EUROPEAN UNION AND UNITED KINGDOM SANCTIONS UPDATE: MARCH 2016

Date: 17 March 2016

Antitrust, Competition & Trade Regulation Alert

Below is a summary of developments since our previous update in January relating to European Union ("**EU**") sanctions on Iran, Russia, Belarus, North Korea and other jurisdictions as well as highlights of recent changes with respect to the sanctions regime in the United Kingdom.

IRAN

As a consequence of EU financial/economic sanctions on Iran being lifted on 16 January 2016, many companies are now evaluating new business opportunities as Iran encourages foreign investment. A number of restrictions as well as bans still remain including for example bans on all military goods and technology and restrictions on equipment used for the interception of telecommunications. Ansar Bank, Bank Saderat Iran and Bank Saderat plc, Bank Refah, Post Bank and Mehr Bank all remain subject to an asset freeze.

Companies seeking commercial opportunities in Iran must consider entities and persons which are still subject to asset freezes and other continuing restrictions on trade. Further, although the US has also removed some of its secondary sanctions on Iran, the principal embargo restrictions relating to US persons and US-origin items and some secondary sanctions remain. These will affect transactions and arrangements involving US-based persons and entities. It is also important to keep up-to-date with the latest developments of the Iran sanctions regime as any failure by Iran to comply with their commitments could result in the lifted sanctions being restored.

Below we list a few recent events which may have an effect on future case law or legislative developments in relation to EU sanctions on Iran.

Mahmoud Jannatian damages application dismissed

On 18 February 2016, the General Court dismissed Mahmoud Jannatian's application for damages relating to an asset freeze and travel ban. The restrictions were part of the EU's sanctions regime on Iran.

Jannatian was listed in 2008 on the basis that until 2007 he was the Deputy Head of the Atomic Energy Organisation of Iran (this listing was reaffirmed in 2010). He was removed from the list on 25 June 2015, and he claimed for damages in respect of losses suffered due to his listing between 2008 and 2015.

The General Court held that it could not rule on damages in relation to the travel ban as that was a matter of EU foreign policy but said that damages could be available in relation to asset freezes if there was a "sufficiently serious breach" of EU law. The General Court said that Jannatian's incorrect listing in 2010 was not a sufficiently serious breach. Once the Council became aware of the erroneous listing, the continued asset freeze was sufficiently serious. The Council should have verified the details.

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Nevertheless, the General Court held that Jannatian had not suffered any damage as a result of the listing and his application was dismissed.

Annulment of Bank Mellat's Iran listing upheld

On 18 February 2016, the Court of Justice of the European Union ("**CJEU**") agreed with the General Court that Bank Mellat's inclusion in EU sanctions had been unlawful.

The CJEU agreed with the General Court that the reasons for Bank Mellat's listing since 2010 were too vague and stated that there was no evidence that First East Export Bank plc (designated under United Nations Security Council Resolution 1929) was a wholly owned subsidiary of Bank Mellat.

RUSSIA AND UKRAINE

On 3 February 2016 the European Parliament passed a resolution extending trade sanctions on people responsible for misappropriating Ukrainian state funds.

The EU reviewed the list of persons subject to asset freezes and visa bans for "undermining or threatening the territorial integrity of Ukraine" and published a notice on 6 February 2016 indicating that it will maintain such sanctions. The EU published Regulation 2016/311 and Decision 2016/318 on 5 March 2016 extending the sanctions until 6 March 2017.

Also on 5 March 2016, the EU published Regulation 2016/315 and Decision 2016/319 extending the asset freezes imposed on 16 people said to have been involved in the misappropriation of Ukrainian state funds with one person being delisted due to them having repaid the funds. Similarly, the asset freezes have been extended for one year.

On 15 March 2016, the EU lifted asset freezes and travel bans from 3 people who have died. The EU also revised the reasons for the listing of 46 people and 11 entities by Implementing Regulation 2016/353 (which amends Regulation 269/2014) and Decision 2016/359 (which amends Decision 2014/145/CFSP). The sanctions against those who are listed under this legislation, which was due to expire on 15 March 2016, have been extended for a further six months to 15 September 2016.

MOST BELARUS SANCTIONS LIFTED

On 15 February 2016, the EU lifted sanctions on 170 individuals, including President Lukashenko and 3 entities - Beltechexport, Beltech Holding and Spetpriborservice - in Belarus. EU sanctions on Belarus were first imposed in 2004 and the latest set of sanctions was put in place in response to allegedly fraudulent referenda and elections and violations of human rights.

This lifting comes less than four months after the EU decided to suspend the same sanctions on 29 October 2015 "in response to the release of all Belarusian political prisoners on 22 August and in the context of improving EU-Belarus relations." Whilst the Council Decision of 29 October 2015 extended the sanctions on Belarus until 29 February 2016 it suspended them for the 170 individuals and three entities above. The EU has now decided not to extend the sanctions beyond 29 February in relation to the aforementioned individuals and entities.

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The EU arms embargo against Belarus remains in place as do sanctions on four members of President Lukashenko's security service suspected of being involved in the disappearance of political opponents in 1999-2000, which were renewed on 25 February 2016 and will remain in place until 28 February 2017.

SANCTIONS ON NORTH KOREA EXTENDED FOLLOWING 'NUCLEAR TEST'

In response to Pyongyang's purported detonation of nuclear weapons in January 2016, UN Security Council Resolution 2270 was passed unanimously on 2 March 2016, strengthening sanctions against North Korea. Consequently, the Commission Implementing Regulation 2016/315 was passed by the European Council, adding 16 individuals and 12 entities to the list of those subject to EU sanctions.

CENTRAL AFRICAN REPUBLIC

The EU Council added the Lord's Resistance Army and its commander Joseph Kony to the list of persons and entities subject to EU sanctions pursuant to UN Security Council Resolution 2127 (2013). EU Sanctions on the Central African Republic are imposed via Council Decision 2013/798/CFSP and Regulation (EU) No 224/2014.

TERRORIST GROUPS (FOREIGN TERRORIST ORGANISATIONS)

The EU Council amended the list of persons, groups and entities associated with the Al Qaida network subject to a freezing of funds and economic resources provided in the Council Regulation (EC) No 881/2002. Eleven natural persons and the Harakat Sham Al-Islam Movement were added to the list and six more entries were amended in accordance with recent decisions of the Sanctions Committee of the UN Security Council.

UNITED KINGDOM

Government to increase sanctions sentences and fines

On 10 February 2016, the UK Government introduced the Policing and Crime Bill, within which it proposes to increase sentences and fines for sanctions violations. The Bill had its second reading in the House of Commons on 7 March 2016 and will proceed to the Committee Stage soon.

Sentences for sanctions violations will increase from six to 12 months on summary conviction and from two to seven years on indictment if sections 89 and 90 of the Policing and Crime Bill become law. Section 91 of the bill sets out the maximum civil fine, which is the greater of £1,000,000 and 50% of the estimated value of the funds or economic resources involved.

This latest action comes less than two months before the UK's new "Office of Financial Sanctions Implementation" ("**OFSI**") is set to launch in April with both OFSI and the Policing and Crime Bill expected to form part of what is anticipated to be a more heavy-handed approach by the UK government with respect to sanctions enforcement.

Joint action on EU sanctions is one of the reasons for the UK to remain in the EU

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The White Paper recently presented to the UK Parliament by Prime Minister David Cameron sets out the reforms proposed as part of the settlement agreement with the European Union in light of the forthcoming referendum on the UK membership in the EU. Among other things, the Prime Minister argues that one of the reasons why the UK should choose to remain part of the EU is that it exerts significant influence on the EU Council decisions, including those imposing EU-wide sanctions, and thus benefits from the diplomatic power of being part of a 28 country bloc. The White Paper expressly mentions joint and effective EU efforts with respect to the nuclear agreement with Iran, sanctions imposed in response to Russian aggression in Ukraine as well as sanctions on Syria.

Similarly, the document presented to the Parliament by the Secretary of State for Foreign Affairs notes that UK's withdrawal from the EU would mean unravelling all the rights and obligations, including joint action on sanctions, that the UK has acquired both during accession to the EU and over its 40 year membership.

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