



## Assistance to Russian and foreign businesses in connection with the consequences of the military operation



### Termination and change of contracts



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#### What you may encounter:

- you have lost the opportunity to execute a contract or its execution has become unprofitable
- you are not ready to continue cooperation with a sanctioned counterparty or a counterparty that has become unreliable
- your counterparty refuses to execute a contract as a whole or refers to temporary difficulties with execution
- you need to restructure relations under a long-term contract
- you need to formalise the termination of relations with the counterparty by mutual agreement

#### We can:

- ✓ calculate your risks associated with withdrawal from a contract (risks of recovering losses, paying penalties and other payments (for example, refusal fees/take or pay)) and suggest ways/tools to minimise them
- ✓ support you in your negotiations with the counterparty, both for the purposes of restructuring a contract and its termination, including preparation of arguments that strengthen your negotiating position
- ✓ help you withdraw from a contract while minimising the risk of recovering damages (or other payments) from you
- ✓ encourage the counterparty to fulfil a contract
- ✓ represent you in disputes related to:
  - termination/change of a contract
  - recovery of damages, penalties and fees for withdrawal from a contract
  - removal of the contractual limitation of liability from a party that does not fulfil its obligations



### Consequences of imposing sanctions against Russian persons and counter-sanctions



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#### What you may encounter:

- sanctions have been imposed on you/your company, or sanctions prevent the execution of a contract to which you are a party
- you need to change contracting policy with some companies
- you have problems making payments or other difficulties in the process of executing a contract
- you need to get the transaction approved by a government commission or other government agency

#### We can:

- ✓ advise you on the sanctions legislation of various countries, including ways to continue your activities under sanctions
- ✓ coordinate the process of removing your company from the sanctions lists, and obtaining licences to enter into transactions subject to sanctions
- ✓ coordinate disputes in foreign courts in connection with challenging the imposition of sanctions and their application against your company, refusal to remove your company from sanctions lists and issue licences
- ✓ challenging your company's exclusion from international organisations and associations



### Nationalisation of foreign companies



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#### What you may encounter:

- nationalisation under the provisions of the Civil Code of the Russian Federation in the form of requisition or confiscation of property
- appointment of state administration in a subsidiary of foreign entities
- your company is banned from withdrawing assets
- the court has imposed interim measures preventing the activities of your company
- the state restricts your corporate rights and invalidates earlier decisions of your company's management bodies
- you are forced to perform transactions, in particular with respect to stocks and shares

#### We can:

- ✓ advise you on ways to minimise the risks of nationalisation, including business restructuring, and fully support you in this process
- ✓ represent your interests in Russian courts in connection with challenging the actions of the state in civil, administrative and criminal proceedings
- ✓ represent your interests in bankruptcy cases of subsidiaries and counterparties, including the protection of participants and management from subsidiary liability and losses allegedly caused to the company
- ✓ represent your interests in disputes on the recovery of the company's and its management's losses
- ✓ support you with procedures for including a creditor's claims in the register of claims of the company in relation to which external administration has been appointed, as well as challenging the refusal to include, or preventing the inclusion of other creditors of the company
- ✓ collect evidence for the future protection of your interests in international investment arbitration, including by creating the necessary 'tracks' of evidence in the course of supporting judicial and extrajudicial proceedings in the Russian Federation, as well as communicating with Russian government agencies for the purposes of subsequent successful litigation in disputes on investment protection
- ✓ protect management, shareholders and beneficiaries of companies in criminal cases related to the termination of companies' activities



### Representation in connection with the transfer of disputes from foreign courts and arbitrations to Russian courts



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#### What you may encounter:

- inability to protect your interests in a foreign arbitration/court due to the imposition of sanctions
- bias of the arbitral tribunal/court
- you or your counterparty disputes the arbitration clause/arbitration agreement
- you or your counterparty is trying to transfer the dispute to another jurisdiction

#### We can:

- ✓ represent you in disputes against an arbitration clause/arbitration agreement
- ✓ represent your interests in disputes regarding the transfer of proceedings to another jurisdiction, disputes on the prohibition on initiating/continuing foreign proceeding



## Consequences of imposing sanctions against Russian persons and counter-sanctions

Advising the client, a **major Russian private group of companies**, in connection with potential litigation relating to replacement of a management company (general partner) of an investment fund (exempted limited liability partnership) in the Cayman Islands. The replacement was caused by sanctions which had been imposed on the beneficiary of one of the fund's partners. The replacement was effected by the firm without trial.

Advising a **major Russian shipping company** in connection with sanctions against Iran, including on the possibility of entering into various types of contracts and payment arrangements.

Advising a **Russian transport company** on the possibility of pursuing claims against the Libyan government under the BIT for failure to provide protection for property imported for the purposes of a construction contract, the performance of which was breached due to sanctions.

Advising a **client (an insurance company)** in connection with the application of a sanctions clause in an insurance policy as to whether military action in Libya constituted the implementation of no-fly zone sanctions.

**We have always done and will always do what we are best at – commercial disputes**



## Nationalisation of foreign companies

Representing **Sovfrakht**, one of the ten largest transport companies in Russia, in a dispute against the Department of Presidential Affairs of Russia, which claimed **US\$30m** in compensation for harm caused by the client's allegedly illegal privatisation and disposal of Russian real estate assets located abroad (UK, India, Portugal, Bulgaria, Finland).

Advising a **foreign defendant** in SCC proceedings for the recovery of damages for the alleged expropriation of the claimant's assets, on the ambiguous issue of the relationship between the legal status of the claimant – a state corporation – and that of a public-law entity.



## Termination and change of contracts

Successfully defending **Avia-FED-Service**, a Russian aircraft parts supplier, in a series of proceedings before the ICAC for recovery of an advance payment against a major foreign exporter of military equipment. The advance payment was not returned and the contract was not performed by the exporter due to the sanctions imposed. The exporter argued that the imposition of sanctions prevented it from fulfilling its obligations and exempted it from liability under the contract. The firm proved otherwise, resulting in all four disputes being won in favour of the client.

Advising a **Russian transport company** on the consequences of sanctions against Libya, including their impact on a construction contract: suspension of the contract, exemption from liability, qualification as force majeure, timing, procedure and consequences of termination of the contract, and risks of destruction of equipment and a construction facility.

Representing the client in a dispute against a **major international company offering engineering solutions for various equipment**, including turbines for heat power plants. Our services included advising the client on strategic and legal issues of LCIA arbitration related to terminating the contract with the opponent and recovering damages, including the procedure, grounds for termination, relevant examinations and assessment of the opponent's legal position (preparation of the necessary pre-trial documents, collecting evidence, communication with experts and the insurance company, etc.).

Advising the **world's #1 producer and exporter of high-quality UHG anthracite (Russia's largest producer of metallurgical coal)** on the prospects for an upcoming arbitration before the ICAC against a Russian port terminal operator relating to a client's unilateral termination of a transshipment agreement concluded with the operator, as well as on reducing the client's risks regarding improper performance by the terminal operator of its obligations on transshipment, and the implementation of the *take or pay* clause (the project for development of the terminal includes investments of approximately **US\$770m**).

Preparation and implementation of a dispute strategy in relation to a claim by a **Russian manufacturer of industrial equipment** against a foreign counterparty which unilaterally terminated a contract. Our work includes analysis of the client's ability to invoke provisions of the law that protect Russian companies from the consequences of foreign sanctions, as well as interim relief against the assets of the foreign company due to the risk of termination of its activities in Russia.



## Representation in connection with the transfer of disputes from foreign courts and arbitrations to Russian courts

Representing a **major agricultural company** in the recognition and enforcement of arbitral awards rendered by an international commercial arbitration court in London (FOSFA) against a Russian company in a dispute over wrongful termination of contract (a supply contract violation). The specifics of the case were the prospect of recognising an arbitral award arising out of a contract subject to international economic sanctions. The defendant had refused to perform the contract because it could not accept the goods due to import restrictions imposed by the Russian government. The FOSFA arbitral tribunal recovered damages for breach of contract. The Russian courts refused to recognise and enforce the FOSFA arbitration award with reference to violation of public policy. According to the courts, the state authority's prohibition on importing the goods, which were the subject of the parties' agreement, prevented the defendant from performing the contract properly and, therefore, it was entitled to withdraw from the contract.

Maxim Kulkov giving evidence before the High Court of England and Wales in a dispute between a **large international company engaged in the acquisition of watercraft and the international law firm** in order to transfer the proceedings from the High Court to the ICAC (Russia) on the basis of an arbitration clause in the contract. The case was recently settled.

