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INSIGHT

Don’t be ‘shirt-fronted’ by the proposed amendments to Australia’s autonomous sanctions

November 24, 2014 | Written by Chris Keane, Avryl Lattin, Maurice Thompson and Chris Metcalf

The recent G20 Summit in Brisbane generated much speculation as to whether Australian PM Tony Abbott would carry through on his promise to 'shirtfront' Russian President Vladimir Putin. As it turned out, the G20 Summit was shirtfront free. However, last week the Australian Government confirmed its intention to proceed with the expansion of Australia's autonomous sanctions against Russia by releasing draft amendments to the Autonomous Sanctions Regulations. This represents a significant legislative shirtfront to Russia which will also impact upon those in the maritime and offshore sectors, operating within Australia or subject to Australian law.

Background

Australian sanctions laws are implemented through two separate but related regimes: autonomous sanctions and UN sanctions. In May 2014 the *Autonomous Sanctions Regulations 2011* (**Regulations**) were amended to

include sanctions dealing with Russia and the Crimea. These sanctions were limited to targeted financial sanctions and travel bans impacting upon 50 Russian and Ukrainian individuals and 11 entities. Subsequently on 1 September 2014 the Australian Government announced its intention to expand sanctions against Russia, in line with the latest round of sanctions that have been implemented in the EU, US and Canada.

Release of draft proposed amendments

On 18 November 2014 the Australian Government released its draft of the proposed amendments to the Regulations for the purpose of public consultation (**Proposed Amendments**). The Australian Department of Foreign Affairs and Trade (**DFAT**) will consider all submissions regarding the Proposed Amendments received on or before 9 December 2014.

The Proposed Amendments are largely in lockstep with the EU's Russian sanctions (including the most recent EU sanctions which came into force in September) and include:

Restrictions on the supply, sale or transfer of goods

The Proposed Amendments include a prohibition on the unauthorised supply, sale or transfer of "*export sanctioned goods*" for Russia, Crimea and Sevastopol. The list of "*export sanctioned goods*" includes:

- equipment and technology for use in deep water oil exploration or production in Russia, Arctic oil exploration or production in Russia, or a shale oil project in Russia; and
- equipment and technology relating to the creation, acquisition or development of infrastructure in the transport, telecommunications and energy sectors and the exploitation of oil, gas and mineral reserves in Crimea and Sevastopol.

Restrictions concerning the export or provision of services

The Proposed Amendments prohibit the unauthorised provision of a number of "*sanctioned services*" such as drilling, well-testing, logging and completion services and the supply of specialised floating vessels, in relation to deep water oil exploration or production in Russia, Arctic oil exploration or production in Russia or a shale oil project in Russia.

Restrictions concerning commercial activities

The Proposed Amendments prohibit unauthorised engagement in the following "*sanctioned commercial activities*" in relation to Russia, Crimea and Sevastopol:

- the direct or indirect purchase or sale of, or any other dealing with, bonds, equity, transferable securities or "*other similar financial instruments*", if the financial instrument is issued by Russian state-owned banks or an entity selling or transporting crude oil and petroleum products; and
- the acquisition or extension of an interest in an enterprise established in Crimea or Sevastopol and engaged in the exploitation of oil and gas within Crimea and Sevastopol.

Compliance is not straightforward

The Proposed Amendments present difficulties for the maritime and offshore sectors in terms of compliance. Charterers and sub-charterers can conduct voyages or ship consignments in breach of sanctions, thereby exposing the owner or head charterer to criminal liability (even though it was unaware of the unlawful conduct). In many instances it can be extremely difficult for carriers to identify consignments which contravene sanctions regarding the supply or transfer or certain goods and/or the ultimate recipients of these consignments. Offshore

service providers and carriers are also confronted with the difficulty of having to interpret sanctions drafted in wide and sometimes imprecise terms (and the Proposed Amendments are no exception, at least in several key respects).

Extra-territorial effect

As with the existing designated person and entity sanctions in the Regulations, the Proposed Amendments would apply to:

- conduct occurring entirely or partly in Australia (regardless of the nationality of the alleged offender); and
- conduct committed entirely outside Australia where, at the time of the alleged offence, the alleged offender is an Australian citizen or permanent resident or a corporation incorporated by or under a law of the Commonwealth or of a state or territory.

In relation to sanctioned exports, services and commercial activities, corporations would also be liable for conduct engaged in by entities over which they have effective control.

Authorisations and permits

The Proposed Amendments will enable any person with a pre-existing legal obligation to export or import goods, provide a service or engage in a commercial activity to apply for an authorisation to meet that legal obligation. The application will need to be made within 30 days of the commencement of the new sanctions. Furthermore, it would be prudent to proceed on the basis that DFAT will not grant authorisations in relation to any commercial activity which is the subject of a legal obligation entered into after 1 September 2014 (when the Australian Government announced its intention to enact the Proposed Amendments).

The *Autonomous Sanctions Act 2011* stipulates that DFAT may not grant a permit authorising activities that would otherwise be unlawful unless "*it would be in the national interest to grant the permit*". When determining what is in the "*national interest*", DFAT will consider the importance of comity between Australian sanction laws and those of other jurisdictions, particularly the EU and US.

Preparing for the introduction of the proposed amendments

If introduced, the Proposed Amendments will significantly broaden the scope of Australia's laws regarding Russian sanctions and will necessitate a careful review of screening processes in relation to Russian business dealings. The Proposed Amendments are also a timely reminder that Australia has a constantly changing autonomous sanctions regime which should always be kept in mind when considering global sanctions compliance. Australia currently imposes autonomous sanctions on a number of nations that are of importance to the maritime and offshore sectors, including Iran, Libya, Myanmar, and North Korea.

With one of the largest sanctions practices in the world and extensive experience advising the maritime and offshore sectors in relation to this complex regulatory issue, Clyde & Co is well placed to assist with the preparation of submissions to DFAT regarding the Proposed Amendments and also in relation to:

- preparation of requests to DFAT and other regulatory authorities for authorisations and permits;
- compliance issues including due diligence of joint venture partners, shippers, receivers, charterers, subcontractors and agents
- responding to official requests from regulatory authorities for information

- regulatory investigations and enforcement proceedings

If you would like any further information on any issue raised in this update, please contact:

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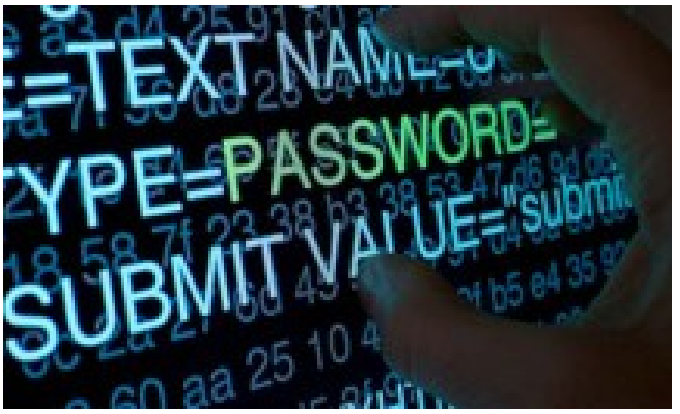

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