

INTERNATIONAL LAW

QUARTERLY

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**Focus on Ukraine, Russia,
and Eastern Europe**

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This article provides a brief summary of the types of transactions affected, since 2014, by the Russian/Ukrainian conflict and references resources that may be helpful to legal practitioners in navigating the rapidly evolving regulatory framework. The article focuses mainly on the effects of the economic and trade sanctions administered and enforced by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC). It is meant to help legal practitioners and businesses to identify whether their transactions with Russia, Belarus, or Ukraine may be prohibited under the imposed sanctions, the extent and scope of the restrictions, and whether a license may be required.

10 • International Arbitration Disputes Involving Sanctioned Russian Parties

In response to Russia's military operation in Ukraine, the European Union, the United Kingdom, the United States, Canada, Singapore, and Japan enacted unprecedented and complex sanctions against Russia and Belarus, and Russia enacted its own countermeasures to contain the effects of the restrictions. Mutual restrictions block access to justice for Russian and Western parties alike. This article focuses on international arbitration proceedings involving Russian parties, highlights various effects that sanctions might have on these international disputes, and suggests solutions for sustaining access to justice in turbulent times.

12 • Effects of Sanctions on the Russian Economy and Energy Revenue

An assessment of the effectiveness of the sanctions against Russia on the Russian economy is important to determine whether the policy goals behind the sanctions have been satisfied or are making satisfactory progress, and also to determine what next steps may plausibly contribute toward the ultimate goal of ending the war with Ukraine. This article attempts to capture how current sanctions have impacted the Russian economy, the effect of Russia's retaliatory

natural gas cutoff on Europe, and what measures may still be necessary to impact Russia's greatest active military funding, the energy sector.

14 • Options for Ukrainian Nationals in the Present Crisis

President Biden's administration and the Department of Homeland Security (DHS) are providing support and immigration relief to Ukrainian nationals fleeing the Russian invasion both in the United States and abroad. These measures include designating Ukraine for Temporary Protected Status, announcing the Uniting for Ukraine humanitarian parole program, and expediting immigrant visa petitions and immigrant visa processing for Ukrainian family members of U.S. citizens. This article will discuss each of these options to explain who may benefit from these measures, the application process, and the benefits provided by each measure.

16 • Romanian Holding Companies as Investment Vehicles for Latin American Investments Into the U.S. and the European Union

Romania is generally considered to be a low-political-risk jurisdiction. The country has also become an increasingly attractive foreign investor destination due to the implementation in 2014 of a holding company tax regime. Likewise, Romania has had a long-standing double-taxation avoidance treaty with the United States dating back to 1974. This article explores why, from a double-taxation point of view, as well as other considerations, utilizing Romania as a jurisdiction is attractive to Latin American investors desiring to invest in the United States and the European Union.

18 • Russian American Bar Association of Florida's Efforts to Help Ukrainian Refugees

This article reports on the many ways the Russian American Bar Association of Florida is uniting the Russian-speaking community and Florida's legal community in support of Ukrainian refugees.



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Message From the Chair

Want More, Do More, Be More



JACQUELINE VILLALBA

It is with great honor that I write my first “Message From the Chair” for the *International Law Quarterly (ILQ)*. I am truly humbled by the privilege of serving as chair of The Florida Bar International Law Section (ILS), and I look forward to working with

all of you this year. Forty-one years ago, our section was born to connect members of The Florida Bar who have an interest in the field of international law. Over the years, we have accomplished great things for the international law community, but our work is far from being finished. The ILS has GREAT members. The talent among us is extraordinary, and when we put that talent together, incredible things happen. Our voices get heard, ideas become reality, and laws get changed; however, great things cannot happen at the ILS without each and every one of us. For our section to continue thriving, we must increase our members’ involvement and mentor a new generation of leaders.

For these reasons, two of my priorities are cultivating members’ participation and mentoring newer members in the advancement of succession planning. In June, during the annual Florida Bar Convention, I called upon each of you to get involved, engage with your colleagues, collaborate, generate ideas, and help our section flourish. The time is now! The ILS does real work, important work, but it takes a village. The success of our organization, our success, depends on each of us.

To our newer members—it is your turn to step up and serve, to take on leadership roles. To our seasoned members and current leaders—we have a responsibility to reach out, encourage, mentor, and help our newer members move forward. We cannot rest. It is incumbent upon all of us to continue building on the work forged under the leadership of our past chairs.

There are many ways you can become more involved with the ILS. Sign up for one of our committees, attend iLaw in February, serve as judge in our section’s pre-moot competition, or even write an article for this renowned publication. This edition of the *ILQ* focuses on Ukraine, Russia, and Eastern Europe. It includes articles discussing U.S. immigration options for Ukrainian nationals and the effects of sanctions on the Russian economy, among other timely and related topics. It also includes a republication of our statement condemning the invasion of Ukraine.

As international lawyers, we know that conflict is inevitable. By supporting and promoting the application of international law principles by foreign nations, which, by its very nature, includes the uniform application of the rule of law and the recognition of fundamental human rights, we can advance the peaceful management of conflict. This, in turn, fosters positive changes, builds trust, and strengthens relationships. The ILS continues to support and promote the uniform application of international law principles and stands with our friends and colleagues around the world who are risking their lives fighting for democracy and human rights in their home countries.

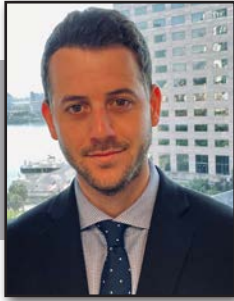
The ILS has always inspired me to want more, do more, be more. Throughout the next year, I hope you too will be inspired to want more, do more, be more.

Best regards,

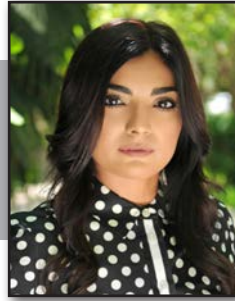
Jacqueline Villalba

**Chair, International Law Section of The Florida Bar
Board Certified in Immigration & Nationality Law
Harper Meyer LLP**

From the Editors . . .



JEFFREY S. HAGEN



NEHA S. DAGLEY

On 24 February 2022, Russian President Vladimir V. Putin ordered Russian troops to sweep into Ukraine. Days earlier, President Putin had recognized the regions of Donetsk and Luhansk in eastern Ukraine as independent states, laying the groundwork for the Russian advance that has turned into a sustained war. The resulting human casualties have been substantial. As of this writing, 6.6 million Ukrainians have been forced to flee their unsafe homeland. The U.S. Department of Defense estimates that as of August 2022 as many as 80,000 Russian troops were killed or wounded in the war. The catastrophic impact on human life is only one consequence of the war in Ukraine. As international attorneys connected through the International Law Section, our knowledge and network position us as an ideal cohort to shepherd our clients through the legal implications and global disruption caused by prolonged armed conflict.

The wealth of information in this edition of the *International Law Quarterly* will better equip us to navigate our clients through an evolving legal landscape related to Russia and Ukraine, providing insight on the widespread ramifications of the latest sanctions against Russia. Perhaps even more fundamental to the practice of international law than complex problem solving is the upholding of basic human rights and dignity. Whether or not Russian nationals receive equal treatment in legal arenas around the world may not be top of mind in typical discourse on the Ukrainian-Russian war, but it is also a topic worth our consideration and discussion. As Florida attorneys sworn to uphold the U.S. Constitution who happen to specialize in the practice of international law, it may be reasonable to suggest that we hold a unique responsibility to ensure the scales of justice are not weighed down by negative sentiment toward a specific nationality.

The feature articles appearing in this robust edition of *International Law Quarterly* focusing on Ukraine, Russia, and Eastern Europe touch on the aforementioned topics and more. Our first two articles are written by native

Russians. Luba Zeldis, originally from Moldova, describes the genesis of U.S. and Russian sanctions, providing a roadmap to where we are today, in her article “Transactions Affected by the Russian/Ukrainian Conflict Since 2014.” Directly following this piece is the article “International Arbitration Disputes Involving Sanctioned Russian Parties” by Anna Tumpovisky (president of the Russian American Bar Association of Florida) and Ilya Nikiforov (an arbitrator based out of Saint Peterburg, Russia), which offers an interesting and important take on the effect the war is having on Russians around the world.

Additionally, Jorge Salcedo, Barbara Hernandez, and Juliana Carbonell have provided an informative article on the sanctions stemming from the conflict in “Effects of Sanctions on the Russian Economy and Energy Revenue.” Larry Rifkin outlines immigration options for Ukrainians seeking safety in “Options for Ukrainian Nationals in the Present Crisis.” In an article also associated with the Eastern European region, Dan Vişoiu and Alexandru Stănescu seek to educate us on the benefits of Romanian tax treaties with their piece “Romanian Holding Companies as Investment Vehicles for Latin American Investments Into the United States and the European Union.”

This edition of *ILQ* then presents a special excerpt submitted by Anna Tumpovisky and Kendall Coffey highlighting efforts of the Russian American Bar Association to help Ukrainian refugees here in South Florida. It also features a “Quick Take” article from FIU law student Javier Ortiz, entitled “Arbitrating the War: Ongoing Russian Energy Disputes in the Baltics.”

As usual, we also present the ILS Section Scene and World Roundup in this edition, permitting our readers to stay up-to-date on other events occurring around the world outside of our region of focus. We are proud to announce that this edition’s World Roundup features legal updates from Australia, the Caribbean, China, India, Latin America, the Middle East, North America, Thailand, and Western Europe.

As a final note, this Fall 2022 *ILQ* is the first in which we are proudly serving as your co-editors-in-chief. We are truly excited and honored to bring you this edition and future editions of *ILQ* as we move forward into 2023. We hope you are able to gain important knowledge from reading these timely articles, and we look forward to continuing to bring you important international content in the months ahead.

Best regards,

Jeffrey S. Hagen
Neha S. Dagley
 Co-Editors-in-Chief

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April 8, 2022

**Statement of The Florida Bar International Law Section
Condemning the Invasion of Ukraine**

On this the 31st day of March, 2022, The Florida Bar International Law Section hereby states:

The Florida Bar International Law Section was founded in 1981 to provide an organization for members of The Florida Bar in good standing who have an interest in the field of international law. It is also a forum for the sharing of knowledge, experience, and “best practices” that may improve the administration and application of the statutes, rules, regulations, and the most fundamental precepts of international law including the recognition of and respect for basic human rights, the rule of law and sovereignty. As such, the Florida Bar International Law Section unequivocally condemns in the strongest terms possible the invasion of Ukraine by Vladimir Putin’s regime in Russia.

International law, as expressly recognized by the laws of the United States and the State of Florida, as well as the United Nations’ charter, is clear that a territory may only change hands with the consent of its own people and not as the result of the use of force and violence against those people by another country, except under the most limited of circumstances, none of which exist today in Russia or which could justify the attack on Ukraine by the Russian Army as ordered by Vladimir Putin.

The ILS hereby confirms that this Statement is made solely by the ILS and supported by the separate resources of this voluntary organization, and not in the name of The Florida Bar.

Respectfully submitted on behalf of the Executive Council of the Florida Bar International Law Section,

Very truly yours,

James M. Meyer,
ILS Chair, 2021-2022

Transactions Affected by the Russian/ Ukrainian Conflict Since 2014

By Lyubov Zeldis, Fort Lauderdale



In 1989, seeking asylum, I immigrated to the United States from a country that no longer exists, the Soviet Union.

At that time and for a number of years thereafter, when Americans asked me where I was from, to avoid a long explanation or a history lesson, I would simply reply, “Russia.” This was a common response of émigrés from the former Soviet Union. Regardless of what part of the Soviet Union we came from (I was born in and came from the republic of Moldova), many of us referred to ourselves as “from Russia,” and in return, received warm and curious responses from most Americans. We were associated with the great achievements Russia was known for: Dostoyevsky’s writings, Tchaikovsky’s music, the Bolshoi Ballet, the arts, the architecture of St. Petersburg, etc. Many of us felt proud to have that connection.

No longer.

No longer does “I am Russian” receive a warm response, and no longer can we feel proud to be associated with the Russian Federation (Russia) and its regime.

The purported annexation of Crimea, Ukraine in March

2014 and certainly the invasion of Ukraine on 24 February 2022 changed the way the democratic world, and the United States in particular, feels about Russia.

This article provides a brief summary of the types of transactions affected, since 2014, by the Russian/Ukrainian conflict and references resources that may be helpful to legal practitioners in navigating the rapidly evolving regulatory framework. The article focuses mainly on the effects of the economic and trade sanctions administered and enforced by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC). The article does not intend to be and is not a detailed summary of all laws, regulations, and export controls implemented as a result of the invasion of Ukraine. Rather, it is meant to help legal practitioners and businesses to identify whether their transactions with Russia, Belarus, or Ukraine may be prohibited under the imposed sanctions, the extent and scope of the restrictions, and whether a license may be required. Review and analysis of the pertinent regulations to each situation will be necessary to determine specific restrictions and licensing requirements.

Transactions Affected by the Ukrainian Conflict Since 2014, continued

My First Experience With Russian/Ukrainian Sanctions

Since the collapse of the Soviet Union, many U.S. companies in various industries have participated in trade with Russia. As recently as 2019, U.S. goods and services trade with Russia totaled an estimated US\$34.9 billion, with exports totaling US\$10.9 billion and imports totaling US\$24.0 billion. The U.S. goods and services trade deficit with Russia was US\$13.1 billion in 2019.¹

In July 2014, during my engagement in an exciting and complex transaction between a U.S. public company and an entity in Russia, the Russian entity was added to the Specially Designated Nationals (SDN) List. Needless to say, the work stopped instantaneously. At that time, the Russian/Ukrainian sanctions were fresh, the guidance was scarce, and the U.S. individuals and entities engaged with Russia and the former Soviet Union territories navigated with heightened caution. Guidance on proper compliance and the legal framework was very much needed. Now, eight years later, the U.S. government, through its agencies including but not limited to OFAC; the U.S. Department of State;² the U.S. Department of Commerce, Bureau of Industry and Security (BIS);³ the U.S. Department of State, Directorate of Defense Trade Controls (DDTC);⁴ and the U.S. Securities and Exchange Commission,⁵ provides guidance and resources for those who may be impacted by the Ukrainian/Russian conflict.

Genesis of the Russian/U.S. Sanctions

The Ukraine/Russia-related sanctions program, implemented by OFAC, commenced on 6 March 2014, when President Obama, in Executive Order (EO) 13660 declared a national emergency to deal with the threat posed by the actions and policies of certain persons who had undermined democratic processes and institutions in Ukraine; threatened the peace, security, stability, sovereignty, and territorial integrity of Ukraine; and contributed to the misappropriation of Ukraine's assets.⁶

In further response to the actions and policies of the government of the Russian Federation, including the purported annexation of the Crimea region of Ukraine, President Obama issued three subsequent EOs that

expanded the scope of the national emergency declared in EO 13660. Together, these orders authorized, among other things, the imposition of sanctions against persons responsible for or complicit in certain activities with respect to Ukraine, against officials of the government of the Russian Federation, against persons operating in the arms or related materiel sector of the Russian Federation, and against individuals and entities operating in the Crimea region of Ukraine. EO 13662 authorized the imposition of sanctions on certain entities operating in specified sectors of the Russian Federation economy. EO 13685 also prohibited the importation or exportation of goods, services, or technology to or from the Crimea region of Ukraine, as well as new investment in the Crimea region of Ukraine by a U.S. person, wherever located.

Affected Transactions

The affected transactions most often fall within one of three categories: (1) blocking sanctions, (2) sectorial sanctions, and (3) trade embargo.

Blocking Sanctions

Unless otherwise authorized or exempt, transactions by U.S. persons (or within the United States) in the property or interests in property of an entity or individual listed on OFAC's SDN List are prohibited. The property and interests in property of an entity that is 50% or more owned by individuals whose property and interests in property are blocked pursuant to any part of 31 C.F.R. chapter V are also blocked, regardless of whether the entity itself is listed.⁷

On 24 February 2022, the U.S. government imposed correspondent and payable-through account (CAPTA) sanctions on SberBank and its subsidiaries. SberBank is one of the largest banks in Russia.⁸

Sanctions were announced on 22 February 2022, pursuant to EO 14024 of 15 April 2021 "Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation," and on 24 February 2022, OFAC blocked transactions with the following Russian banks:

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International Arbitration Disputes Involving Sanctioned Russian Parties

By Anna V. Tumpovskiy, Miami, and Ilya V. Nikiforov, Saint Petersburg, Russia



In response to Russia's military operation in Ukraine, the European Union, the United Kingdom, the United States, Canada, Singapore, and Japan enacted unprecedented and complex sanctions against Russia and Belarus. These measures included freezing of assets of certain companies and individuals; prohibiting certain transactions with various entities; restricting imports of Russian gas, oil, and coal, as well as new investments in such industries; and banning Russia's major financial institutions.

Russia enacted its own countermeasures to contain the effects of the restrictions and to provide means for continuing business in light of being cut off from a main financial artery of the world.¹ Russia is an important exporter of natural resources, and experts are now saying that the impact of trade sanctions on both Russian and world economies is yet to be fully realized.

Thus far, international businesses conducting transactions with Russian counterparts have been hit the hardest causing a surge in international disputes involving Russian parties or Russian interests. Yet mutual restrictions block access to justice for Russian and Western parties alike.

Arbitration proceedings are stalled for the time being due to compliance requirements of arbitral institutions. Russian parties have struggled to find adequate legal representation, as their counsel dropped them as clients

due to the sanctions being implemented² or sometimes due to self-imposed policy reasons (which act as "self-imposed sanctions").

This article focuses on international arbitration proceedings involving Russian parties, highlights various effects that sanctions might have on these international disputes, and suggests solutions for sustaining access to justice in turbulent times.

Ensuring Due Process Is a Requirement Under the New York Convention

Fiat justitia et pereat mundus (Let justice be done, though the world perish) is an important principle of civil society used by the 16th century ruler, Ferdinand I. The Holy Roman Emperor established this important rule to control the nation in uncertain times, realizing that a just decision should be made no matter the consequences.³

Just and fair proceedings are a pivotal principle of the Convention on Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Article V(1)(b) of the New York Convention provides that "Recognition and enforcement of the award may be refused, at the request of the party against whom it is invoked" if the party shows that he "was otherwise unable to present his case . . ."⁴ In the matter *Gol Linhas Aereas S.A v. MatlinPatterson Global Opportunities Partners (Cayman) II L.P.*, a Cayman

International Arbitration Disputes Involving Sanctioned Russian Parties, continued

court recently decided that, in principle, a tribunal should not reach its decision based on an issue that a party has had no opportunity to address, noting that there are basic minimum requirements that generally are regarded throughout the international legal order as essential to a fair hearing.⁵

After the invasion of Ukraine, some lawyers dropped their Russian clients in the midst of proceedings based solely on the fact they were Russian, or refused representation altogether. In some instances, lawyers claimed they foresaw difficulties in obtaining payment. In others, law firms adopted “no Russian clients” policies. As a result, many Russian parties have been unable to present their case in court or in arbitration.

In a recent case, Russia challenged a tribunal that refused to grant a temporary stay to provide time to find reputable counsel and new experts after Russia’s counsel and experts resigned citing the conflict in Ukraine as their reason. While the tribunal granted a three-week adjournment for the quantum hearing, Russia argued this timeframe was “unrealistic to the point of dissimulation.”⁶ The tribunal refused to grant a six-month stay, and Russia challenged the tribunal on the grounds of a lack of impartiality. The appointing authority at the Permanent Court of Arbitration dismissed Russia’s challenge of the tribunal at this stage.⁷ It is yet to be seen how this challenge will play out during enforcement or set aside proceedings. This case shows that ignoring the principle of equal access to justice and not providing a temporary stay of proceedings might prompt a slew of challenges and raise costs for both parties, as well as result in an unenforceable award.

The problem is not novel. Four decades ago, in 1980, a Hague Convention on International Access to Justice (the Convention) was adopted under the auspices of the United Nations.⁸ Its purpose is to ensure that the mere status as an alien or the absence of residence or domicile in a Contracting Party are not grounds for discrimination with regard to access to justice. The Convention provides for nondiscrimination with respect to legal services, including the provision of legal advice, security for costs, copies of entries and decisions, and physical detention and safe conduct. The Convention has twenty-eight member

states; however, neither the United States nor Russia are participating states.

Until the Convention is ratified by the United States, it is up to the legal community itself to follow its high ethical standards in avoiding discrimination and prejudice. In 2022, many professional services firms adopted “self-imposed sanctions.” A list maintained by a research team from Harvard Law School, Stanford Law School, and Yale Law School, and students from the Cambridge Law Society highlights the AmLaw 100 and UK 100 firms that have made statements falling under two categories: (1) not doing business with government or sanctioned firms and (2) not doing business with Russia^{9,10}. The latter approach is particularly alarming. It is exemplified by statements such as “we will no longer accept new instructions from Russian clients, sanctioned or not”¹¹ and “we have taken a policy decision to not act for any new or existing Russian clients, Russian state-owned entities or individuals identified as having close connections to President Putin, whether or not they are subject to sanctions, and wherever they are.”¹²

Leaders of the “Law Firms and Russia Profits” project believe that law firms can and “should turn down all new pro-Russian business.”¹³

We submit to the contrary that a “no service to Russians” policy goes against ethics rules of the legal profession. Locally in Florida, Florida Bar Rule 4-8.4(d) prohibits discrimination based on national origin. The American Bar Association rates discrimination as “professional misconduct.”¹⁴ Fundamental international and national legal norms universally denounce discrimination including Article 7 of the Universal Declaration of Human Rights and Title VII of the Civil Rights Act. We appeal to attorneys and umpires not to succumb to cancel culture, to uphold professional ethical standards, and to refrain from stereotypes and discrimination, especially when it comes to handling international proceedings.

Properly Administering Cases Despite Challenges to Ensuring Fairness of Proceedings

As one of the main pillars of the dispute resolution process in private international law, arbitration institutions are

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Effects of Sanctions on the Russian Economy and Energy Revenue

By Jorge Salcedo, Barbara Hernandez, and Juliana Carbonell Lopez, Miami



After Russia invaded Ukraine in February of this year, a multinational collaborative effort ensued to wage maximum pressure on Russia.¹ As Russia's war on Ukraine enters its fifth month, despite the world's collaborative attempts to stop its continuance, there is no apparent end to the invasion in sight or any attempts for amicable negotiations by Russia's President Vladimir Putin.

Months into a series of sanctions on Russia, an assessment of the effectiveness of these measures on the Russian economy is important to determine whether the policy goals have been satisfied or are making satisfactory progress, and also to determine what next steps may plausibly contribute toward the ultimate goal of ending the war.² This article attempts to capture how current sanctions have impacted the Russian economy, the effect of Russia's retaliatory natural gas cutoff on Europe, and what measures may still be necessary to impact Russia's greatest active military funding, the energy sector.

Foreign Policy Measures Against Russia

Authority to Issue Sanctions

Sanctions are penalties imposed by one country on another to halt a specific conduct and to promote change of behavior.³ Sanctions are among the toughest actions

nations can take, short of going to war.⁴ For the U.S. government, sanctions are a tool of first resort to address foreign policy problems.⁵

Sanctions are imposed by the president, by authority granted under the International Emergency Economic Powers Act (IEEPA), passed by Congress in 1977.⁶ Once the president makes an executive order (EO) invoking authority under federal law, then a department or agency within the executive branch carries out the functions.⁷

Enforcement of Sanctions

The U.S. Departments of Treasury, State, and Commerce each have a unit focused primarily on sanctions. At the U.S. Department of Treasury, the Office of Foreign Assets Control (OFAC) is tasked with the primary role in administering and enforcing the sanctions program. The U.S. Department of State's Office of Economic Sanctions Policy and Implementation (SPI) provides foreign policy guidance to the Departments of the Treasury and Commerce on sanctions implementation, and works with Congress to draft legislation that advances U.S. foreign policy goals.⁸ The U.S. Department of Commerce's Bureau of Industry and Security's (BIS) Foreign Policy Division (FPD) is responsible for developing export control policies and issuing export licenses.⁹

Effects of Sanctions on the Russian Economy and Energy Revenue, continued

Current U.S. Sanctions on Russia

The sanctions on Russia relating to its conflict with Ukraine initiated with President Obama's EO 13660 in 2014 and to date continue with EOs issued by President Biden.¹⁰ To quickly recap, a summary of the EOs are noted below.

Beginning with EO 13660, the order authorized sanctions on individuals and entities responsible for violating the sovereignty and territorial integrity of Ukraine, or for stealing the assets of the Ukrainian people. EO 13661 found that the actions and policies of the Russian government with respect to Ukraine—including through the deployment of Russian military forces in the Crimea region of Ukraine—undermined democratic processes and institutions in Ukraine. EO 13662 issued sanctions against certain sectors of the Russian economy such as financial services, energy, metals and mining, engineering, and defense and related material. EO 13685 prohibited exportation, importation, or any new investment in the Crimea region by a U.S. person, wherever located. EO 14065 effectively blocked all property and property interests implicated with Russian security council members and/or enablers of the Russian president, prohibiting the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any blocked person and the receipt of any contribution or provision of funds, goods, or services from any such person. EO 14066 prohibited the importation of crude oil, petroleum energy products, liquefied natural gas, and coal products. EO 14068 prohibited the importation of fish, seafood, alcoholic beverages, and nonindustrial diamonds from Russia.

Recently, in a surprising attempt to take opportunity in difficult situations, some large banks found a loophole in current sanctions and applied maneuvering tactics to continue business dealings with Russia in the secondary market.¹¹ Lawmakers criticized JPMorgan and Goldman Sachs for taking advantage of the conflict, trading Russian bonds that plunged in price amid fallout from the war.¹² Eventually, the U.S. Department of Treasury restricted this secondary market exploitation.¹³ A new ban now prevents investors from buying Russia's debt in the secondary market, attempting to close the loophole.¹⁴

The United States continues its commitment to impose severe restrictions on President Putin and his enablers. The newest rounds of sanctions announced in August by OFAC target Kremlin-connected elites, including a woman identified as President Putin's longtime romantic partner, Alina Kabaeva, an Olympic gymnast; a major multinational company; and a yacht.¹⁵ The U.S. Department of State also recently designated thirty-one individuals and entities for enabling Russia's invasion of Ukraine.¹⁶

Global Commitment to Sanctioning Russia

In response to Russia's unprovoked invasion and in solidarity with Ukraine, a multilateral task force was launched to take concrete actions against Russia.¹⁷ The Group of Seven, namely the richest economies in the world, the United States, Canada, Japan, Germany, France, Italy, and Britain, the "G7" nations, recently met in Germany and joined in banning the import of Russian gold, a major revenue for Russia. This collective measure aims to "starve" Russia of tens of billions of dollars.¹⁸ A deep recession is foreseeable for Russia's economy, expected to shrink by 10% by the end of 2022.¹⁹

Russia's Retaliatory Sanctions

In retaliation, by decree Russia has responded in kind with its own economic sanctions, prohibiting its exportation of products and raw materials to certain people and entities. Russia believes these sanctions are appropriate as a means of protection against aggressive measures by other countries as they believe sanctions are a weapon for geopolitical control.²⁰

Under pressure from investors and consumers, large corporations have also decided to cut ties with Russia, but the Russian government has taken retaliatory measures. McDonald's, the world's leading food service retailer, announced on 8 March 2022 its exit from Russia after operating for over thirty years in the country.²¹ Four days after, a Moscow law firm filed an application to trademark a similar logo to the Golden Arches.²² Russia hopes to replace the stores with its own version of the food chain. This attempt to seize trademarks is a tactical strategy by the

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Options for Ukrainian Nationals in the Present Crisis

By Larry S. Rifkin, Miami



On 24 March 2022, one month after the Russian invasion of Ukraine, Osnat Lubrani, the United Nations resident and humanitarian coordinator in Ukraine, stated that “the war has caused the fastest and largest displacement of people in Europe since World War II.”¹ According to the U.N. High Commissioner for Refugees (UNHCR), as of 5 July 2022, the war in Ukraine has displaced more than 7.1 million people within the country this year and more than 5.6 million refugee movements from Ukraine have been recorded.² The UNHCR has declared Ukraine a Level 3 emergency—the highest level the agency has.³ In response to this humanitarian crisis, President Biden’s administration and the Department of Homeland Security (DHS) are providing support and immigration relief to Ukrainian nationals fleeing the Russian invasion both in the United States and abroad. These measures include designating Ukraine for Temporary Protected Status, announcing the Uniting for Ukraine humanitarian parole program, and expediting immigrant visa petitions and immigrant visa processing for Ukrainian family members of U.S. citizens. This article will discuss each of these options to explain who may benefit from these measures, the application process, and the benefits provided by each measure.

Temporary Protected Status

On 3 March 2022, citing to Russia’s premeditated and unprovoked attack on Ukraine resulting in an ongoing war and senseless violence, DHS Secretary Alejandro Mayorkas announced the designation of Ukraine for Temporary Protected Status (TPS) for 18 months, effective 19 April 2022.⁴ Congress established the TPS program as part of the Immigration Act of 1990 to provide humanitarian relief to foreign nationals whose countries were suffering from environmental (natural) disasters, ongoing armed conflict, or extraordinary and temporary conditions that render the country in question unsafe.⁵ TPS provides employment authorization,⁶ travel authorization with permission,⁷ and a stay of deportation to foreign nationals from the designated country.⁸ Thus, upon approval, nationals of Ukraine will be eligible to live and work in the United States until 19 October 2023 and perhaps even longer if the TPS designation for Ukraine is extended. The authority to grant a country TPS designation is held by the secretary of homeland security, who can extend it indefinitely if they determine that the conditions in the country prevent individuals from returning home safely.⁹ An

Options for Ukrainian Nationals in the Present Crisis, continued

initial designation period for a given country lasts between six and eighteen months.¹⁰ At the conclusion of the TPS designation, if it is not renewed, TPS beneficiaries return to the immigration status they held prior to receiving TPS.¹¹ DHS estimates that approximately 59,600 individuals may be eligible for Ukrainian TPS relief.¹²

Eligibility for TPS for Ukrainian Nationals

Evidence of Nationality. The registration period for nationals of Ukraine (or persons without nationality who last habitually resided in that country) to apply for TPS runs from 19 April 2022 to 19 October 2023.¹³ To register for TPS based on the designation of Ukraine, applicants must submit Form I-821, Application for Temporary Protected Status, and pay the filing fee or request a fee waiver by submitting Form I-912, Request for Fee Waiver.¹⁴ Applicants must provide evidence of their Ukrainian nationality in conjunction with the immigration form. The primary evidence that the U.S. Citizen and Immigration Services (USCIS) accepts are the applicant's passport, the applicant's birth certificate accompanied by government-issued photo identification, a national identity document bearing the photograph and/or fingerprint of the applicant, and any other documents issued by the country's embassy or consulate in the United States.¹⁵ If the applicant does not have any primary evidence available, then they must provide an affidavit with proof of unsuccessful efforts to obtain the primary evidence documents along with secondary evidence, such as a baptismal certificate, copies of school or medical records, other immigration records from their home country, or affidavits from friends and family attesting to the applicant's nationality.¹⁶

Continuous Physical Presence and Residence

Requirements. In addition, applicants for Ukrainian TPS must establish continuous residence in the United States since 11 April 2022 and continuous physical presence in the United States since 19 April 2022.¹⁷ Evidence to establish continuous residence and physical presence may consist of passport entries; employment records; recent receipts; utility bills; school records; hospital or medical records;

attestations by churches, unions, or other organizations; money order receipts; birth certificates of children; bank books with dated transactions; tax receipts; insurance policies; or any other relevant documentation.¹⁸

There is an exception to the continuous physical presence and residence requirements for TPS applicants if the absence from the United States during the requisite period was "brief, casual, and innocent."¹⁹ In order to qualify for the exception, the absence must be of short duration, not be the result of an order of deportation or voluntary departure, and the purposes of the absence from the United States or actions while outside the United States must not have been contrary to law.²⁰ The Administrative Appeals Office (AAO), in an unprecedented decision issued on 24 June 2013, held that an applicant's visit to Haiti for his father's funeral and subsequent four-month absence from the United States taking care of his father's affairs abroad was not of short duration, thereby disqualifying the applicant from TPS relief.²¹ In a non-precedent decision dated 19 May 2015, the AAO held that an applicant's two and one-half month absence from the United States to visit his severely ill mother was brief, casual, and innocent.²²

Ineligibility for TPS

An applicant who has been convicted of any felony or two or more misdemeanor offenses is barred from consideration for TPS.²³ A *felony* is defined as a crime committed in the United States that is punishable by imprisonment of more than one year.²⁴ A *misdemeanor* is defined as a crime committed in the United States, punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any.²⁵ For purposes of TPS, an offense punishable by a maximum of five days or less does not qualify as a misdemeanor.²⁶ The applicant must also not come within the bars to asylum (persecution of others, conviction of a particularly serious crime, commission of a serious nonpolitical crime outside the United States, or being a security threat to the United States) in order to qualify for TPS.²⁷

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Romanian Holding Companies as Investment Vehicles for Latin American Investments Into the United States and the European Union

By Daniel F. Vişoiu and Alexandru Stănescu, Bucharest



Background

Romania has been a European Union (EU) member state since 2007, and a member of the North Atlantic Treaty Organization (NATO) since 2004. As such, Romania is generally considered to be a low-political-risk jurisdiction. The country has also become an increasingly attractive foreign investor destination due to the implementation in 2014 of a holding company tax regime.¹ Likewise, Romania has had a long-standing commercial relationship with the United States, with the double-taxation avoidance treaty (double-taxation treaty) between the United States and Romania dating back to 1974 (U.S.-Romania Tax Treaty). Overall, Romania has entered into more than eighty-eight double-taxation treaties.²

On the other hand, most Latin American countries do not have such an extensive network of double-taxation treaties. Perhaps most importantly, the largest Latin American economies, such as Brazil, Argentina, Chile,³ Colombia, and Peru, have not entered into a double-taxation treaty with the United States.⁴ With respect to the EU and its twenty-seven member states, the above-mentioned Latin American

countries have generally entered into double-taxation treaties with only a handful of large-economy EU member states, such as Belgium, Spain, France, and Italy.⁵

Consequently, from a double-taxation point of view, Romania is an attractive jurisdiction for Latin American investors desiring to invest in the United States and the European Union, the primary reason being that the U.S.-Romania Tax Treaty is a so-called old-style double-taxation treaty since it does not contain a “limitation on benefits” provision, thus allowing nonsignatories to benefit from this treaty.⁶

Limitation on Benefits Provisions

A limitation on benefits (LOB) provision generally is intended to limit the benefits of a particular double-taxation treaty to bona fide residents of the respective treaty countries. In short, an LOB provision is intended to prevent residents of a third nontreaty country from inappropriately using a legal entity that is resident or domiciled in one of the respective treaty countries as a conduit to obtain benefits from the respective double-taxation treaty.⁷ For example, corporate residence is

Romanian Holding Companies as Investment Vehicles, continued

generally based upon the jurisdiction of incorporation. Nonetheless, this general rule does not prevent a resident of a nontreaty jurisdiction from incorporating in a treaty state in order to obtain treaty benefits through the incorporated entity.⁸ What an LOB treaty clause does is to set forth objective anti-treaty-shopping provisions that would prevent a resident of a nontreaty jurisdiction from receiving benefits under a tax treaty even if that nontreaty resident incorporated a legal entity in a treaty jurisdiction. In other words, LOB provisions set forth a number of tests to ensure that a proper nexus exists to justify conferring treaty benefits.⁹

Specifically, the U.S. Internal Revenue Service (IRS) describes an LOB clause as

... an anti-treaty shopping provision intended to prevent residents of third countries from obtaining benefits under a [double-taxation] treaty. Residents of a country whose income tax treaty with the United States contains a “Limitation on Benefits” article are eligible for benefits only if they satisfy one of the tests under the Limitation on Benefits article. Residents who are individuals of one of the Contracting States or political subdivision thereof are generally not affected by the Limitation on Benefits article. *Residents of a country whose income tax treaty with the United States does not contain a Limitation on Benefits article do not need to satisfy these additional tests.*¹⁰ [emphasis added]

Consequently, all modern U.S. double-taxation treaties contain an LOB article, based on the U.S. Model Income Tax Convention and its Article 22 (Limitation on Benefits), with the latest version published in 2016.¹¹ The IRS has also issued so-called technical explanations that address and provide additional details with respect to the U.S. Model Income Tax Convention’s articles.¹²

Therefore, the lack of an LOB clause in the U.S.-Romania Tax Treaty provides the opportunity to maximize the vehicle structure of Latin American investments into the United States and the European Union. In other words, this treaty remains a “carve-out” in terms of the large number of double-taxation treaties concluded by the United States

that contain LOB clauses for the main purpose of ensuring that the beneficial interest owned in the business/corporate vehicle is substantial, and not just a form of tax avoidance. Regarding Romania’s growing reputation as a holding company jurisdiction, it is also important to note that Romania has concluded substantially more double-taxation treaties than the United States.¹³

Romanian Holding Company Regime

Pursuant to Romania’s introduction of its holding company regime in 2014, generally this allows for the tax exemption of dividend income, capital gains, and liquidation proceeds derived from local or foreign subsidiaries, under certain conditions. These conditions are commonly known as a participation exemption¹⁴ regime, which requires, for example, that a holding company has owned at least 10% of the share capital of the respective subsidiary for a minimum uninterrupted interval of one year as of the date on which the income at issue was derived from its subsidiary.¹⁵ In addition, the Romanian participation exemption regime is not subject to any active business test¹⁶ and does not require any specific company status,¹⁷ as is generally the case relating to holding company legislation in other EU member states, such as The Netherlands.¹⁸ Romania is also widely considered to be a low-tax jurisdiction, especially within the EU, with a corporate tax rate of 16%¹⁹ and a personal flat tax rate of 10%.²⁰

Further, as an EU member state, Romania has transposed the EU Parent-Subsidiary Directive on the Common System of Taxation Applicable in the case of Parent Companies and Subsidiaries of Different Member States (EU Parent-Subsidiary Directive)²¹ into its tax legislation. This directive, among others, exempts dividends and other profit distributions from the withholding taxes paid by EU-based subsidiaries to their EU-domiciled parent companies. The main requirement for the application of the EU Parent-Subsidiary Directive is that the parent company has a minimum shareholding of 10%²² that has been held for at least a continuous period of twelve months prior to the dividends’ payment date.²³

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Russian American Bar Association of Florida's Efforts to Help Ukrainian Refugees

By Anna V. Tumpovskiy and Kendall Coffey, Miami



Russian American Bar Association of Florida Hosts Events to Assist Ukrainian Refugees

On 24 February 2022, the world awoke to the news of Russia's invasion of Ukraine amid rapid escalation of the Russia-Ukraine conflict when Russia's demands for "border safety" and Ukrainian "neutrality" (i.e., ineligibility to join NATO), as well as recognition of Donetsk and Luhansk as independent states were not satisfied by its neighboring state of Ukraine. According to a United Nations report, nearly 12 million people have fled Ukraine to neighboring Russia (1,412,425), Poland (1,194,642), Germany (867,000), Czech Republic (382,768), Italy (141,562), Moldova (82,700), Romania (83,321), and Slovakia (79,770).¹ The United States has opened a Temporary Protective Status (TPS) program allowing Ukrainian citizens to overstay their visas and not return to Ukraine. Furthermore, more than 71,000 Ukrainians arrived in the United States since President Biden announced in March that his administration would welcome up to 100,000 Ukrainians, according to new data from the U.S. Department of Homeland Security.²

While the war has caused many to believe that Russians and Ukrainians are mortal enemies, the truth is that most Russian and Ukrainian families are intertwined—sharing bloodlines, cultural roots, cuisine, and history. Similarly, in the United States, Russian-speaking communities include

a mix of Ukrainians and people from former Soviet Union/ USSR countries going to the same churches, Eastern European grocery stores, Russian-speaking schools and kindergartens, musical concerts performed by visiting Russian and Ukrainian artists, and working together shoulder-to-shoulder on common goals.

Locally, in Florida, attorneys working with Russian-speaking clients united five years ago to create a voluntary bar organization known as RABA (Russian American Bar Association of Florida). RABA consists of lawyers with different backgrounds united by the same cause: to provide professional and ethical legal services to their clients in the Russian-speaking community.

When the news broke about Ukrainian refugees needing legal assistance, RABA was at the forefront of developing events and other opportunities to inform Ukrainian refugees of their legal options and opportunities in the United States free of charge. RABA's own chairwoman of ethics, Irina Shabetayev, Esq., has dedicated over twenty hours to making presentations on immigration law in the United States. This initiative was made possible by the support of the City of Sunny Isles and, in particular, Mayor Dana Goldman, Esq., and Sylvia Flores, director of the Cultural and Community Service Department. RABA and

Russian American Bar Association of Florida's Efforts to Help Ukrainian Refugees, continued



the City of Sunny Isles held three joint events in 2022: two in March pertaining to TPS applications that, if approved, allow Ukrainian citizens to stay and work for at least eighteen months and one in July informing them of the program Uniting for Ukraine (UFU). UFU allows Ukrainian citizens to come to the United States under a renewable “humanitarian parole” for an initial period of two years. Ukrainian parolees will be eligible for employment authorization and Social Security numbers, as well as refugee resettlement benefits.

RABA, with the support of the City of Sunny Isles, helped hundreds of refugees by keeping them informed of their immigration options. It is important to note that despite minor setbacks, these events went smoothly thanks to the professionalism and expertise of the lawyers and government officials involved. The fact that the Russian-speaking community came together united by a great cause instead of separating itself into different camps of Russians or Ukrainians or Byelorussians should be recognized. Along with helping to achieve the paramount goal of helping refugees, by working together Ukrainian-Americans, Russian-Americans, and other colleagues are sending a strong message of unity even when their countries of origin are in the midst of a war.

Attorneys have a special duty to rise above differences that might separate people and to oppose stereotypes that wrongly associate ancestry with the current geopolitical strife. Discrimination is anathema to our profession. If

perpetrated by lawyers, it violates the ethical rule of Florida Bar Rule 4-8.4(d) as well as the model rules of the American Bar Association, which condemn discrimination as “professional misconduct.”³ Fundamental legal norms also condemn discrimination, including Article 7 of the Universal Declaration of Human Rights and Title VII of the Civil Rights Act. Despite Hollywood’s sometimes egregious unfairness in its use of stereotypes,⁴ the values of our professions and our laws reject false images and call upon lawyers to actively oppose any form of invidious discrimination.

There is much work to do in the never-ending battle against



Russian American Bar Association of Florida's Efforts to Help Ukrainian Refugees, continued

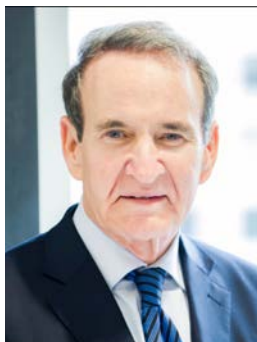


ignorance and stereotypes. But, by working together, lawyers in our community have sent an important message that they are fully committed to meeting this challenge.



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QUICK TAKE

Arbitrating the War

By Javier J. Ortiz, Miami

On 24 February 2022, Russian President Vladimir Putin launched a full-scale invasion of Ukraine. The violence initiated by Russia's despot triggered an immediate response from the world that has varied in significance from pouring vodka (often not Russian) down drains to the exodus of multinational corporations from Russia.

Most relevant to our discussion are the West's sanctions prohibiting transactions with the Bank of Russia and the freeze on the bank's foreign currency reserves.¹ Among the most affected by the prohibition is the oil and gas industry, as large euro payments for oil and gas would fall within the jurisdiction of EU-operated payment systems used by central banks.² Such systems are authorized to freeze any euros paid to Moscow, thus making the euros inaccessible.

To avoid this, Putin has demanded that gas exports to Europe be paid in rubles, Russia's national currency.³ Putin's decree requires gas importers to create a ruble and foreign currency account with Gazprombank, the financial arm of state-owned Gazprom. Importers deposit euros into their foreign currency account for the purchased gas. Given the sanctions, those funds are immediately frozen but remain in a Gazprombank account. Then, using the frozen euros as collateral, Gazprombank borrows rubles from the Bank of Russia on the importer's behalf. The rubles are transferred to the importer's ruble account and then withdrawn by Gazprom. The restored flow of rubles allows the Kremlin to finance its domestic expenses and the Ukrainian war.⁴ Unsurprisingly, energy companies have adopted the system to avoid an energy crisis. To date, around half of Gazprom's clients have opened ruble accounts.⁵ Consequently, the ruble's value has risen to its prewar margins after losing 30% of its value against the U.S. dollar.⁶

Still, not all importers have cowered to Moscow's demands. Bulgarian and Polish companies have refused the new term, leading Moscow to cut off gas to both countries.⁷ Finland's state-owned Gasum Oy (Gasum) has also rejected Putin's new plan. Gasum is the first to initiate arbitration proceedings against Gazprom over the policy.⁸

Most European supply contracts are denominated in euros and do not require the creation of ruble accounts. The



additional obligations imposed on Gasum by the mandate breach the express contract terms; however, Gasum's case is not as straightforward as it seems. Although Gasum must create a ruble account, does it really pay in rubles? Once an importer deposits its euro payment into its foreign currency account, the importer's performance, in practice, ends. Gazprom—not the importers—secures the rubles and transfers them as needed. Gazprom is the party burdened with additional performance. Thus, there's an argument for no breach.

Yet, Gasum is still not obligated to create the ruble account, which Gazprom can argue contradicts emerging industry practice. The EU Council has not condemned the new system as a breach of sanctions, and some EU member states have publicly supported the measure.⁹ Several importers argue that their initial payments in euros, regardless of the ruble account, comply with EU regulations and preexisting supply contracts. Putin's plan is quickly becoming the established industry practice, a point in favor of Gazprom. Gazprom has also declared force majeure on other supply contracts.¹⁰ It can argue that unforeseeable sanctions rendered the Gasum contract inoperable. A tribunal may disagree because Gazprom is partly responsible for the war.¹¹ Gazprom's last (or first) defense could be to seek an antisuit injunction in the Russian courts. Russian law broadly relieves a sanctioned party, like Gazprom, from participating in international arbitrations. If the arbitration continues after injunctive relief is granted, Russian courts can award the sanctioned party a sum equal

Quick Take, continued

to that awarded by a tribunal to the claimant plus legal costs,¹² thereby nullifying the claimant's award. Whether Gazprom initiates domestic proceedings remains to be seen, but it is a worthwhile option for Gazprom. Other considerations like additional contract terms, arbitrators, and institutional rules can affect the outcome of the arbitration. Nonetheless, at this stage, either party can prevail.



Javier J. Ortiz is a native Miamian and third-year law student at Florida International University College of Law. His interests are varied and include international commercial arbitration, military law, and legal history. He can be contacted on LinkedIn or at javierjoseortiz@outlook.com.

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WORLD ROUNDUP

AUSTRALIA



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Australia's environment faces further decline from amplifying threats, prompting new policies and laws.

In 2021 Australia ranked last for climate action out of nearly 200 countries in a report assessing progress toward global sustainable development goals. The Sustainable Development Report 2021 scored Australia last out of 193 United Nations member countries for action taken to reduce global greenhouse gas emissions. A database in that report shows Australia received a score of just 10 out of 100 in an assessment of fossil fuel emissions, emissions associated with imports and exports, and policies for pricing carbon.

A 2,000-page report called State of the Environment, commissioned by the government, found nineteen ecosystems are on the brink of collapse. There are now more non-native plant species in Australia than native ones. Australia has lost more species to extinction than any other continent.

Climate Change Bill 2022 passes Australia House of Representatives.

Australian Prime Minister Anthony Albanese has announced more ambitious climate targets for Australia, to bring the country more in line with other developed economies and the Paris climate accord commitments. The bill will enshrine into law an emissions reduction target of 43% from 2005 levels by 2030 and net zero emissions by 2050. Australia is one of the world's highest per capita carbon emitters, and therefore, as it relates to electricity, the bill will encourage the additional generation of electricity from renewable sources, reduce emissions of greenhouse gases in the electricity sector, ensure that renewable energy sources are ecologically sustainable, and contribute to the achievement of Australia's greenhouse gas emissions reduction targets.

The world's largest majority Indigenous-owned renewable energy company reduces reliance on diesel fuels.

Major fossil fuel companies in Australia are decarbonizing their operations while Indigenous-led renewable energy company Desert Springs Octopus (DSO) provides an avenue for Indigenous communities to reduce their reliance on high-polluting diesel fuels as a source of electricity while

leading the way toward a sustainable renewable energy future for all Australians.

In addition to lighting the way for Indigenous communities, DSO will focus on promoting a range of renewable energy projects, hydrogen production, new water infrastructure, agricultural production, and energy for mining, as well as grid and transmission build-out in northern Australia.

Octopus Australia, which has so far invested more than AUD\$1 billion in Australian renewables, said it sees DSO as an AUD\$50 billion investment opportunity over the next ten years.

Donald Betts, Jr., is a corporate lawyer at Australia's first national majority owned Indigenous law firm, Jaramer Legal (Norton Rose Fulbright joint venture). He specializes in commercial transactions, corporate advisory, and corporate structuring in relation to community modelling, capacity building, and infrastructure projects in the energy and agriculture sectors. Mr. Betts is a former Kansas state senator and U.S. congressional candidate. He is cofounder and president of the North American Australian Lawyers Alliance (NAALA) and a director at Desert Springs Octopus.

CARIBBEAN



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The United Kingdom's Economic Crime Act comes into force.

The United Kingdom's Economic Crime (Transparency and Enforcement) Act (the Act) came into force on 15 March 2022. Under the terms of the Act, a new Register of Overseas Entities will be created and held by Companies House. This new Act forms part of the UK government's strategy to combat economic crime while encouraging legitimate businesses to continue to see the UK as a great place to invest.

What does this mean?

The new register will require overseas entities that purchased any UK land (which for the avoidance of doubt includes all residential, commercial, or agricultural property) on or after 1 January 1999 to declare its beneficial owners or managing officers. Overseas entities will not be able to buy, sell, transfer or lease land, or create a charge against the land in the UK unless they have registered with Companies House.

What is an overseas entity?

An overseas entity is any legal vehicle that is governed by

the law of a country or territory outside of the UK (e.g., British Virgin Islands, Bahamas, Belize, Panama, Cayman Islands, Guernsey, Barbados, etc). This includes IBCs, private foundations, LLPs, and other non-UK partnerships with a legal personality.

What do you need to do?

You will need to provide basic details about the overseas entity and deliver one of the following three statements about its registrable beneficial owners and the required information for that statement:

1. That the entity has identifiable beneficial owners and can provide information about those owners;
2. That the entity has no reasonable cause to believe that there are registrable beneficial owners and will provide information about the managing officer of the entity. This only applies if you do not believe that there are registrable beneficial owners. If they meet the requirements of being a registrable beneficial owner, then their details must be provided; or
3. That the entity either has a beneficial owner that it cannot identify or is unable to provide the required information about a beneficial owner and will provide information about the managing office of the entity or as much information as has been obtained about the beneficial owners.

What will happen to the information?

It will be published on the Register of Overseas Entities and you will receive an Overseas Entity Identification Document (ID). You will need this ID to deal with any registered property in the UK.

Annual renewal is mandatory.

To maintain a valid Overseas Entity ID you will need to comply with updating obligations, which include reconfirming the required information and statements to Companies House at least every twelve months.

When is the deadline?

There will be a short transition period of six months from the commencement date under the Act. We have not been informed of the commencement date, but we expect it soon, and almost certainly during 2022. This six-month period will not begin until the new register has been launched (and we don't have a date for that yet). Overseas entities acquiring land after the register has been launched will need to register with Companies House immediately.

What if you do not comply?

Criminal sanctions may apply, with fines ranging up to US\$3,000 per day for failing to update the register.

Sanctions include unlimited fines and imprisonment of up to five years for making false statements.

Restrictions to sell or mortgage the land or grant a lease will apply. Also, restrictions to buy new property or to become the tenant of a property will apply.

Fanny Evans is a senior associate at Morgan & Morgan and is admitted to practice law in the Republic of Panama. She focuses her practice on corporate services, estate planning, and fiduciary services. Her portfolio of clients include banks and trust companies, family businesses, corporate practitioners, and private clients. From 2011 until mid-2017, Mrs. Evans served as executive director and general manager of MMG Trust (BVI) Corp., the Morgan & Morgan Group's office in British Virgin Islands. Prior to becoming head of the BVI Office, she served as fiduciary attorney in a local firm focusing on corporations and trusts. Mrs. Evans is member of the Society of Trust and Estate Practitioners (STEP). She is fluent in Spanish, English, and Italian.

CHINA



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China's amended Anti-Monopoly Law takes effect.

China's amended Anti-Monopoly Law (AML) took effect on 1 August 2022, updating the original 2008 AML.

The amended law expands the powers of the State Administration for Market Regulation (SAMR), which issued six draft implementation rules in preparation for its extended remit.

SAMR can now require that parties report any transaction that could have an anticompetitive effect, even if the transaction does not reach the turnover threshold that would trigger a mandatory filing. In addition, the amended law significantly increases penalties for violations. Fines may be multiplied up to five times in cases where "the circumstances are particularly serious, the impact is particularly bad, [and] particularly serious consequences are caused." The revamped AML also establishes liabilities on the individuals who negotiate monopoly agreements on behalf of businesses, allowing the regulator to impose fines of up to RMB 1 million on them.

Among the provisions of the amended law that have drawn the most attention are those directed at the digital economy. Under the 2022 version of the AML, operators shall not use data and algorithms, technology, capital advantages, and platform rules to engage in the monopolistic behaviors prohibited by the law. Similarly, the use of these resources to engage in the abuse of a dominant market position is also prohibited.

Authorities strongly enforce Hong Kong National Security Law.

In Hong Kong, authorities have been robustly enforcing both the letter and spirit of the National Security Law (NSL), officially known as the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region. Imposed by the central government in 2020, the NSL has dealt a severe blow to civil liberties in the former British territory. John Lee Ka-chiu, who was sworn in as Hong Kong's chief executive on 1 July 2022, has indicated that one of his administration's priorities will be to enact national security legislation at the local level.

The first person convicted under the NSL, Tong Ying-kit, was sentenced to six and one-half years in prison for waving a flag with the slogan "Liberate Hong Kong, revolution of our times," one of the main rallying cries of Hong Kong's pro-democracy movement. Recently, police warned a shop called Not One Less Coffee that it could be in violation of the NSL for displaying articles bearing other phrases associated with the pro-democracy movement, such as "resist with you, I am very happy" and "without any fear" (the coffee shop's name is itself reference to the pro-democracy movement's "five demands, not one less").

The United Nations Human Rights Committee has called for a repeal of the NSL, considering it incompatible with Hong Kong's obligations under the International Covenant on Civil and Political Rights (ICCPR). Ironically, Article 4 of the NSL requires that the provisions of the ICCPR be protected.

In addition to the NSL itself, Hong Kong authorities have availed themselves of colonial-era sedition offenses not invoked since the 1960's to go after pro-democracy activists. On 5 July 2022, five speech therapists were put on trial for writing "seditious" children's books, which portrayed Hongkongers as sheep under threat by Mainland Chinese wolves. Sedition charges have also been brought against six individuals who clapped during court proceedings against lawyer Chow Hang-tung, herself jailed for organizing unauthorized vigils in remembrance of the victims of the 1989 Tiananmen Square crackdown.

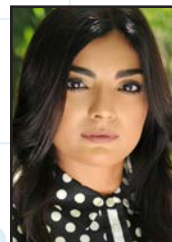
Macau's amended gaming law expands regulatory oversight over casinos.

Another important statute was modified in the Macau Special Administrative Region. On 21 June 2022, the Legislative Assembly voted in favor of Law No. 7/2022, which amends Macau's 2001 gaming law. Boasting China's only legal casinos, the former Portuguese colony has established itself as a true gambling mecca, though COVID-19 pandemic-related travel restrictions have taken a heavy toll on the gaming sector—and with it on Macau's economy, which is highly dependent on casinos for revenues and jobs.

The amended gaming law expands regulatory oversight over casinos, likely reflecting the central government's wishes for tighter controls in historically freewheeling Macau. In line with this, national security threats are now explicitly listed as one of the reasons for cancellation of a casino license. Another important change is the shortening of the validity period for casino licenses from twenty to ten years, with licenses subject to review every three years. Gaming taxes have been increased slightly, from 39% to 40%. Casinos that bring in more foreign visitors may enjoy small tax breaks, in a bid to reduce dependence on Chinese bettors as Beijing cracks down on cross-border gambling activity.

Frederic Rocafort is an attorney at Harris Bricken Sliwoski, LLP, where he specializes in intellectual property and serves as coordinator of the firm's international team. He is also a regular contributor to the firm's China Law Blog. Previously, Mr. Rocafort worked in Greater China for more than a decade in both private and public sector roles, starting his time in the region as a U.S. consular officer in Guangzhou. Mr. Rocafort is licensed in Florida, Washington State, and the District of Columbia.

INDIA



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India unexpectedly withdraws a long-pending data protection bill.

The proposed legislation, Personal Data Protection Bill, 2019, contained strict regulations on data flow across borders and proposed providing the Indian government with certain avenues to seek user data from companies. The legislation was further designed to require companies like Meta and Google to obtain specific permission for use of personal data and simplified the process for any request to erase such data. Certainly not novel, the legislation was similar to steps adopted by other countries in an effort to protect privacy and data of their citizens. Introduced on 11 December 2019, a key feature of the Data Protection Bill was that users' sensitive personal data was required to be stored in India subject to limited exceptions. This proposed requirement presented a critical cost and compliance burden for technology companies.

The withdrawal of the bill on 3 August 2022 came as a surprise. The Indian government cited to complications with the proposed legislation itself, including that it was a bill of ninety-nine sections with eighty-one amendments. According to the government, a new bill will be presented for public consultation. One thing remains clear: India,

being one of the world's fastest-growing economies for new internet users, needs robust protection laws for better safeguarding of its citizens' privacy and data.

Neha S. Dagley is a commercial litigation attorney in Miami, Florida. For the last eighteen years, she has represented foreign and domestic clients across multiple industries and national boundaries in commercial litigation and arbitration matters. A native of Mumbai, Ms. Dagley is fluent in Hindi and Gujarati. She is the cofounder and president of the Australia United States Lawyers Alliance, Inc. (AUSLA), and currently serves as chair of the Asia Committee of The Florida Bar's International Law Section.

LATIN AMERICA



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Brazil enacts new anti-corruption regulation.

On 12 July 2022, the Brazilian Federal Government enacted Decree No. 11,129/2022 (the New Anticorruption Decree), amending the main regulation of the Brazilian Anticorruption Law (Law No 12,846/2013, also named Clean Company Act). The Brazilian Clean Company Act came into force in 2014, bringing similar provisions to the Foreign Company

Practices Act regarding corruption or bribery involving government officials, but with a local application as well.

The New Anticorruption Decree revoked Decree No. 8,420/2015 (Prior Anticorruption Decree) and came into effect on 18 July 2022. The main highlights brought by the New Anticorruption Decree are:

Change in the fine parameters (article 22)

In general terms, the New Anticorruption Decree reduces the percentages considered for the calculation of fines by removing a minimum fine to be applied; however, on a general basis, the New Anticorruption Decree increases the maximum rates of percentages potentially applied.

Monitoring (articles 36 and 51)

The New Anticorruption Decree provides for the direct and/or indirect monitoring by the Brazilian Office of the Comptroller General (CGU) of (1) the commitments undertaken under the leniency agreement and (2) the implementation and improvement of the integrity program, as provided under the leniency agreement.

The Prior Anticorruption Decree did not provide any monitoring, although it was conducted in practice, so the new Anticorruption Decree rightly reflects the local practice.

Penalties for breaching the leniency agreement (article 53)

The New Anticorruption Decree includes specific penalties in case of breach of the terms of the leniency agreement, such as (1) prohibition to enter into a new leniency agreement with CGU for a three-year term, (2) early maturity of the fine installments, and (3) potential application of other penalties that can be established in the agreement.

Possibility of suspending penalties (article 40)

The New Anticorruption Decree includes the possibility of the CGU suspending or replacing penalties imposed in certain circumstances, such as (1) the suspension is beneficial to the Public Administration, (2) there is evidence of good faith by the legal entity, and (3) circumstances exist that may prevent the entity from complying with the leniency agreement (e.g., inability to pay).

Changes in requirements for the compliance program (articles 56 and 57)

- Articles 56 and 57 provide significant changes to what constitutes compliance, including:
 - Inclusion of the requirement to “foster and maintain a culture of integrity within the company’s environment”;
 - In addition to training, the company should adopt “communication actions”;
 - In addition to the establishment of a whistleblower channel, it should provide mechanisms for “handling reports”;
 - In addition to a commitment to undertake risk analysis, it should include “adequate risk management, including its analysis and periodic reassessment” to enable “necessary adaptations to the integrity program and efficient allocation of resources”;
 - Regarding due diligence, in addition to undertaking third-party due diligence, it should include:
 - Due diligence of politically exposed persons; and
 - Performance of due diligence and implementation of procedures to supervise sponsorships and donations.

Evaluation of the integrity program (article 57, § 1)

The New Anticorruption Decree includes as a parameter for evaluating the adequacy of an integrity program, in addition to the total number of employees (i.e., size of the company), (1) revenues (indicating that it should be taken into consideration whether the company is a micro or

small business) and (2) the corporate governance structure (number of departments, structure, and governing bodies, etc.). It also provides a simplified evaluation for micro and small companies.

In a nutshell, the New Anticorruption Decree reflects and formalizes some practices already being introduced by the authorities and the experience they had from more than seven years of the Clean Company Act. Besides, with more flexibility from CGU when entering into leniency agreements, maintaining and fostering a compliance culture gains more importance for companies using their compliance program as a mitigation factor, as the authorities understand that Brazil has matured with respect to compliance and corporate integrity.

Cintia Rosa focuses her practice on internal corporate investigations and compliance matters, leveraging her experience with criminal proceedings and white-collar crime from when she worked at the Brazilian Federal Police. She earned her law degree (LLB) from the Pontifical Catholic University of São Paulo (PUC-SP) and has specialization in compliance from the GV São Paulo Law School.

Rafael Szmid is a dual qualified lawyer (NY/USA and Brazil) with ten-plus years of experience advising clients on anticorruption, antitrust, compliance, and corporate governance matters. He also has experience working at the Brazilian Competition Authority and as a compliance lawyer of a Fortune 100 multinational conglomerate. He holds a Ph.D. from the University of São Paulo, an LL.M. from Stanford Law School, and a Master of the Science of Law from the University of São Paulo. He was a visiting student at the University of Barcelona, Spain.

MIDDLE EAST



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Qatar faces \$6 billion claim.

Qatar is facing a \$6 billion international arbitration claim stemming from a case against a member of the country's ruling family. The dispute dates back

to 2009, when Swifthold Foundation, a Panamanian registered foundation, transferred \$900 million to Fast Trading, a company owned by Sheikh Fahd Bin Ahmed Bin Mohammed Al-Thani of the ruling family of Qatar. In 2011, a UK court ruled that Fast Trading had breached its agreement with Swifthold and ordered it to pay \$4 billion to Swifthold. In 2015 and 2018, the court added Fahd's name as a debtor and increased the amount to \$6 billion to allow for interest.

Swifthold says its efforts to enforce the judgment in Qatar

have been frustrated. In April 2019, the Court of First Instance in Qatar recognized the UK judgments; however, that position was reversed by the Court of Appeals, which meant the judgments could not be enforced. Swifthold appealed. The Court of Cassation, in January 2022, dismissed Swifthold's right to enforce the UK court judgments in Qatar.

Swifthold alleges the failure to recognize the judgment is a violation of the Qatar-Panama bilateral investment treaty. It has invoked the treaty's dispute resolution provision, which calls for six months of negotiations before an international arbitration proceeding can be brought.

DIFC Courts launches specialized court to settle digital economy disputes.

A Greek contractor has applied to enforce a US\$105 million ICC award against an Iraqi state company over a sea wall the contractor was supposed to construct. The construction was allegedly delayed by an ISIS offensive and other issues. The claim and award were not previously known.

Omar K. Ibrahem is a practicing attorney in Miami, Florida. He can be reached at omar@okilaw.com.

NORTH AMERICA



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Mexican and U.S. lawyers form alliance to protect the rule of law.

Following Mexican President Andrés Manuel López Obrador's statements in early 2021 branding Mexican lawyers as "traitors" for representing international business interests and accusing the Mexican judiciary of being in the service of private international interests, Mexican lawyers and international practitioners have formed an alliance to

protect the rule of law in Mexico.

On 14 June 2022, el Fundación Barra Mexicana, A.C. (the Mexican Bar Foundation), and the New York City Bar Association's Cyrus R. Vance Center for Worldwide Justice formed a Joint Committee dedicated to strengthening the independent judiciary and democratic principles in Mexico. From the Vance Center's website, "The Joint Committee seeks to study and evaluate threats to the institutions of democracy and to the rule of law in both countries and to issue reports addressing concerns and identifying strategies to reinforce the institutions of democracy."

Canada issues statement on application of international law in cyberspace.

The Canadian government issued a position paper on how international law applies to state activity in cyberspace, endorsing both the applicability of international law in cyberspace and addressing how international laws can and should apply. Canada affirmed that international law, including the United Nations Charter (UN Charter) in its entirety and customary international law, applies to the activities of every state in cyberspace. The position paper also engaged in a robust analysis of how state-sponsored wrongful cyber-related actions (i.e., cyber-attacks) violate the territorial sovereignty of the affected state. It also addressed how affected states are entitled to use countermeasures in response to internationally wrongful acts including in cyberspace.

Canada has further called for states to abandon ambiguity in favor of developing and publishing their national views to “increase international dialogue and the development of common understandings and consensus on lawful and acceptable State behaviour. These statements can help reduce the risk of misunderstandings and escalation between States arising from cyber activities.”

United States vows to hold Russia accountable for crimes committed in Ukrainian invasion.

The United States and its allies stated at a U.N. Security Council meeting that they would take steps to hold Russia accountable for crimes committed by its military forces in Ukraine. They also announced their strong support for International Criminal Court investigations of possible war crimes, as well as for investigations by the United Nations and other bodies. These sentiments were echoed by Ireland’s Attorney General Paul Gallagher, Britain’s Deputy U.N. Ambassador James Kariuki, and Albania’s Prime Minister Edi Rama. Rama, who was presiding over the Security Council session, called Russia’s aggression “reprehensible” and stated that Russia “has violated everything this council stands for—the values, the norms, the law, and the respect we owe each other as responsible members of the same community of nations.”

U.S. Department of Justice seeks international cooperation to monitor cryptocurrency and to address crypto crime.

In a new report issued in June 2022, the U.S. Department of Justice (DOJ) announced its intention to seek international collaboration to address the “unique obstacles” presented by digital currency, such as the speed of transactions, user anonymity, the risk of money laundering, and the threat of ransomware and other malicious programs. The DOJ report states, “Strengthening international law enforcement cooperation for detecting, investigating, prosecuting, and otherwise disrupting criminal activity related to digital assets is vital to the mitigation of illicit finance

and national security risks posed by the misuse of such assets.” The DOJ suggests that the United States will provide training and other resources to assist in international investigations and that countries must do a better job of sharing information with each other.

Laura M. Reich is a commercial litigator and an arbitrator practicing at Harper Meyer LLP. In addition to representing U.S. and foreign clients in U.S. courts and in arbitration, she is also an arbitrator with the American Arbitration Association and the Court of Arbitration for Art in The Hague. A frequent author and speaker on art, arbitration, and legal practice, Ms. Reich is an adjunct professor at Florida International University Law School and Florida Atlantic University and the vice treasurer of the International Law Section.

Clarissa A. Rodriguez is a board certified expert in international law. She is a member of the Harper Meyer LLP dispute resolution practice and specializes in art, fashion, and entertainment law, as well as international law. With nearly two decades of experience, Ms. Rodriguez leads and serves on cross-disciplinary teams concerning disputes resolution and the arts industry. She has found a way to dovetail her passion for the arts into her legal career by representing the players in the art, fashion, and entertainment industries in their commercial endeavors and disputes.

THAILAND



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Thailand makes headlines for decriminalizing cannabis use, but restrictions remain.

Over the summer, Thailand made headlines by decriminalizing the use of cannabis. Some of the publicity is warranted, as Thailand is the first country in Southeast Asia—a region notorious for stiff punishment for cannabis possession—to legalize cannabis use. There are a few major caveats in Thailand’s new cannabis regulations, however, that make the apparent loosening of restrictions less than the great publicity surrounding them.

Cannabis had been criminalized in Thailand since 1935, thanks to the Cannabis Act 2477 BE, and then again in 1979 by the Narcotics Act 2522 BE. Thailand deviated from its Asian neighbors in 2018 by becoming the first Asian country to legalize cannabis for medical purposes.

In January of this year, cannabis for recreational use was decriminalized in Thailand, again the first Asian country

to make such a move. This past summer, on 9 June, Thailand decriminalized crime related to cannabis, and all parts of the cannabis plant were removed from the country's controlled substances list. In doing so, the Thai government even announced plans to give away one million free cannabis plants to households.

The recent changes to Thailand's cannabis regulations are a big deal, especially considering how cannabis is treated by Thailand's neighbors in Southeast Asia; however, the reality of cannabis legalization in Thailand falls short of the media publicity going around. According to Section 29 of the Thailand Narcotics Code, only cannabis products with a THC content not exceeding 0.2% are now legal while those above this threshold are still considered Category 5 narcotics according to the Narcotics Code. This threshold is too low for this legalization to have any practical effect. In the United States, there are currently efforts to raise its analogous limit from 0.3% to 1.0%.

Additionally, recreational cannabis remains illegal in public, even if the THC content does not exceed 0.2%. Thai authorities have given clear warnings for using cannabis in public, including fines for disturbing the peace. The warnings have been particularly pointed toward tourists, telling them to stay away if they are looking "to smoke joints freely."

While Thailand's decriminalization of cannabis may not be all that it is made out to be, it does indicate a positive direction in cannabis trends, and is especially noteworthy within Southeast Asia. For instance, in Singapore, possession or consumption of cannabis may be punishable with up to ten years imprisonment and a fine of up to \$10,000, if not a hanging. On several occasions, cannabis traffickers have been punished with the death penalty. In Malaysia, a man was sentenced to death by hanging in 2021 for presumably trafficking 299 grams of cannabis. Both Indonesia and the Philippines have also used the death penalty to punish cannabis traffickers. In the 2000's, successive Indonesian presidents supported the execution of drug dealers. The Philippines no longer imposes the death penalty, though extrajudicial killings are common.

While the media coverage of Thailand's cannabis decriminalization may have been overblown, the move symbolizes a shift in the cannabis perception in a region long known for staunch intolerance to cannabis use. Should Thailand start reaping economic benefits of looser cannabis regulations, it may consider future cannabis legislation to further loosen cannabis regulations and increase THC thresholds. In time, Thailand may be remembered as a pioneer of cannabis reform within the region if neighboring countries follow its lead.

Andrew Smith is a 3L at BYU Law School, primarily interested in international law. He graduated from Brigham Young University in 2019 with degrees in economics and geography, and graduated from the Barcelona School of Economics in 2020 with a master's degree in international and development economics. He spent the past two summers as a summer associate at Harris Bricken Sliwoski LLP in Portland, Oregon, where he contributed regularly to the firm's *Canna Law Blog* and *Psychedelics Law Blog*. During the school year, he assists a professor with international trade law research.

WESTERN EUROPE



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Germany's implementation of the Digitization Directive allows for online company formation in some cases.

Long-awaited changes to the German law regulating the formation of German corporations occurred on 1 August 2022 with implementation of the Digitization Directive (2019/1151/EU) of 5 July 2021. In the case of cash formations, a company formation for a GmbH (limited liability company) or a UG (entrepreneurial company with limited liability) is now possible through an online process using an online notary system. Previously, Germany's corporate law required physical presence in front of a notary. While the German law still requires the shareholder agreement to be notarized (§ 2 para. 1 sentence 1 GmbHG), appearance via video communication is now an option. Whether physically in-person or via video, a notary must read the incorporation documents to the founders, who subsequently must approve and sign the documents in view of the notary. The law permits signatures by an authorized person, but only if the authorized person acts pursuant to a valid power of attorney. A power of attorney must be notarized to be valid.

The new online incorporation procedure held via videoconference will use a video communication system that is controlled and operated by the Federal Chamber of Notaries. At this stage, only EU identification documents are permitted for verification. That means this new legislation will have no effect for U.S. citizens. All citizens from third countries must still follow the pre-digitization procedure and appear in-person in front of a notary.

Additionally, the new law updates other procedures for the formation of a GmbH. According to § 8 Para. 1 No. 3 GmbHG, the required signature of the applicant on the

list of shareholders can be made via a qualified electronic signature. The law also aims to expedite the incorporation process. According to the new legislation, a GmbH application should be processed and the GmbH formed within ten business days after receipt of the completed application.

Another key point of the legislation allows the applicant to use video communication for all other commercial register applications in the future. The physical appearance of the applicant before a notary is no longer mandatory. In contrast to the new online formation process for the GmbH, this simplification applies to all corporations and sole proprietorships.

With this first step Germany is heading toward a long-time overdue digitization of its corporate law and follows suit of other European countries.

The European Central Bank (ECB) raises interest rates for the first time in more than eleven years.

The war in Ukraine and the COVID-19 pandemic caused supply chain issues, and everyday costs have risen dramatically. Europe is in a particularly vulnerable state as it depends on Russia for oil and gas. In an effort to control inflation, the ECB increased its key interest rate by 0.5 percentage points to 0.0%. The interest rate has been

negative since 2014 to help boost Europe's economy. But consumer prices rose at a record 8.6% in the twelve months to June as food, fuel, and energy costs soared. Representatives of the ECB explained the interest rate increase as a result of economic activity slowing down and the war in Ukraine creating an ongoing drag on growth. The ECB expects inflation to remain high for some time; however, there are concerns about how the higher interest rates will affect highly indebted European nations, such as Italy and Greece.

Susanne Leone is one of the founders of Leone Zhgun, based in Miami, Florida. She concentrates her practice on national and international business start-ups, enterprises, and individuals engaged in cross-border international business transactions or investments in various sectors. Ms. Leone is licensed to practice law in Germany and in Florida.

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Annual ILS Leadership Retreat

29 April - 1 May 2022 • North Bimini, The Bahamas

At the annual ILS Leadership Retreat held 29 April to 1 May on the island of North Bimini in The Bahamas, the ILS truly put the International back into the International Law Section of The Florida Bar. At the retreat, Keith Major of Higgs & Johnson explained how the ILS can better collaborate with The Bahamas Bar Association, Jamie Finizio Bascombe discussed how the ILS can increase membership and programming through outreach and interaction with the Broward County Bar Association, and ILS member Luba Zeldis spoke about how the ILS can establish a Ukrainian Assistance Task Force. In addition to these presentations, ILS members who attended the event swam with the sharks at Honeymoon Harbor south of Bimini. While many members may claim they exhibited bravery by remaining in the water as the sharks appeared, rumor has it that the combination of paralyzing fear and not wanting to spill their drinks were also essential factors.



Jim Meyer pilots his boat "Offshore Office" to Bimini for the ILS Spring Retreat. Pictured with Jim are Jackie Villalba and Eddie Palmer.



Friday evening cocktail reception with Clarissa Rodriguez, Jackie Villalba, Cristina Vicens, Ana Barton, Marycarmen Soto, and Lester Parades (and Bob Becerra in the back)



Saturday afternoon swim with the sharks and stingrays!





Jamie Finizio Bascombe of the Broward County Bar Association presents ways to increase membership and programming through collaboration.



Saturday night party... names omitted to protect the guilty!



Luba Zeldis presents to the assembled group on the situation in Ukraine and the benefits of a Ukrainian Assistance Task Force.



ILS Chair Jim Meyer introduces the retreat's educational program.



Keith Major from The Bahamas Bar Association discusses ways the ILS and the BBA can collaborate.



Cristina Vicens, Jackie Villalba, Jim Meyer, Keith Major, and Ana Barton

ILS Chair's Reception • 23 June 2022 • Signia by Hilton Orlando Bonnet Creek

ILS Chair Jim Meyer hosted a reception for ILS members and guests at Signia by Hilton Orlando Creek as a part of the International Law Section's events at the annual Florida Bar Convention. Held the evening before a busy morning of ILS committee meetings and the ILS executive council meeting, it gave everyone a chance to reconnect and reenergize in an informal, welcoming setting.



Richard Montes de Oca, Cristina Vicens, Jackie Villalba, Ana Barton, and Jim Meyer



Laura Reich, Edward Mullins, and Jim Meyer



Richard Montes de Oca and Jeff Hagen



Laura Reich, Jackie Villalba, and Cristina Vicens



Luke Becerra, Bob Becerra, Kristin Paz, Cristina Vicens, and Frederic Rocafort



Richard Montes de Oca, Tiany Montes de Oca, and Nouvelle Gonzalo



Jim Robinson, Laura Reich, and Raoul Cantero



Adriana Hincapie, Jackie Villalba, and Frederic Rocafort



Phillip Buhler, Gloria Buhler, Robin St. Denis, and Nouvelle Gonzalo



Laura Reich, Cristina Vicens, Jackie Villalba, Ana Barton, and Nouvelle Gonzalo

ILS Executive Committee Meeting • 24 June 2022 • Signia by Hilton Orlando Bonnet Creek

The 2021-2022 ILS Executive Committee held its final meeting of the Bar year on 24 June 2022, in conjunction with the annual Florida Bar Convention. In addition to conducting the regular business of the section, the ILS honored outgoing Chair Jim Meyer for his contributions to the section and thanked him for a job well done.



ILS members attend the ILS executive committee meeting.



Nouvelle Gonzalo discusses the ILS Canada Committee, which she chairs.



Davide Macelloni introduces his plans for a collaboration with the Rome Bar.



The 2021-2022 ILS Executive Committee: Vice Treasurer Cristina Vicens, Treasurer Ana Barton, Chair Jim Meyer, Chair-Elect Jackie Villalba, and Secretary Richard Montes de Oca



Treasurers Cristina Vicens and Ana Barton appear to be enjoying an inside joke as Chair Jim Meyer studies the next item on the agenda.



Chair Jim Meyer unofficially retires the ILS mask and declares that ILS is "back in person."



Chair Jim Meyer accepts an award exemplifying his role in helping the ILS soar to new heights as incoming Chair Jackie Villalba leads the group in congratulating Jim on his excellent tenure as ILS chair.



Margaret Ioannides and Zel Saccani



Don St. Denis, Bob Becerra, and Luke Becerra enjoy lunch after the executive council meeting.



Chair Jim Meyer leads the Executive Committee as they unveil the Spring 2022 edition of the *International Law Quarterly* and congratulates Editor-In-Chief Laura Reich on a job well done.



ILS India Subcommittee Meeting 5 August 2022 • Coral Gables

The India subcommittee of the ILS Asia Committee met on 5 August 2022 in downtown Coral Gables. The members exchanged ideas for future events and committee projects. The members also came together to celebrate Indian Independence Day! India celebrated its 76th independence day on 15 August 2022.



Raghvendra Pratap Singh, Kritika Sureka, Susanne Leone (immediate past chair, Asia Committee), Neha Dagley (chair, Asia Committee), and Manisha Shirolikar



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Best Practices: The Importance of ‘Boots on the Ground’ International Investigations

By Marc Hurwitz and Sarah Parr, Tampa



International transactions are inherently challenging. From different privacy laws in each country to decentralized governmental agencies and record keepers, dealing with international elements in business and law involves many layers of complexity. It should come as no surprise that this extends to international investigations as well.

In the United States, we are both blessed and cursed. As attorneys and investigators, we are blessed to have easy access to information about people and businesses. As an example, licensed private investigators, if they have a person’s name and approximate age, are usually able to figure out many details quickly, including Social Security number, date of birth, address history, vehicle information, properties, even where they bank and sometimes how much money is in their account! All of this can be done from an investigator’s computer. There is a myriad of resources available to us that enable these capabilities. We are cursed, of course, by the inverse—our own personal information can be readily obtained by other parties.

At Crossroads Investigations, we are often asked to conduct international investigations because we are owned by a

former CIA officer who has a wide network of contacts overseas, and South Florida is a hub for international activity. Obtaining information overseas is a whole different ballgame, though. Every country has its own set of rules regarding what information is available and how to get it. Investigators who try to do this from the United States are doing their clients a disservice—there is no way to keep track of all of these parameters for every country.

Thus, while conducting an investigation overseas, it is imperative to use “boots on the ground.” We often use the following example: how would a lawyer in Romania search for a business in Florida? They wouldn’t know to check Sunbiz to look for fictitious names. They wouldn’t know to check PACER for bankruptcies. The list goes on. Similarly, if we want to learn about a business in Romania, we contact a trusted agent there who knows how to efficiently and expertly retrieve the maximum amount of details available.

When choosing an investigator in a foreign country, it is critical to select someone whose reputation precedes them. There are scammers who promise the world—sometimes at exorbitant costs—only to disappear.

Here are some examples of how we provided value to an international case with our investigations:

- We were tasked with investigating a Kuwaiti-based oil company with whom our client was preparing to do business. One of our client's concerns was the Foreign Corrupt Practices Act (FCPA). One of the Kuwaiti company's executives told our client he previously resigned from a government regulatory board; however, we uncovered that this executive still advised the board as an attorney. We advised the client to check with USG regulators on this issue, as well as to verify "cooling off" time periods.
- We were asked by a major league sports team to research a possible Chinese investor. Our local agent discovered that the main address listed for the investor was a run-down apartment.
- We were asked by a high-net-worth client to look into a collection company based in the Caribbean. Our agent discovered this company was a front for a scam.
- We were asked by an insurance company to investigate the cause of death of a major league sports player in Central America. The cause of death would impact the insurance payout. Our local agent discovered that the government autopsy report indicated drug abuse, which the government tried to cover up.
- We were asked to locate an heir for a probate matter in the United Kingdom. The client provided us with very limited information—only the heir's first and last names and photocopies of two holiday cards she had sent without return addresses. We used the postmarks to clue us into her general location. Our local agent determined through database research that the client had provided a misspelled last name. The agent then conducted an in-person visit to confirm that the individual they located was the correct person.

We have assisted clients with many international matters, including business due diligence, heir searches, criminal background checks, locates, acquiring apostille for official documents and mailing them overseas, and more. We have been fortunate that not only have we used the same investigators in many countries for over a decade, but we have also met several of them in person at international investigator conferences. We look forward to assisting more clients with international cases in the coming years.

Crossroads Investigations (<https://xinvestigations.com>) is a full-service global private investigation agency, operated by a former Central Intelligence Agency (CIA) officer, offering

international investigations, asset and bank searches, background checks, due diligence, surveillance, locate reports, jury vetting, and employment and tenant screening.



Marc Hurwitz is president of Crossroads Investigations. He attended SUNY Buffalo for a B.A. in political science and The George Washington University for an M.A. in national security policy. Mr. Hurwitz began government service with Senator Daniel Patrick Moynihan and continued in the U.S. Department of State's

Human Rights Bureau. He then worked in the White House for three years, where he served as the aide to the deputy national security advisor. He went on to become a counterterrorism officer for the Central Intelligence Agency (CIA) and later worked for the government in multiple overseas posts, earning several commendations for meritorious service. Mr. Hurwitz is a Florida Board Certified Investigator, a National Board Accredited Investigator, and a Certified International Investigator.



Licensed Private Investigator Sarah Parr is Crossroads Investigations' client relations manager and investigator. She has an extensive background in investigative quality control, including training and mentoring other employees as a team lead and helping fine-tune guidelines for specialty clients. She is also passionate

about writing and puts together Crossroads' monthly newsletter. She is originally from California and holds a B.S. in journalism from California Polytechnic State University, San Luis Obispo (Cal Poly).

Transactions Affected by the Ukrainian Conflict Since 2014, continued from page 9

State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB), Promsvyazbank Public Joint Stock Company (PSB), VTB Bank Public Joint Stock Company (VTB Bank), Public Joint Stock Company Bank Financial Corporation Otkritie (Otkritie), Open Joint Stock Company Sovcombank (Sovcombank), and Joint Stock Commercial Bank Novikombank (Novikombank).

Between 22 February and 24 March 2022, OFAC designated several dozen individuals as SDNs, including Vladimir Putin himself. The designations include “influential Russians in Putin’s inner circle and in elite positions of power within the Russian state” and their family members, certain individuals in Russian government positions, certain persons related to SDN companies, persons engaged in destabilizing disinformation efforts, persons operating in the technology and defense sectors of Russia, persons in Russia’s State Duma (a house of Russia’s legislature), and more.

Under EO 14024, “Prohibitions Related to New Debt and Equity of Certain Russia-Related Entities,” OFAC issued Directive 3 to prohibit transactions and dealings by U.S. persons (or within the United States) in new debt of longer than fourteen days’ maturity and new equity of thirteen major firms. Designated entities will be heavily restricted from raising money through the U.S. market. The following entities were identified as being owned or controlled by, or having acted or purposed to act for or on behalf of, directly or indirectly, the government of Russia, and subject to Directive 3: SberBank, Gazprombank Joint Stock Company, Joint Stock Company Russian Agricultural Bank, Public Joint Stock Company Gazprom, Public Joint Stock Company Gazprom Neft, Public Joint Stock Company Transneft (Transneft), Public Joint Stock Company Rostelecom, Public Joint Stock Company RusHydro, Public Joint Stock Company Alrosa, Joint Stock Company Sovcomflot, Open Joint Stock Company Russian Railways, Joint Stock Company Alfa-Bank, Credit Bank of Moscow Public Joint Stock Company, the Russian Direct Investment Fund (RDIF), Joint Stock Company Management Company of the Russian Direct Investment Fund (JSC RDIF), RDIF’s management company, and Limited Liability Company RVC Management Company (LLC RVC), a subsidiary of JSC RDIF.

On 23 February 2022, President Biden directed his administration to impose sanctions on Nord Stream 2

AG and its corporate officers. Nord Stream 2 AG is now designated an SDN under EO 14039.

OFAC has designated dozens of Belarusian individuals and entities SDNs due to Belarus’s support for, and facilitation of, the Russian invasion. The designations focus on Belarus’s defense sector, financial institutions, and elites, including Belarusian President Lukashenka and his wife. The designation means that all property and interests in property in the United States or in the possession or control of U.S. persons are blocked unless authorized by OFAC.

The names of those persons and entities listed in an annex to, or designated pursuant to, EO 13660, EO 13661, EO 13662, and EO 13685, whose property and interests in property are blocked, are published in the Federal Register and incorporated into OFAC’s SDN List with the prefix “UKRAINE” in the program tag associated with each listing.

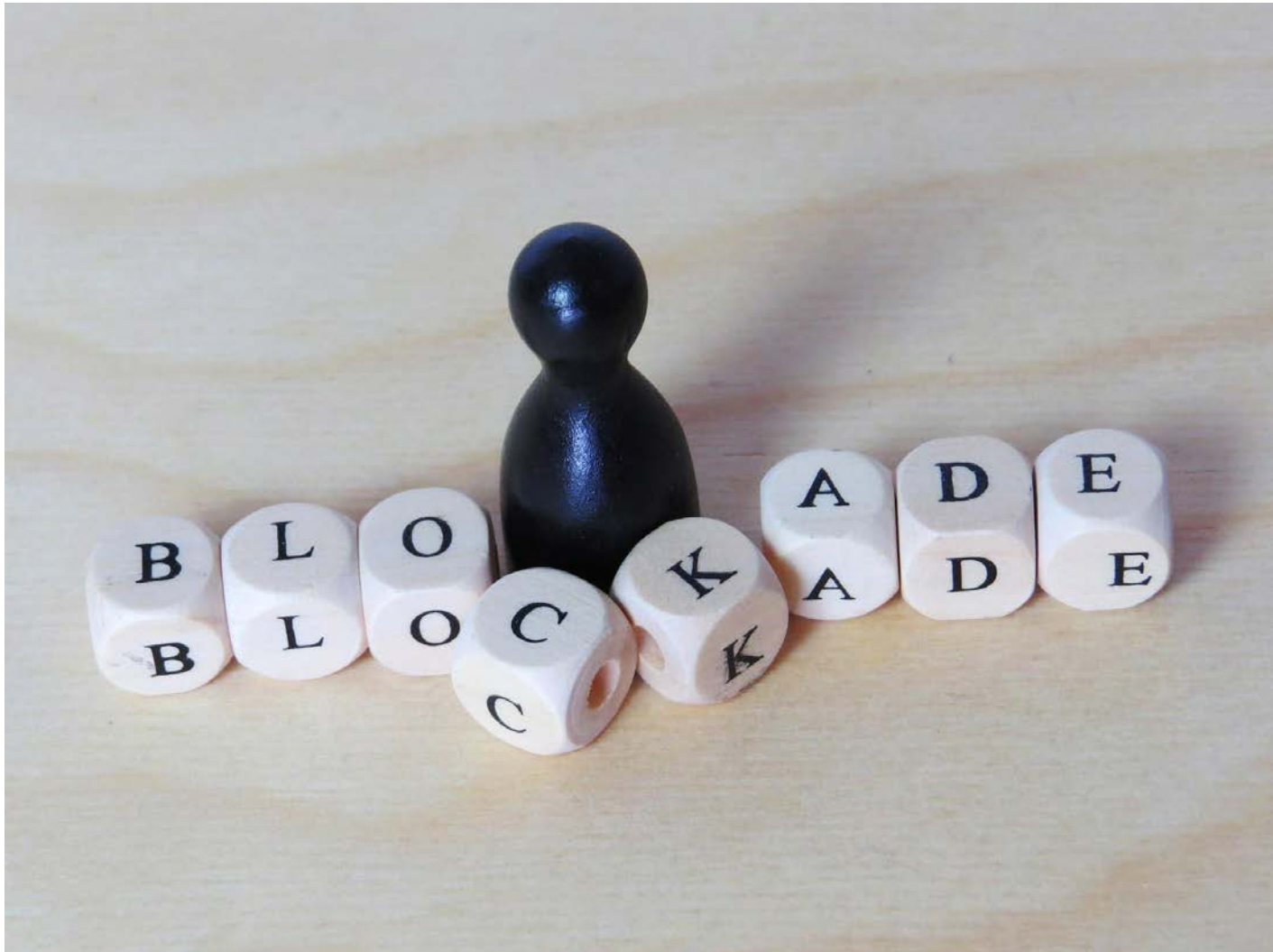
Sectorial Sanctions

Sectorial sanctions are prohibitions on U.S. persons and within the United States for certain specified transactions with entities made subject to the relevant Directive, as identified on the Sectorial Sanctions Identifications (SSI) List. It also affects the property and interests in property of an entity that is 50% or more owned by sanctioned persons, regardless of whether the entity itself is listed on the SSI List. Unlike blocked transactions, the property and interests in property of these persons are not blocked, nor are transactions with them prohibited beyond these restrictions.

Directive 1, as amended, prohibits the following transactions by U.S. persons and within the United States: (1) all transactions in, provisions of financing for, and other dealings in new debt of longer than thirty days’ maturity or new equity of persons determined to be subject to Directive 1, their property, or their interests in property; and (2) all activities related to debt or equity issued before 12 September 2014 that would have been prohibited by the prior version of Directive 1 (which extended to activities involving debt of longer than ninety days’ maturity or equity if that debt or equity was issued on or after the date a person was determined to be subject to Directive 1).

Directive 2, as amended, prohibits the following

Transactions Affected by the Ukrainian Conflict Since 2014, continued



transactions by U.S. persons and within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than ninety days' maturity of the persons subject to Directive 2, their property, or their interests in property.

Directive 3 prohibits the following transactions by U.S. persons and within the United States: transacting in, providing financing for, or otherwise dealing in new debt of longer than thirty days' maturity of the persons subject to Directive 3, their property, or their interests in property.

Directive 4 prohibits the following transactions by U.S. persons and within the United States: providing, exporting, or re-exporting, directly or indirectly, goods, services (except for financial services), or technology in support of exploration or production for deep-water, Arctic offshore,

or shale projects that have the potential to produce oil in the Russian Federation, or in a maritime area claimed by the Russian Federation and extending from its territory, and that involve any person subject to Directive 4, its property, or its interests in property.⁹

The names of those entities that are subject to Directives 1, 2, 3, or 4, pursuant to EO 13662, are published in the Federal Register and incorporated into OFAC's SSI List with the prefix "UKRAINE-EO 13662" in the program tag associated with each listing.

On 28 February 2022, OFAC issued Directive 4 under EO 14024, "Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation," and on 24 March, OFAC issued

Transactions Affected by the Ukrainian Conflict Since 2014, continued

FAQ 1029 suggesting that OFAC intends to target gold assets held by the Russian Central Bank to hinder Russia's ability to evade sanctions.

On 8 March 2022, President Biden issued EO 14066, "Executive Order on Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine," prohibiting: (1) the importation into the United States of the following Russian-origin products: crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products; and (2) new investment in the energy sector in the Russian Federation by a U.S. person, wherever located. As with other sanctions' prohibitions, U.S. persons are also prohibited to facilitate, approve, finance, or guarantee transactions if they are prohibited to undertake the transaction themselves.

On 11 March 2022, President Biden issued "Executive Order on Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression," which prohibits: (1) the importation into the United States of Russian-origin fish, seafood, and "preparations thereof"; alcoholic beverages; and non-industrial diamonds; (2) the direct or indirect exportation, re-exportation, sale, or supply of luxury goods to Russia from the United States or by a U.S. person; (3) the direct or indirect exportation, re-exportation, sale, or supply of USD banknotes to Russia from the United States or by a U.S. person; and (4) new investment in any sector of the Russian Federation economy as may be determined by the secretary of the treasury, in consultation with the secretary of state, by a U.S. person.

On 8 May 2022, OFAC issued broad restrictions against the provision of accounting, trust, and corporate formation, as well as management consulting services, to parties located in the Russian Federation, following which BIS released a rule expanding the scope of items subject to licensing requirements for export to Russia. The new restrictions intend to restrict U.S. persons from engaging in many corporate activities involving Russia. U.S. persons are prohibited from providing a broad range of professional services to Russia, and U.S. and non-U.S. persons may face sanctions if they engage in activities contrary to OFAC's

policy objectives. In addition, the range of general licenses issued by OFAC and new export licensing requirements suggest that the U.S. government is interpreting the existing restrictions on Russia broadly. The consolidated SDN and SSI lists are available on OFAC's website.¹⁰

New Investment Ban and Trade Embargo

The following transactions involving the Crimea region of Ukraine are generally prohibited, effectively creating an embargo on any transactions from these territories: new investment in the Crimea region of Ukraine; the importation into the United States of any goods, services, or technology from the Crimea region of Ukraine; the exportation, re-exportation, sale, or supply of any goods, services, or technology to the Crimea region of Ukraine; and any approval, financing, facilitation, or guarantee of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a U.S. person or within the United States.

On 21 February 2022, Russia declared the separatist regions in the so-called Donetsk People's Republic (DNR) and so-called Luhansk People's Republic (LNR) to be Russian territories. In response, President Biden issued EO 14065 along with a series of sanction designations. Modeling the current sanctions on the Crimea region, they specifically prohibit: new investment in the DNR or the LNR (or any other regions identified by the Treasury); the import into the United States of any goods, services, or technology from the DNR or the LNR; the export, re-export, sale, supply from the United States or by a U.S. person of any goods, services, or technology to the DNR or the LNR; and financial services (including financing, facilitating, approvals, guarantees) by a U.S. person of a transaction by a foreign person where that transaction by a U.S. person would be prohibited.

Licenses

OFAC may authorize certain types or categories of activities and transactions that would otherwise be prohibited under the Ukraine/Russia-related sanctions program by issuing a general license. For a current list of all general licenses relating to the Ukraine sanctions program, one should refer to the OFAC updates and alerts.¹¹

On a case-by-case basis, OFAC considers applications for

Transactions Affected by the Ukrainian Conflict Since 2014, continued

specific licenses to authorize transactions that are neither exempt nor covered by a general license. Requests for a specific license must be submitted to OFAC's Licensing Division.¹²

Conclusion

U.S. sanctions and export restrictions targeting Russia continue to evolve, and the recently published determinations and rules reflect a substantial escalation of those restrictions. It is important for legal practitioners to conduct screening at the time of engagement or the order and prior to the export, re-export, or transfer (in-country) to verify that no party to a transaction is covered by any applicable sanctions. The tools provided by the U.S. government should be utilized, including BIS's Denied Persons List¹³ or Entity List or OFAC's List of Specially Designated Nationals and Blocked Persons.¹⁴



Lyubov Zeldis is an attorney in Fort Lauderdale, Florida, the principal of the law firm Lyubov Zeldis, PA. For the past 20 years, she has represented international and domestic clients in commercial matters, mergers and acquisitions, as well as arbitration and litigation matters, and has served as general counsel. Born

in the republic of Moldova, former Soviet Union, Ms. Lyubov is fluent in written and spoken Russian and has working proficiency in Ukrainian and Romanian.

Endnotes

1 <https://ustr.gov/countries-regions/europe-middle-east/russia-and-eurasia/russia>.

2 <https://www.state.gov/targeting-russias-war-machine-sanctions-evaders-military-units-credibly-implicated-in-human-rights-abuses-and-russian-federation-officials-involved-in-suppression-of-dissent>.

3 Since 24 Feb. 2022, BIS has implemented numerous new export control restrictions in response to the invasion of Ukraine by Russia. These restrictions, which significantly restrict exports, re-exports, and transfers (in-country) of technology, commodities, and software destined to or transiting Russia or Belarus as well as to certain persons affiliated with Russia and Belarus, can be found in the Export Administration Regulations 15 C.F.R. Parts 730-774 (EAR). See also <https://www.bis.doc.gov/index.php/policy-guidance/country-guidance/russia-belarus>.

4 DDTC ensures that commercial exports of defense articles and defense services advance U.S. national security and foreign policy objectives. https://www.pmdtdc.state.gov/ddtc_public.

5 Companies may have disclosure obligations under the federal securities laws related to the direct or indirect impact that Russia's invasion of Ukraine and the international response have had or may have on their business. To satisfy these obligations, the Division of Corporation Finance (the Division) believes that companies should provide detailed disclosure, to the extent material or otherwise required, regarding (1) direct or indirect exposure to Russia, Belarus, or Ukraine through their operations, employee base, investments in Russia, Belarus, or Ukraine, securities traded in Russia, sanctions against Russian or Belarusian individuals or entities, or legal or regulatory uncertainty associated with operating in or exiting Russia or Belarus; (2) direct or indirect reliance on goods or services sourced in Russia or Ukraine or, in some cases, in countries supportive of Russia; (3) actual or potential disruptions in the company's supply chain; or (4) business relationships, connections to, or assets in, Russia, Belarus, or Ukraine. See also <https://www.sec.gov/corpfin/sample-letter-companies-pertaining-to-ukraine>.

6 On 6 Mar. 2014, President Obama issued EO 13660 pursuant to, inter alia, the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 et seq.) (IEEPA) and the National Emergencies Act (50 U.S.C. §§ 1601 et seq.) (NEA). https://home.treasury.gov/system/files/126/ukraine_overview_of_sanctions.pdf.

7 Blocking sanctions against individuals and entities designated pursuant to EO 13660, EO 13661, EO 13662, or EO 13685 and listed on the List of Specially Designated Nationals and Blocked Persons (SDN List).

8 Complete CAPTA List. <https://www.treasury.gov/ofac/downloads/capta/captalist.pdf>.

9 Department of Treasury, Office of Foreign Asset Control, *Ukraine/Russia-Related Sanctions Program, updated 16 June 2016*.

10 <http://www.treasury.gov/sdn>.

11 See also 31 C.F.R. part 589 subpart E.

12 <https://licensing.ofac.treas.gov/Apply/Introduction.aspx>.

13 <https://www.bis.doc.gov/index.php/recent-changes-to-the-denied-persons-list>.

14 <https://sanctionssearch.ofac.treas.gov/>.

International Arbitration Disputes Involving Sanctioned Russian Parties, cont. from page 11

tasked with maintaining equal access to justice, which requires them to make sure the parties to a dispute are treated equally regardless of their origin. Yet sanctions prohibiting the provision of services or freezing assets may extend to the activities of arbitration institutions as well as to accepting payments from a sanctioned party. It is therefore advisable that arbitration intuitions and organizations implement special committees to determine if a dispute can be settled by arbitration or if it should be administratively stayed.



If the tribunal is constituted, arbitrators themselves have inherent powers to stay arbitration proceedings.¹⁵ This power is used sparsely, usually under parallel proceedings; however, parallel proceedings with parties being unable to present their case can result in an unenforceable award and extra costs of litigation to both parties. In addition, in some instances arbitrators might be unable to work on the matter depending on the laws in the country of their origin and on the laws of the juridical seat. As such, it is practically sound to order a temporary stay when the sanctioned party or the party unable to present its case is involved.

Furthermore, necessary amendments, regulations, or licenses should be implemented allowing arbitration institutions to accept payments of fees and costs as well to communicate with parties and, where possible, to constitute a tribunal. Such measures have been already accepted in the EU mainly due to the efforts of arbitration institutions. For example, according to the International Criminal Court (ICC), it has been in constant contact with the French Treasury to monitor continuously the impact of EU sanctions on ICC proceedings. ICC also requested clarification and advocated ICC's position with the EU Commission regarding transactions that are necessary to

ensure access to judicial and arbitral proceedings.¹⁶ And on 21 July 2022, with Decision (CFSP) 2022/1271 and Regulation (EU) No 2022/1269, the Council of the European Union introduced an exemption to the general prohibition set out in Article 5 (aa) to enter into any direct or indirect transactions with Russian public entities. Article 5 (aa) paragraph 3 of Regulation (EU) No 833/2014 now explicitly incorporates a new paragraph (g) pursuant to which the above prohibition shall not apply to “transactions which are strictly necessary to ensure access to judicial, administrative or arbitral proceedings in a Member State, as well as for the recognition or enforcement of a judgment or an arbitration award rendered in a Member State and if such transactions are consistent with the objectives of this Regulation and Regulation (EU) No 269/2014.” As such, arbitration institutions located in the territory of the European Union can now expressly accept fees and costs to administer arbitration proceedings. We submit that legal services are within the scope of this exclusion as they are “strictly necessary to ensure access to judicial, administrative or arbitral proceedings.”

A similar exemption or a general license from restrictions is advisable in the United Kingdom, the United States, and other jurisdictions. “Even with full blocking sanctions, which include a prohibition on services, there is a ‘general license’ or regulatory carve-out that covers most legal services, including counseling on complying with U.S. law, and representation in regulatory proceedings and litigation,” observes a commentator.¹⁷ “If a law firm represents Ivan Doe, and he then gets put on the OFAC list of blocking sanctions, presumptively then, unless there was an exemption or a license, a law firm couldn’t provide services to the guy,” says Charlie Steele, former chief counsel for U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) and now a partner at Forensic Risk Alliance Ltd. “But almost every [sanctions] program has a broad general license for legal services.”¹⁸

No such exemption for Russia-related sanctions is in place. It is suggested that national bar associations, e.g., the ABA Section of International Law, and arbitration community bodies such as International Council for Commercial Arbitration (ICCA) are well placed to lead the process for lobbying for such an exemption.

International Arbitration Disputes Involving Sanctioned Russian Parties, continued

Procedural Complications Impede Economic and Speedy Resolution of the Dispute

Restrictions are omnibus and extend to arbitration fees, court fees, and legal expenses. A designated Russian entity is unable to pay filing fees and to engage counsel without license. Law firms of all sizes are now tasked with performing sanctions due diligence checks of their client, the client's corporate structure in determining majority ownership of their clients, and the client's location. This could be a rather expensive and onerous process especially for smaller law firms. Effectively, the pool of available counsel is contracting, and compliance costs and limited availability are driving up prices for legal services.

In arbitration, the formation of a tribunal can be gravely impeded. Residence and nationality of arbitrators could inhibit their service as they may be bound by the sanctions imposed by their home state even when sitting in arbitration elsewhere.

Without such general license, restrictive measures in such situations work against their own nationals, in what

surely is an unintended effect. In the author's experience, an arbitration initiated by a European company against a Russian defendant designated a Specially Designated National (SDN) was stalled after commencement for three years. That is how long it took for a prominent arbitration institution to work out a license to deal with the case. It is an illustration that sanctions are blocking recovery by nationals of the state that implemented the regulation and are benefiting sanctioned parties that otherwise could be held accountable.

In addition, it might be difficult to obtain discovery or to get third-party funding especially for a sanctioned entity. Once a tribunal has been formed, it may then need to consider arbitrability of the dispute, in the sense of the right of the tribunal to decide the matters brought before it. This is often an issue the tribunal is empowered to raise on its own, even when it is not raised by the parties. Arguably, in certain cases a tribunal may conclude that applicable sanctions legislation means the dispute is not eligible for arbitration, especially if Russia is a juridical seat or if Russian legislation applies to a contract or its enforcement.



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International Arbitration Disputes Involving Sanctioned Russian Parties, continued

On 19 June 2020, Russian law was amended to grant exclusive jurisdiction to Russia's Arbitrazh courts (commercial courts) for disputes involving sanctioned parties, or at the request of a sanctioned party, including allowing Russian courts to issue antisuit injunctions against arbitration proceedings (Russian Injunction Law).¹⁹ The sanctioned party can simply unilaterally opt for the jurisdiction of Russian courts, e.g., opt out of a dispute resolution clause that designates a forum seated outside of Russia. If an arbitration is continued in spite of such an injunction, the legislation empowers Russian courts to impose a penalty on the non-sanctioned party in the amount of the entire claim submitted to arbitration plus costs relating to the proceeding. In the matter of *JSC Uraltransmash v. PESA* (cases No. A60-62910/2018 and A60-36897/2020), the Supreme Court of the Russian Federation ruled that this legislation was to be interpreted broadly. It is held to extend to any and all sanctioned entities and individuals. Under the law, the application of sanctions against a Russian entity is considered to create obstacles to its access to justice abroad ipso facto, and it is not required to prove that the sanctions actually created an obstacle to the sanctioned party to access justice outside of Russia.

Obtaining an Enforceable Arbitral Award

The ultimate goal of any arbitration process is an enforceable award, which, in most cases, takes place under the New York Convention. If Russian assets that are sought for the award enforcement are not shielded by sovereign immunity, the Russian party can still resist enforcement under the New York Convention's public policy related grounds (Article V(2)(b) New York Convention). Enforcement may be further complicated if the assets sought are frozen, especially as is the case with many Russian oligarchs and Russian entities, including state-owned companies. In the United States, an award creditor must secure a license from OFAC to be able to enforce its award against frozen assets. A clearance is also required in the UK, the EU, and other jurisdictions.

In the matter of *Crystallex International Corporation v. Bolivian Republic of Venezuela*, the U.S. District Court for the District of Delaware confirmed the requirement for a license from OFAC. In this case from March 2022, Crystallex had obtained an ICSID award against Venezuela²⁰ and sought to enforce it against the assets of the state-owned *Petróleos de Venezuela S.A.* (PDVSA). In its opinion, the U.S.

District Court confirmed that it would not permit the sale to be executed unless and until OFAC grants a specific license (or unless and until the sanctions regime is materially changed).²¹

Even where a Russian award debtor is not a sanctioned individual or entity, the enforcement of an award is prone to challenge on the grounds that the Russian party was not able to obtain adequate legal representation.

In conclusion, implementation of 1980 Hague Convention on International Access to Justice is a step to ensure that the parties to judicial or arbitral proceedings are given equal opportunity to present their case. Legal communities in the United States and the UK and international arbitration institutions should lobby for an omnibus general license that allows transactions with sanctioned entities related to legal (administrative, judicial, or arbitration) proceedings, including legal services.

It is suggested that national bar associations, e.g., the ABA Section of International Law, and arbitration community bodies such as International Council for Commercial Arbitration (ICCA)²² and the International Federation of Commercial Arbitration Institutions (IFCAI) take the lead in this process.



Anna V. Tumpovskiy is a founding attorney of TLG, PA, based in Miami and serves as the president of the Russian American Bar Association of Florida. The firm specializes in commercial litigation, international arbitration, international business transactions, and data privacy. Ms. Tumpovskiy's practice areas include international business disputes and

transactions with an emphasis on IT-sector and focus on clients from Russia, Ukraine, and Belarus.



Ilya V. Nikiforov is an arbitrator based in Saint Petersburg, Russia. He teaches international law and arbitration at the Law School of St. Petersburg State University.

International Arbitration Disputes Involving Sanctioned Russian Parties, continued

Endnotes

- 1 M. Crowley, E. Wong, *New York Times*, available at: <https://www.nytimes.com/2022/06/24/us/politics/russia-ukraine-biden-sanctions.html>; B.Chellaney, *the Hill* available at: <https://thehill.com/opinion/international/3473500-why-sanctions-against-russia-may-not-work/>.
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Russian government to make good on its threat to suspend intellectual property rights, giving Russian companies the use of patents without threat of lawsuits or licensing fees as it continues to defy all global intentions to stop its invasion of Ukraine.²³

Effects of Sanctions on Russia's Economy

While Western sanctions have not yet succeeded in forcing Russia to stop its actions and end aggression in Ukraine, they have been successful in slowly weakening the economy over time. Across a range of metrics, Russia's economy is worse off than it was before Russia expanded its invasion of Ukraine.²⁴ The International Monetary Fund (IMF) projects that in 2022 Russia's inflation rate will continue to increase and unemployment will double by the end of the year.²⁵

Ordinary people have also been affected by the sanctions. As the country is enduring its worst inflation in two decades affecting the prices, quantity, and quality of goods, there has also been an increase in the basic cost of living. Even rural Russian citizens that farm their own food are finding



what they still need to buy has become more expensive.²⁶

The Russian government has implemented a number of policies to mitigate the impact of sanctions, however, and Russia's energy exports remain a major source of revenue.²⁷ It is likely that as long as Russia can continue to sell oil and gas, they will likely be able to muddle through the economic shakeup.

Europe's Energy Crisis and Methods of Reducing Russia's Energy Revenue

Natural Gas Shortage

For Europe, its reliance on Russia for natural gas means unprecedented concerns for the winter months to come. Roughly 40% of Europe's natural gas comes via Russian pipelines, but Russia believes in playing by its own rules, cutting its supply of natural gas to countries like Finland, Poland, Bulgaria, and Denmark right before the winter months. Policymakers are now left scrambling to fill storages before the cold returns.

Russia's Energy Revenue

While the sanctions are increasing the country's economic instability, Russia continues to receive revenues from its energy exports.²⁸ The United States took action in March to reduce this revenue source for Russia, banning the importation of Russian oil, liquefied natural gas, and coal.²⁹ The results of the ban have had a considerable effect on the U.S. people, increasing gas prices, likely a reasonable price to pay for collective war-diminishing efforts.³⁰

As for the European Union (EU), despite its dependence on energy from Russia, it also took measures by recently placing a partial embargo on Russian oil and agreed to ban all Russian oil imports that come in by sea by the end of this year.³¹ The EU hopes these measures will lead to a reduction on its dependence on Russia while simultaneously reducing Russia's exportation of oil significantly.³² This will take several months to come into full effect, and even then Russia will be able to sell oil elsewhere around the world, specifically to Asian countries, which have become the primary consumers of Russian oil.³³

Countries like China and India have the power to undercut the EU's latest move, potentially lessening the impact as these countries will provide Russia an alternate income source.³⁴ Therefore, governments are debating new

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sanctions to reduce Russia's energy revenues while minimizing disruptions to global energy flows, which would push prices higher.³⁵ Perhaps the most effective ways to deprive the Russian government from its greatest revenue source would be via an imposition of a price cap or a tariff on Russian energy exports, forcing President Putin to accept less revenue while maintaining Europe's much-needed oil flow.³⁶ This tactic has already commenced with the EU's partial embargo, but it is not yet certain this round of sanctions will accomplish the goal of depriving Russia of revenue, as Russia has found an alternate market and the revenue from oil is soaring.

Future Sanctions

Recently, the G7 agreed to setting a price cap on Russian crude to curb the oil revenue it uses to finance its invasion of Ukraine.³⁷ The G7 want the price on Russian crude to be set by members of the buyers at a level above Russian production costs.³⁸ The logic is simple, to decrease Russia's income rather than simply limit the purchase of Russian goods.³⁹ The G7 stated that Asian countries also have an interest in joining the coalition or at least an interest in understanding the price point at which their negotiating power over future Russian oil contracts would be strengthened. This way, Russia would face a tough choice between agreeing to lower but continued revenue versus almost no revenue once the EU crude oil embargo enters into force in December.⁴⁰

Conclusion

Uncertainties remain, such as the extent of the sanctions' effect on the Russian economy long term, whether Europe will be able to obtain natural gas from another source, whether Russia's foreign trade, particularly in oil and gas, will be banned, and whether Russia will continue to be able to count on India and China for its energy revenue in the future. The logic behind applying the sanctions imposed is that as Russia's economic situation worsens, the likelihood of a political reaction from within that would challenge Putin's leadership increases. As the U.S. administration and the EU await a change of behavior from Russia toward Ukraine, the collateral effects of multilateral sanctions are taking a significant toll on ordinary people all around the world who do not support or have any connection to the Russian invasion of Ukraine.



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Grounds of Inadmissibility

TPS applicants are exempt from certain grounds of inadmissibility. Paragraphs (4) (public charge), (5) (A) and (B) (labor certification), and (7)(A)(i) (immigration documentation requirements) of Section 212(a) of the Immigration and Nationality Act shall not render an alien ineligible for Temporary Protected Status.²⁸ TPS applicants can file I-601 waiver applications based on humanitarian or family unity grounds or when it is in the public interest to waive certain grounds of inadmissibility, such as unlawful presence bars, misrepresentation, and reentering the United States after deportation.²⁹ Criminal grounds, including drug offenses, cannot be waived unless the applicant only has a single offense for possession of 30 grams or less of marijuana.³⁰

Uniting for Ukraine

On 21 April 2022, President Biden announced Uniting for Ukraine, “a new streamlined process to provide Ukrainian citizens who have fled Russia’s unprovoked war of aggression opportunities to come to the United States.”³¹ This new process allows Ukrainian citizens and their immediate family members who are *outside the United States* to come to the United States and remain temporarily in a two-year period of humanitarian parole.³² Ukrainians participating in Uniting for Ukraine must have a sponsor in the United States who agrees to provide them with financial support for the duration of their stay in the United States.³³

Humanitarian Parole. The Immigration and Nationality Act (INA) provides the secretary of homeland security



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with discretionary authority to parole noncitizens into the United States temporarily, under such reasonable conditions that the secretary may prescribe, on a case-by-case basis, for “urgent humanitarian reasons or significant public benefit.”³⁴ Parole is not an admission of the individual to the United States, and a parolee remains an “applicant for admission” during the period of parole in the United States.³⁵ DHS may set the duration of the parole based on the purpose for granting the parole request, and may impose reasonable conditions on parole.³⁶ Additionally, DHS may terminate parole in its discretion at any time.³⁷ Individuals who are paroled into the United States may apply for employment authorization.³⁸

Eligibility for Uniting for Ukraine. Ukrainians are eligible to apply for the Uniting for Ukraine program if they meet the following requirements:

- Must have resided in the Ukraine through 11 February 2022 (date of the Russian invasion) and were displaced as a result of the invasion;
- Are a Ukrainian citizen and possess a valid Ukrainian passport (or are a child included on a parent’s passport);
- Have a sponsor who filed a Form I-134, Declaration of Financial Support, on their behalf that USCIS has vetted and confirmed as sufficient; and
- Must clear biographic and biometric security checks.³⁹

The applicant’s immediate family members (spouse, including common-law partner, and unmarried children under 21), even if non-Ukrainian, will also receive the benefits if they accompany the principal Ukrainian when completing travel to the United States.⁴⁰ Ukrainian citizens who are *present in the United States* will not be considered for parole under Uniting for Ukraine.⁴¹ Children traveling to the United States without their parent or legal guardian are also not eligible for parole under this program.⁴²

Qualifications of Sponsor. The sponsor who will file Form I-134 on behalf of the Ukrainian citizen must also meet certain requirements:

- Must be a U.S. citizen, lawful permanent resident, nonimmigrant in lawful immigration status, asylee, refugee, parolee, TPS holder, or beneficiary of deferred action (including DACA) or Deferred Enforced Departure;
- Must be able to receive, maintain, and support the

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beneficiary listed in Form I-134. Examples of financial support include receiving the beneficiary upon arrival, arranging for suitable housing and basic necessities for the beneficiary, assisting the beneficiary with completing immigration paperwork, ensuring that the beneficiary's health care and medical needs are met for duration of the parole, securing employment for the beneficiary, and enrolling their children in school.⁴³

The sponsor must file a separate Form I-134 for each beneficiary, including different members of a family group.⁴⁴ Multiple sponsors may join together to support a beneficiary as well. In this case, one person files Form I-134 and includes the identity and resources provided by the additional sponsors in addition to a statement of intent that all the persons involved will share in the responsibility of financially supporting the beneficiary.⁴⁵ In these cases, USCIS will assess the sponsors' financial ability collectively.⁴⁶

Uniting for Ukraine Application Process. The U.S.-based sponsor begins the application process by submitting Form I-134 online. There is no filing fee to apply for parole through Uniting for Ukraine. The instructions for the form require that the sponsor submit evidence of their financial

means, such as federal tax returns, employment verification letters, paystubs, bank letters, etc.⁴⁷ After USCIS conducts the necessary background checks on the sponsor and confirms the I-134 is sufficient, the Ukrainian beneficiary will receive an email from USCIS with instructions for setting up an online account in order to confirm their biographic information, to attest to the understanding of the family relationship requirements for children under age 18, and to attest to completing vaccinations against measles, polio, and COVID-19.⁴⁸ Biographic information provided by the prospective Ukrainian beneficiary is vetted against national security and law enforcement databases.⁴⁹

If the I-134 is determined to be insufficient, the beneficiary will receive an email advising them of USCIS's decision. There is no appeal of this decision, but the same or a different sponsor may file a new Form I-134 for the same beneficiary and restart the process.⁵⁰ When the case is approved by USCIS, the beneficiary will receive an email granting them authorization to travel to the United States to seek parole.⁵¹ The Ukrainian beneficiary is responsible for arranging and funding their own travel. The travel authorization is valid for ninety days.⁵² Upon arrival to



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the United States, each individual will be inspected by U.S. Customs and Border Protection (CBP) and will be considered for parole for a period of up to two years.⁵³ All individuals two years of age or older will need to complete a medical screening for tuberculosis within ninety days of arrival to the United States.⁵⁴

Benefits of Uniting for Ukraine Humanitarian Parole.

After the beneficiary is paroled into the United States, they are eligible to apply for discretionary employment authorization from USCIS by submitting Form I-765. The grant is discretionary because the employment authorization benefit is not automatic once the parole is approved.⁵⁵ In practice, as long as the beneficiary can demonstrate a need to work in the United States and there are no adverse factors in the beneficiary's background, the employment authorization should be granted for the duration of the two-year parole period.⁵⁶ Once the employment authorization document is received, the beneficiary can apply for a Social Security number and card.⁵⁷ The beneficiary's parole will automatically terminate if they depart the United States without obtaining advance authorization to travel or the parole period expires.⁵⁸ DHS may also terminate a beneficiary's parole for violating any law of the United States.⁵⁹

Since President Biden's announcement of Uniting for Ukraine on 21 April, as of 15 June 2022, more than 45,000 applications have been submitted, 6,500 persons have arrived to the United States, and another 27,000 persons have been approved for travel to the United States.⁶⁰

Expedited Immigrant Visa Processing for Ukrainian Nationals.

Immigrant visas are for foreign nationals who intend to live and/or work permanently in the United States. The U.S. Consulate General in Frankfurt, Germany, is the designated processing post for all Ukrainian immigrant visa applications except adoption cases.⁶¹ USCIS and the Department of State have announced several measures to expedite the processing of family petitions filed on behalf of Ukrainian beneficiaries.

First, petitioners may request expedited processing of I-130 petitions currently pending with USCIS by submitting an inquiry directly to USCIS at <https://www.uscis.gov/forms/filing-guidance/how-to-make-an-expedite-request>.⁶²

Second, U.S. citizens who are physically present abroad

with their immediate family members and have not yet filed an immigrant visa petition with USCIS may request to locally file an I-130 immigrant visa petition at the nearest U.S. embassy or consulate that processes immigrant visas.⁶³ This applies only to U.S. citizens physically present in that consular district filing petitions for their spouses, unmarried children under 21, and parents who have fled Ukraine.⁶⁴ Petitioners who qualify for this measure are encouraged to contact their nearest U.S. embassy abroad via email. Filing the immigrant visa petition directly with the embassy or consulate in these cases is a more efficient and time-saving measure.

Third, for cases where the I-130 immigrant petition has already been approved by USCIS, but the case is pending at the National Visa Center while the petitioner/beneficiary awaits interview in Frankfurt, they may request expedited processing of their immigrant visa interview from the National Visa Center directly if the priority date of the petition is current and there is a visa number immediately available.⁶⁵

Conclusion

In response to the humanitarian crisis in Ukraine, the U.S. government has promulgated several measures for Ukrainian nationals and their families, including designating Ukraine for Temporary Protected Status for Ukrainians present in the United States, implementing the Uniting for Ukraine humanitarian parole program for displaced Ukrainians abroad, and expediting the processing of family petitions and immigrant visa interviews. Practitioners should be cognizant of these measures in order to properly counsel their Ukrainian clients.



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Examples of U.S. Investment by a Latin American Investor²⁴

Let us consider a trading business carried out by a U.S.-based legal entity (USCo) whose sole shareholder or member would be an Argentinian parent company, a jurisdiction that does not have a double-taxation treaty with the United States. Specifically, let us presume that the trading business generated US\$1 million in revenue. As the corporate tax rate in the United States is 21%,²⁵ USCo would owe US\$210,000 in corporate tax, meaning a profit of US\$790,000. Due to the lack of a double-taxation treaty between the United States and Argentina, the US\$790,000 profit would be subject to a dividend withholding tax of 30%,²⁶ representing US\$237,000. Consequently, the overall tax amount paid would be US\$447,000, an effective tax rate of 44.7%.

As another option, let us presume that the Argentinian investor would have structured the U.S. trading business so that the sole shareholder or member would have been a Romanian holding company (RoHoldCo). In this case, USCo likewise would be liable to pay the 21% U.S. corporate tax; nonetheless, based on the U.S.-Romanian Tax Treaty, the dividend withholding tax would represent only 10% of the post-corporate tax profit, specifically US\$79,000. Pursuant to Romania's holding company regime, the dividends received by RoHoldCo in the amount of US\$711,000 would be distributed to its shareholder tax free. Consequently, this investment structure would result in a de facto effective tax rate of 28.9%,²⁷ and a tax savings of US\$158,000 (15.8% of the trading business's revenue).

Examples of EU Investment by a Latin American Investor²⁸

A Brazilian multinational desiring to do business in Germany would not be able to benefit from a double-taxation treaty. With no double-taxation treaty in place between these two countries,²⁹ one option for the Brazilian investor would be to directly establish a German subsidiary. In such a case, the German subsidiary would be subject to the German corporate tax rate (including a solidarity surcharge) of 15.825%,³⁰ and its nontreaty parent company to a 25%



dividend withholding tax in effect for dividends paid to a non-double-taxation treaty shareholder.³¹

As an example, pursuant to these tax percentages, let us presume that the German subsidiary generated pretax revenues in the equivalent of US\$10 million in a particular fiscal year. The German corporate tax would be US\$1,582,500,³² thus resulting in a net profit of US\$8,417,500. Should this entire amount be paid as dividends to the Brazilian parent company (which would be subject to a 25% nontreaty dividend withholding tax), this would mean that US\$2,104,375³³ would be withheld, and thus the corporate tax and withheld amounts paid to the nontreaty shareholder would total US\$3,686,875,³⁴ meaning an overall effective tax rate of approximately 36.87%. From that point on, the Brazilian tax regime would apply to the Brazilian investor profits received.

Another option for the Brazilian multinational investor would be to invest in Germany through a Romanian holding company (RoHoldCo). In such a case, the German subsidiary would be subject to the same German corporate tax rate, that is 15.825%, again amounting to US\$1,582,500 in tax on an annual revenue of US\$10 million. Presuming that the EU Parent-Subsidiary Directive requirements have been met, there would be no dividend withholding tax due in Germany, with the entire U.S. dollar net profit of US\$8,417,500 transferred as dividends to the parent RoHoldCo. Thereafter, considering the 5% dividend withholding tax applicable to nontreaty shareholders of Romanian legal entities,³⁵ the Brazilian investor in its capacity as RoHoldCo's shareholder would receive US\$7,996,625 as dividends.³⁶ As the overall taxes

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paid would have been US\$2,003,375, this would have represented an overall approximate tax rate of 20.03%.

Doing Business in Romania

Romania also provides interesting business opportunities for global investors. Romania is on the verge of modernizing its production capacities and its national transport infrastructure (especially its freeways and rail networks) and diversifying its European-oriented economy. Various major cities are becoming regionally relevant (Bucharest, Cluj, Timișoara, and Iași), especially in the area of IT services and products. Romania ranks consistently on an increased performance path in the World Bank's Doing Business Report³⁷ in terms of (1) starting a business; (2) trading across borders (1st place, given the EU status where intra-EU trade is without borders); (3) enforcing contracts (ranked 19th worldwide); and (4) obtaining credit/financing (ranked 25th worldwide).

On starting a business, it is worth mentioning that Romania has a liberal economy that allows investors to incorporate without much red tape and without any limit with respect to the nationality of the shareholders. Further, there is no requirement for a local (Romania) director to be appointed, the distribution of dividends outside of Romania is unrestricted, and the registration or establishment of a company may now be carried out online. To this end, Romania has a burgeoning English-speaking corporate administrative services industry that has been and continues to be instrumental in supporting Romania's position as a growing regional holding company jurisdiction.

Conclusion

As the U.S.-Romanian Tax Treaty remains one of only a handful that still does not contain a limitation on benefits (LOB) provision, coupled with the fact that Romania has a holding company regime that also benefits from the EU Parent-Subsidiary Directive, a closer look by Latin American investors is warranted in terms the use of a Romanian holding company to ensure a tax-efficient international investment structure.



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Romanian Holding Companies as Investment Vehicles, continued

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