

BULLETIN

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Rusal sanctions: market turmoil and legal fall-out

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April 2018 has seen the metals markets thrown into turmoil by the US imposition of sanctions on United Company Rusal (“Rusal”). Any party in doubt as to whether it is impacted by the sanctions regime should seek prompt legal advice. Appropriate compliance procedures, including due diligence as to ownership structures, should be followed.

Parties should also seek legal assistance in the event of contractual disputes arising whether directly or indirectly from the knock-on impact of sanctions.



Background

On 6 April 2018, the US Office of Foreign Assets Control imposed sanctions on (amongst others) Oleg Deripaska, and his business enterprises. These include United Company Rusal (“Rusal”). Rusal ranks in the world’s top aluminium companies based on production. Rusal has been designated as a Specially Designated National (“SDN”) under Executive Order 13661 and 13662, and the Ukraine-related Sanctions Regulations.

Market turmoil

The imposition of these sanctions has resulted in significant disruption to the global metals markets. Prices have climbed rapidly for aluminium and alumina (a raw material needed to make aluminium), as parties rush to secure supplies.

Global supply chains may be threatened, given that aluminium is a pre-requisite in engineering and manufacturing. Aerospace

and car production lines may be threatened globally, not just in Russia. On 19 April 2018, Germany’s Wirtschaftsvereinigung Metalle (a group representing interests of metals companies), announced that car production in Europe could be disrupted with consequent plant closures.

Meanwhile, shipping and logistics are also affected. Rusal’s Irish plant, at Aughinish, supplies alumina across Europe. Ships are reported to be sitting at port unable to load cargo from Aughinish to transport to mainland Europe. On the other side of the world, Japanese trading houses are reported to be putting stops on shipments of Rusal-origin cargo to Japan.

Political fall-out has followed. China, India and the EU are all reported to have raised objections with the WTO. As of 19 April 2018, Russia is reported as having applied to WTO for compensation.

The sanctions

The sanctions regime is divided into primary and secondary sanctions. The primary sanctions apply to US persons. US persons is broadly defined including (a) all US-domiciled entities, including their non-US branches (b) US citizens and US green-card holders globally, and (c) all persons in the United States. Unless licensed by OFAC, the sanctions block the property and interests in property of Rusal and any entity owned 50% or more by Rusal that are in the USA or in the possession or control of a US person. Further, the sanctions prohibit certain actions to the extent that they involve US persons or the US financial system (referred to as “US Elements”). The prohibited actions including receiving or making any contribution or provision of funds, goods or services to or for/for the benefit of Rusal. Certain limited carve-outs are available via an OFAC licence scheme. These primary sanctions apply to transactions of non-US persons only to the extent that they involve US elements. However, as US elements

encompasses the US financial system, many transactions are likely to be caught by this definition.

The secondary sanctions provisions expose non-US persons to a sanctions designation by OFAC for facilitating significant transactions with Rusal, unless such transactions would be permitted by general licence to involve US elements. Significantly, a non-US financial institution could face sanctions designation for knowing facilitation of “significant financial transaction” on behalf of Rusal. International banks are likely to be extremely anxious about involvement in financing of transactions related to the sanctioned entities.

There is market concern that the scope of the General Licences regime is insufficiently broad to allow wind-down of ongoing relationships. A further source of concern and controversy is the applicability of the sanctions to metals produced and supplied by Rusal prior to 6 April 2018. The London Metal Exchange (LME) is alive to the anxiety and provides its own interpretation and analysis via an official Notice of 10 April 2018.

Legal disputes

Parties need to ensure that they take appropriate steps for compliance. Urgent legal assistance should be sought.

In addition to compliance angles, it is probable that numerous legal disputes

will spin off from this situation. Multiple contracts will be affected. Parties involved in sale/purchase and supply chain contracts will want to consider the relevance of force majeure clauses, potentially material adverse change clauses, and sanctions clauses. It is being reported that Rio Tinto has already declared Force Majeure on a number of contracts. Similar considerations may also arise in financing contracts for the relevant trades. Those involved in the commodities markets will be reviewing their contracts closely in light of the market and political developments.

Contractual disputes are also likely to arise on the transport and logistics side. If voyage orders are changed as cargo cannot be discharged at intended port, or if vessels remain at port unable to load intended cargo, inevitably disputes will follow. Disputes as to laytime and demurrage may not be the first thought when considering the Rusal sanctions, but they are an almost certain outcome.

This article does not constitute legal advice. If you require advice on any of the topics discussed in this briefing from Angharad, or any member of 20 Essex Street, please contact: clerks@20essexst.com



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[Read her online biography](#)

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