



The deep freeze: the impact of EU and US sanctions on Jersey



by
Lisa Springate

In a globalised world, political decisions have far reaching consequences to all corners of the globe.

On 17 March 2014, the Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014 came into force in the UK (“**UK Ukraine Regulations**”) which mirrors the European Council Regulation on Ukraine (“**EU Ukraine Regulations**”), which has direct effect on all EU member states imposing financial sanctions against certain Russians and Ukrainians in connection with the crisis in the Ukraine.

These actions have laid the foundations for more sanctions to follow. The number of countries which are the subject of the EU’s targeted financial sanctions continues to grow, with over 30 countries affected.

Essentially, these sanctions are measures (either for a specific or unlimited period of time) which are adopted by several nations acting together against a regime or organization believed to be violating international law.

The measures may include the freezing of financial assets, a ban on the trade of goods or weapons as well as travel restrictions on individuals.

The Sanctions in detail: what is prohibited under the UK Ukraine Regulations?

The scope of the prohibition is extremely wide. It is a freeze on all assets of a designated person including their financial assets such as money, stocks and financial

instruments as well as companies owned or controlled by them.

A “designated” person is an individual or legal entity which has been blacklisted under the EU Ukraine Regulations. The sanctions or ‘freeze’ places a prohibition on all types of “dealing” with the designated persons’ assets. By way of example, financial institutions are prohibited from offering financial services to a designated person and suppliers are prohibited from trading with a designated person.

Penalties

Breach of the UK Ukraine Regulations is a criminal offence and the penalties are imprisonment and/or a fine. Where the offence has been committed by a body corporate, the body corporate will be found guilty as well as any senior officers if they consented to the offending action or were negligent in allowing it to take place.

Responsibility for the introduction and monitoring of sanctions in Jersey

In Jersey, the Chief Minister’s Department is responsible for co-ordinating the introduction of sanctions measures and assists the Chief Minister in the carrying out of his duties in relation to sanctions legislation.

Individual businesses are then responsible for monitoring and ensuring compliance with the sanctions orders, through their

compliance officers and are overseen by the Jersey Financial Services Commission (“JFSC”) which circulates updates with regard to the introduction of new sanctions.

Jersey’s response to the Ukraine situation

Earlier this year, Jersey adopted sanctions against 18 individuals, in response to the continual political unrest in the Ukraine. It thus ensured that the Island’s sanction regime is in line with the international developments referred to above with regard to those persons identified as responsible for the misappropriation of Ukrainian State funds and persons responsible for human rights violations in Ukraine, including the former president, Viktor Yanukovich.

The JFSC requested all financial institutions and other bodies to check their records to ensure they comply by freezing any funds or economic resources held by the said individuals.

Impact on Jersey

The targets of these sanctions are usually individuals from countries where wealth is concentrated in the hands of a few. This factor, combined with the extension of the sanctions to any entity in which a target has an interest, make the sanctions very wide ranging.

They are deliberately drafted in the widest possible terms with extra-territorial effect.



They are intended to exclude their targets from the international financial system and they do this by making everybody involved in that system criminally liable for anything that would assist a target to benefit from his assets.

The compliance cost that these sanctions impose on businesses, particularly financial businesses is significant.

From a local perspective, it is apparent that sanctions have shot up the scale of risks and thereby present challenges for Jersey, which is renowned for having a robust and highly regarded regulatory regime.

These challenges are faced locally not only by financial institutions, including trust and corporate service provider businesses involved in the administration of the structures in question, but also by the law firms that are advising on the same.

An accurate assessment of the risks inherent in taking on such work requires an extensive and in-depth analysis of the structures in question. The complexity of some offshore structures can make it difficult to ascertain who the ultimate owner is and it is necessary to examine the individual structure and ascertain the involvement of the designated person. Furthermore, whether or not the transaction could result in any funds or resources flowing to them in order to determine whether or not the underlying assets are frozen because of their ownership or control.

The result of these in depth enquiries is an extra layer of expenses, particularly in matters spread across several jurisdictions. It is imperative though that these extensive take-on checks are undertaken to protect and preserve the reputation and integrity of the law firm, trust and corporate service provider and thereby the Island itself.

Conclusion

The rise in the number of sanctions being imposed worldwide will, without doubt, result in an increase in the level of instructions for law firms specialising in this area. Subject to satisfactory due diligence checks being undertaken, many firms have expressed the view that there is no reason why they would not advise a designated person of their rights under the sanctions imposed on the basis that everyone has the right to legal representation. Similarly, many of these firms are seeing an increase in instructions from financial institutions which are seeking guidance so that they can assess their exposure to sanctioned individuals.

Whether or not events in Ukraine prompt a further round of sanctions remains to be seen. However, what is more certain is that this is a rapidly expanding practice area which is here to stay.



From The Chairman's Desk



By
Vernon Breese

Dear Members

We are three years old now with over 160 members and still growing! Your Association is truly a representative voice now comprising a good share of the Island's board members and other officers.

In the same way that some businesses used to promote their calibre by advertising decades of combined experience, I recounted to a public audience recently that together JADO has in excess of 4,000 years' combined experience and history in business!

Whilst at first blush this may sound impressive, you will be pleased to learn that I have dropped this truth from my repertoire on the grounds that it makes us sound ancient and not the youthful growing three year old we are!

We marked this third anniversary with a modest reception and short presentation to update members on current plans, news and initiatives at a summer reception at the beginning of June 2014, kindly sponsored by Apex Fund Services (Jersey) Limited and Walkers.

The performance and organisation of the Association is executed by members who give freely of their time and whilst they do remarkable work in that short time, the number of projects and initiatives to which we can apply ourselves is limited. This said, we have achieved a great deal so far in producing educational and information pieces through the Directors Development Programme, the Women in Leadership Programme and the regular CPD Town Hall sessions as well as Online PQ Portal training sessions, this publication and networking.

Current 'work in progress' includes projects to:-

- ✦ Address the use and appointment of alternate Directors;
- ✦ Respond on the civil penalties draft legislation;
- ✦ Produce a database of guidance for local directors;
- ✦ Offer the experience of members in "Change" to managers in Education; and
- ✦ Broaden our membership.

As ever, we remain alert to financial, economic and regulatory issues but if you know of topics your Association ought to be considering, please feel free to contact a member of the Committee whose details are published at www.jado.com

If you would like to offer an article to the Newsletter for consideration please contact me vernon@jerseycs.com. Many thanks for your ongoing support and I look forward to seeing you I hope at our next event.