions and regulations of the Council of Europe;

- facts that violate the Universal Declaration of Human Rights.

The Law prescribes that the decision concerning imposition of personal sanctions shall be rendered by the Council of National Security and Defense of Ukraine (the "CNSD") and shall be carried into effect with an order of the President of Ukraine. Sanctions with respect to foreign states and sanctions concerning unspecified persons within certain sphere of activity (sectorial sanctions) shall be imposed by rendering a decision of the CNSD. Then the President shall carry them into effect and the Verkhovna Rada shall approve them by issuing a decree. Only upon issuing of the abovementioned decree the decision regarding imposition of sectorial sanctions enters into force.
On 15 April 2014 the Law "On Ensuring the Citizen's Rights and Freedoms and the Legal Regime on the Temporarily Occupied Territory of Ukraine" (the "Law") was adopted by the Verkhovna Rada. The Law designated the status of Ukraine's territories temporarily occupied in consequence of military aggression of Russian Federation, establishing special legal regime within occupied territory and regulating activity of state bodies, bodies of local government, enterprises, institutions and organizations in conditions of special regime as well as of observing and protecting rights, freedoms and legal interests.

For the purposes of the Law, the temporarily occupied territory of Ukraine shall be defined as follows:

1. The land territory of the Autonomous Republic of Crimea and of the city of Sevastopol and the inland waters of Ukraine adjacent to these territories;
2. The inland waters and territorial sea of Ukraine adjacent to the Crimean Peninsula, the territory of the exclusive (maritime) economic zone along the seaboard of the Crimean Peninsula, and continental shelf of Ukraine adjacent to the coast, which are subject to the jurisdiction of Ukrainian authorities in accordance with international law, the Constitution, and the laws of Ukraine;
3. The air space above the territories specified in clauses 1 and 2 of this Article.

For the duration of this law, the temporarily occupied territory shall be subject to a special legal regime for crossing the temporarily occupied territory's borders, entering into legal agreements, holding elections and referenda, and exercising other human and citizen rights and freedoms. According to the Law Ukraine shall take all necessary measures to guarantee human and citizen rights and freedoms provided for by the Constitution and the laws of Ukraine and by international treaties to all citizens of Ukraine residing in the temporarily occupied territory. Ukraine shall commit itself to supporting and protecting economic, financial, political, social, informational, cultural, and other ties with citizens of Ukraine residing in the temporarily occupied territory.

The Law stipulates that state bodies and local self-governance bodies created in accordance with the Constitution and the laws of Ukraine, their officials, and staff in the temporarily occupied territory shall act solely on the basis, within the limits of authority, and in a manner set forth by the Constitution and the laws of Ukraine. As a result any act issued by entities or officials described in section two of this Article shall be deemed null and void, and shall give rise to no legal consequences.

The Law establishes special procedure of entry in the temporarily occupied territory and exit therefrom. In particular, entry of foreigners and stateless persons to the temporarily occupied territory and exit from it is allowed only with the special permission via entry-exit control points. It should be noted that Transitional Provisions of the Law introduced administrative and criminal responsibility for violation of procedure of entry in the temporarily occupied territory and exit therefrom and strengthened administrative responsibility for violation of border regime. The Law also strengthened responsibility of legal entities privy to commitment of separate crimes, in particular violation of legislation on referendums, establishment of unlawful military formations, money laundering, terroristic activity, etc.

Property rights within the temporarily occupied territory shall be protected in accordance with the legislation of Ukraine. At that, entities of the public law shall preserve their property rights over property, including real estate and land plots, located in the temporarily occupied territory. Acquisition and termination of property rights over real property in the temporarily occupied territory shall be effected in accordance with the laws of Ukraine. In the event that the state registrar shall be unable to exercise its authority regarding state registration of property rights for real property in the temporarily occupied territory, the state registration body shall be designated by the Cabinet of Ministers of Ukraine.

It worth noting that any legal agreement within the temporarily occupied territory that concerns real property, including land plots, which has been entered into in violation of requirements of this Law or other laws of
Ukraine, shall be deemed null and void from the moment of conclusion, and shall give rise to no legal consequences, other than those related to its nullity.

The important place in the Law was granted to the legal response measures in the temporarily occupied territory. Thus, the jurisdiction of cases considered by the courts situated in the temporarily occupied territories. The Law ensured consideration of the above cases in the following order:

- civil cases, defendants that fall under the jurisdiction of local general courts located in the Autonomous Republic of Crimea and the city of Sevastopol shall be considered by local general courts of the city of Kyiv, as designated by the Kyiv City Appellate Court;
- administrative cases, defendants that fall under the jurisdiction of local general courts located in the Autonomous Republic of Crimea and the city of Sevastopol shall be considered by local general courts of the city of Kyiv, as designated by the Kyiv Appellate Administrative Court;
- civil cases, defendants that fall under the jurisdiction of general appellate courts in the Autonomous Republic of Crimea and the city of Sevastopol shall be considered by the Kyiv City Appellate Court;
- administrative cases that fall under the jurisdiction of the Circuit Administrative Court of the Autonomous Republic of Crimea shall be considered by the Kyiv Circuit Administrative Court, whereas administrative cases that fall under the jurisdiction of the Sevastopol City Circuit Administrative Court shall be, respectively, considered by the Kyiv Circuit Administrative Court; and administrative cases that fall under the jurisdiction of the Sevastopol Appellate Administrative Court shall be considered by the Kyiv Appellate Administrative Court;
- commercial cases that fall under the jurisdiction of the Commercial Court of the Autonomous Republic of Crimea shall be considered by the Kyiv Oblast Commercial Court, whereas commercial cases that fall under the jurisdiction of the Sevastopol City Commercial Court shall be considered by the Kyiv City Commercial Court; and commercial cases that fall under the jurisdiction of the Sevastopol Appellate Commercial Court shall be considered by the Kyiv Appellate Commercial Court, respectively;
- criminal proceedings that fall under the jurisdiction of the local (district, city, city district) courts shall be considered by one of the Kyiv City district courts, as designated by the Kyiv City Appellate Court;
- criminal proceedings that fall under the jurisdiction of the Appellate Court of the Autonomous Republic of Crimea and the city of Sevastopol shall be considered by the Kyiv City Appellate Court.

The Law establishes that cases that are currently under consideration of the courts located in the Autonomous Republic of Crimea and the city of Sevastopol, which have not been yet considered, shall be transferred to the appropriate venue as set forth by the Law, within ten business days from the effective date of the Law or from the day of falling under such jurisdiction.

In contrast to provisions of the bill of the Law, the Law does not impose actual prohibition on business activity within temporarily occupied territory. At the same time the Law establishes that special aspects of engaging in economic activity in the temporarily occupied territory are set forth by the law.

In case of violation of the provisions of the Law, the state bodies of Ukraine shall use mechanisms provided for by the legislation of Ukrainian and the norms of international law, for the purposes of protection of peace, security, rights, freedoms, and legal interests of citizens of Ukraine who remain in the temporarily occupied territory of Ukraine, as well as the legal interests of the Ukraine.

The Law prescribes that responsibility for violations of human and citizen rights and freedoms provided for by the Constitution and the laws of Ukraine in the temporarily occupied territory shall be placed on the Russian Federation as the occupying power in accordance with the provisions and principles of international law. As a consequence, the Law states that the responsibility for compensation of pecuniary and moral damages caused to the state of Ukraine, individuals and legal entities, civil organizations, citizens of Ukraine, foreigners, and stateless persons as a result of temporary occupation shall be placed in full on the Russian Federation as the occupant state.