



KINSTELLAR

Ukraine introduces a new type of sanction

Background

Since the outbreak of the war in Ukraine, there has been a plethora of new legislation establishing mechanisms for an adequate political and legal response to russian aggression against Ukraine. Among the most significant is considered to be the [procedure of nationalisation](#) of russia-related property established by the Law of Ukraine "On the Basic Principles of Forcible Seizure of the Objects of Property Rights of the Russian Federation and its Residents in Ukraine" ("**Nationalisation Law**").

Another similar mechanism was introduced on 13 May 2022, when the Parliament of Ukraine adopted a new law amending the existing sanctions legislation ("**Amendments**"). The Amendments enact a new type of sanction amounting to the foreclosure of assets in the state's favour. This new sanction is now applicable to both companies and individuals that cause significant damage to the national security of Ukraine.

The aim of the Amendments is to provide a legislative tool to disable the russian federation from further aggressive actions and to further use foreclosed assets to strengthen Ukraine's defence capability, as well as to fund the post-war rebuilding of Ukraine and to compensate losses. Our understanding is that the Amendments also make it possible to hold accountable a larger circle of persons assisting (directly or indirectly) the russian federation in its armed aggression against Ukraine.

The law was signed by the President on 21 May 2022 and came into force on 24 May 2022.

Ukraine introduces a new type of sanction

01



Preconditions for imposing the new sanction

The new sanction can be applied only if two preconditions are met:

- ❑ a legal regime of martial law is active; and
- ❑ the person or legal entity in question has already been sanctioned in the form of the blocking of assets (which according to the Amendments now means deprivation of the right to use and to dispose of assets, including indirect (through other individuals and/or legal entities) disposal or equivalent rights).

02



Who is affected?

The Amendments apply to individuals and legal entities (including residents¹ within the meaning of the Nationalisation Law) that:

- ❑ by their actions caused significant damage to the national security, sovereignty, or territorial integrity of Ukraine (including through armed aggression or terrorist activities); and/or
- ❑ significantly contributed (including by financing) to the commission of such actions by other persons.

03



What is worth considering?

According to the Amendments, the above damaging actions provide for the active involvement in aggression against Ukraine. The non-exhaustive list of such actions includes direct financing of armed aggression against Ukraine; personal participation in the organisation of illegal elections and/or referendums in the temporarily occupied territory of Ukraine; and providing informational support for the above actions or illegal decisions, etc.

However, some actions that at first sight may not be perceived as contributing significant damage to Ukraine's national security, sovereignty or territorial integrity, are still deemed to be so, for instance:

- ❑ the payment of taxes to the aggressor state's budget in excess of the equivalent of UAH 40 million for legal entities and UAH 3 million for individuals for the last four consecutive tax (reporting) quarters;

¹ Legal entities, including their branches and subsidiaries, operating in Ukraine according to Ukrainian law, which are owned or controlled directly or indirectly by the Russian Federation as a state.

Ukraine introduces a new type of sanction



- ❑ the charitable transfer of funds or other property for the benefit of the authorities of the aggressor state or its military bodies, or persons that cause significant damage to Ukraine's national security, sovereignty or territorial integrity by conducting or financing these measures, if such transfers amount to or exceed UAH 750 thousand for a one-year period;
- ❑ investing in government bonds of the aggressor state amounting to or exceeding UAH 3 million in a one-year period.

04



Procedure applied

Upon the preconditions and grounds provided under the Amendments, a central government agency (yet to be defined by the Cabinet of Ministers of Ukraine ("**CMU**")) initiates legal action before the High Anti-Corruption Court of Ukraine claiming foreclosure of the affected persons' assets in the state's favour. After the court decision is rendered, the CMU adopts a case-by-case procedure of its enforcement and designates authorised bodies to manage the foreclosed assets.

05



Recommendations to consider

To avoid any implied risks that could impact your business when working with individuals or entities possibly affected by the discussed sanctions, please ensure to:

- ❑ check existing and possible counterparties as to their activity's possible fulfilment of any of the criteria for sanctions to be imposed;
- ❑ consider available strategies to mitigate upcoming risks;
- ❑ review documents concluded with prospectively affected individuals or legal entities as to force majeure provisions, sunset clauses, and termination options available;
- ❑ conduct a due diligence of property currently or planned to be further used by your business (if any) that may be impacted by the discussed sanctions; and
- ❑ consider risks other than those directly following from the adopted sanctions (i.e., reputational, financial) related to further business activities with individuals or legal entities affected.

We would be glad to be of any help on this path.

For more information, please contact our team:



Olga Vorozhbyt

Partner, Head of Compliance, Risk & Sensitive Investigations (CRSI) and White-Collar crime services, Kyiv

+380 067 449 0511

olga.vorozhbyt@kinstellar.com



Oleksii Gerasymchuk

Managing Associate,
Kyiv

+380 67 547 5235

oleksii.gerasymchuk@kinstellar.com



Yuliia Demianchuk

Junior Associate,
Kyiv

+380 98 600 6200

yuliia.demianchuk@kinstellar.com

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