

Sanctions Compliance as GR-Strategy Component of Russian Private Business

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Abstract

International sanctions imposed on Russia have inflicted significant damage on the Russian business community. Refusal of the political management to acknowledge legal validity of the sanctions set a precedent where Russian judicial system tends to disregard mechanisms aimed at ensuring interests of the private business - sanctions clause and force majeure clause. Increasing risks of the secondary sanctions, caused by the high state participation in the economy, coerce private companies to develop GR-strategies that would simultaneously include compliance protocols and enhance cooperation with the authorities and state-owned enterprises.

Keywords: *sanctions against Russia, sanctions judicial practice, public sector, state-owned enterprises, sanctions clause, force majeure clause, compliance, GR-strategy.*

Main body

From the very beginning of the sanctions standoff Russian political management referred to the sanctions pressure as «illegal act» that has no legal basis and, respectively, no legal validity¹. By claiming that the authorities implied that no sanctions could actually affect Russian companies or their cooperation with foreign business. Indeed, the very first sanctions waves appeared politically motivated and focused primarily on individual politicians and managers of the biggest state-owned companies.

Despite the political nature of restrictions, they shortly affected Russian private business as well: numerous companies become subject to sectoral or secondary sanctions due to their cooperation with state-owned enterprises². Newly emerged

¹ Kremlin calls new U.S. sanctions illegal, says financial system stable // REUTERS. August 9, 2018. URL: <https://www.reuters.com/article/us-usa-russia-sanctions-kremlin/kremlin-calls-new-u-s-sanctions-illegal-says-financial-system-stable-idUSKBN1KU15A> (request date: 18.05.20)

² Sanctions lists of the Russian citizens and companies // RIA NOVOSTI. July 18, 2014 (updated: March 2, 2020). URL: <https://ria.ru/20140718/1016514535.html> (request date: 18.05.20)

toxicity of these companies rapidly resulted in decline in business activity caused by refusal of foreign partners to trade with Russia.

Nonetheless, Russian business community seems not capable of suspending cooperation with public sector, even being confronted with sanctions risks. The reason for this is high state participation in the Russian economy: according to the Federal Antimonopoly Service, in 2017 the state's share in the economy exceeded 60-70%³. The figures indicate that almost any private business is likely to eventually become a counterparty or indirect supplier of a state-owned company and, respectively, become subject to sanctions.

Another obstacle for effective international trade can be found in the recent judicial practice of Russian arbitration courts that tend to ignore sanctions risks and sanctions-caused damage in the legal proceedings. (Glandin, 2018) Technically, there are mechanisms to secure a company and its counterparty from sanctions-related damage, such as sanctions clause⁴ and force majeure clause, that are usually an immutable part of any business contract, especially an international one. In a legal proceeding these clauses are supposed to ensure the interests of both a company and its partner so that they will not suffer any losses from the exposed sanctions. (Primakov, 2018)

In the recent Russian judicial practice sanctions clause and force majeure clause appear to be disregarded by the courts. The main reason for that may be a strong focus of the Russian judicial apparatus on the political management and political agenda. As already mentioned, high-ranking Russian politicians and officials have numerously referred to the sanctions pressure as «illegal act», emphasizing its absence of legal validity. Considering certain reliance of Russian judiciary on executive power, refusal of the courts to render judgments in favour of national business might be explained by their pursuing of the political agenda. In certain respect, courts' acknowledgement of sanctions clause and force majeure clause would indirectly legitimate sanctions and empower them with legal validity, which would undoubtedly contradict Russian geopolitical stance.

Therefore, since 2014 Russian companies that trade with foreign partners have been vigorously implementing various compliance procedures aimed at forestalling sanctions risks and complying with the national legislation. (Primakov, 2018)

³ Federal Antimonopoly Agency. URL: <https://fas.gov.ru/publications/18306> (request date: 18.05.20)

⁴ OFAC sanctions sample clauses. The Law Insider. URL: <https://www.lawinsider.com/clause/ofac-sanctions> (request date: 18.05.20)

These precautions required installing compliance protocols and establishing special departments within the enterprises, but the majority would simply outsource these procedures to consulting companies. Moreover, large businesses embarked on a proactive lobbying in order to make foreign authorities exclude them from sanctions lists. Such lobbying implied contracting foreign compliance consultants, which appeared to be rather expensive and technically complicated even for major companies. (Bransburg, 2018)

Due to implementation of sanctions compliance procedures numerous companies have managed to secure themselves from external threats. However, in the domestic market there is still a considerable number of state-owned enterprises that are potentially subject to sanctions. State's participations in all industries and spheres make it impossible for private business to avoid cooperation with state-owned enterprises. Furthermore, private companies, especially in strategically important spheres, are often expected not only to display their willingness to trade with the state, but also to share political stance and blatantly neglect sanctions pressure⁵. For a private company with a results-based approach such positioning may lead to disastrous consequences since it could become a trigger for foreign authorities empowered to form sanctions lists (The USA's Office of Foreign Assets Control (OFAC) or European Council).

With Russian private businesses trying to strike a balance between sanctions risks and cooperation with public sector, there emerges a necessity to develop a strategy that would help to achieve effective and stable functioning. Apart from sanctions compliance, this strategy should include a correct self-positioning in legal and public spheres. One of the few ways to achieve this might be a proper GR-strategy.

Application of the Government relations' mechanisms - a discipline concerned with organization of beneficial interaction between business and authorities both executive and legislative - appears to be the exact course of action that would ensure a company's interests amidst confining pressure. Respectively, a GR-strategy is a particular set of activities aimed at establishing contacts with the authorities in order to present a company's perspective regarding the burning issues. (Watkins, 2001)

GR-strategy with focus on sanctions compliance may be especially vital for companies, whose major consumers are either the state or numerous state-owned

⁵ Volodin proposed criminalizing compliance with American sanctions // RBC. April 20, 2018. URL: <https://www.rbc.ru/politics/20/04/2018/5ad9bc9f9a794724da6339a7> (request date: 18.05.20)

enterprises. This applies to car manufacturers, industrial equipment producers, private mining companies and pharmaceutical industry.

Considering the possibility of selling goods to a state-owned company that could be subject to sanctions, business might apply a GR-strategy that would display sanctions compliance as a necessary concession en route to a closer involvement in public sector. Such strategy is also likely to require relevant media campaign aimed at projecting image of a company as a state's credible and reliable partner, whose services should not be disregarded. (Degtyarev, 2018) Reinforcing by this self-positioning a company's status in front of the state, it could then continue to apply compliance procedures to the state-owned counterparties.

Conclusion

To summarize, the international sanctions imposed on Russia become a significant challenge for the private business. Alongside with decline in international trade, Russian companies face considerable sanctions risks caused by the high state participation in the economy and disadvantageous judicial practice. Under such circumstances, implementing compliance component in a GR strategy can prevent numerous risk-related situations, as a company will be already informed about sanctions status of its partners. It could also help to manage cooperation with public sector more consciously. In addition, implementing compliance component is likely to reduce the number of legal proceedings and hence the number of court decisions unfavorable for the private business.

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