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How to deal with sanctions to Russian-related entities in insolvency: the GTLK Europe, Mints and ATB cases - ABI Restructuring Symposium

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The invasion of Ukraine by Russia in February 2022 and the chain of sanctions imposed on Russian entities have significantly affected the landscape of insolvency in Europe, with practical cases such as GTLK Europe, Mints, and Amsterdam Trade Bank (ATB), addressed by a panel of legal professionals in an American Bankruptcy Institute's conference in Lisbon on 3 November.

Frank Tschentscher, a restructuring & insolvency partner with **Deloitte** Legal in Hamburg who moderated the panel, observed that despite sanctions not being something new, the invasion of Ukraine has been met with an unprecedented level of additional and far-reaching measures by many countries and the EU, which by now has already approved eleven packages.

These sanctions introduced an asset freeze on funds and economic resources of the Russian government, named individuals and entities, and prohibit to make available funds or assets "of any kind" to the designated entities and/or persons.

Additionally, the EU regulation specifically prohibits to provide, directly or indirectly, "legal advisory services" to the government of Russia or "legal persons, entities or bodies established in Russia," Tschentscher said.

"What does it mean exactly; nobody knows," he noted. Some guidance may be found in Recital 19 of the EU Regulation, but this is only partly helpful. It seems that those prohibitions do not apply to legal services guaranteeing access to justice, and namely court actions, but otherwise legal services must not be provided. "It still doesn't help a lot in terms of clarifying the exact scope of the prohibition," according to Tschentscher.

While nothing in the legislation appears to prevent an office holder to take the appointment, the problem is what this office holder can do with the assets under their control, Tschentscher observed.

For instance, a restructuring professional's priority would be to help creditors achieve the best possible recovery, he said. However, what if the office holder would have to collect a significant debt (or indeed any debt) from a sanctioned entity in Russia to achieve that goal? He noted there might even be a person or entity in Russia willing to make such payment, but asked "can you accept that money?".

Similarly, if an office holder wants to take an appointment from a Russian individual (for instance a shareholder or company director), Tschentscher enquired how they could be paid if that person is a sanctioned individual and the assets in question may be sanctioned.

Irish subsidiary

Teneo senior managing director Damien Murran was clear when speaking about the GTLK Europe insolvency that it was "the most complex case I have ever looked at." The reasons are the case's size and scale, coupled with the overlapping sanctions affecting the company, the Dublin-based MD said during the panel.

Damien Murran and Julian Moroney of Teneo were <u>appointed</u> liquidators over **GTLK Europe DAC** and **GTLK Europe Capital DAC** on 31 May by the Irish High Court. GTLK Europe is an Irish leasing platform with 81 aircraft, 45 of which are in Russia, with the rest of them scattered around the world. It is quite a big group, with a balance sheet of USD 4.5bn, and it is spread across seven jurisdictions, according to Murran.

The parent company, **JSC GTLK**, was ultimately owned by the Russian Ministry of Transport and was sanctioned by the EU, the UK, and the US in early 2022. In turn, GTLK Europe was sanctioned by the UK and the US but not by the EU, although it got caught by the European sanctions due to the ownership links, he noted.

Under the sanctions, advisors, auditors, and legal advisors were no longer able to act for GTLK Europe, lessees started to issue termination notices, payment

agencies and banks froze all assets, and the company was unable to make payments due under the bonds held by non-Russian entities, Murran added.

Teneo was then approached by a group of non-Russian creditors owed a considerable amount of money, he said, noting that his firm needed to assess whether they could take the appointment, and whether they could sell the assets. And the final question, he noted, was "would our action terminate the control relationship with Russia?"

Although confident that the joint liquidators could take the appointment, Teneo saw that it could not do its job without the regulators' support, and therefore engaged with the Central Bank of Ireland - as the competent authority in the country regarding asset freezing, according to Murran.

Through their engagement with the regulator, and on the basis that GTLK Europe was not a designated entity under EU sanctions itself, Teneo, with legal support from A&L Goodbody, concluded that, if it was possible to demonstrate that there was no longer control of the Russian parent, the asset freeze could be rebutted, so the joint liquidator could deal with the assets, he noted.

Within six weeks of being appointed, the liquidators obtained a judgment from the Irish High Court clarifying that the control relationship with the Russian parent was deemed broken, and the asset freeze under EU sanctions rebutted, according to the practitioner.

The Central Bank of Ireland subsequently confirmed that the asset freeze sanctions were rebutted, for which there was no precedent in the country, Murran added.

Thereafter, and within less than four months following their appointment, the liquidators obtained licenses from the UK's **Office of Financial Sanctions Implementation** (OFSI) and the US **Office of Foreign Assets Control** (OFAC). Legal support was provided by Freshfields Bruckhaus Deringer in respect of UK and US sanction matters.

The company still has 45 aircraft in Russia and, three weeks ago, it <u>filed</u> claims before the High Court in London against insurers for USD 2.3bn. Whilst still early in the liquidation process Murran believes that "there will be a level of recovery for the creditors," he said.

As key takeaways, Murran believes that insolvency processes can protect the integrity of sanctions while allowing the recovery of capital, and that building trust with "open and transparent engagement" with the regulators has been "critical".

Relying on sanctions

Director of **CRI Group** in Cyprus Andri Antoniou spoke about the case of **Boris Mints**, the focus of a judgment of the Court of Appeal in London in early October. Mints was a shareholder of **Otkritie Bank**, a designated entity under US, EU, and UK sanctions regulations.

Therefore, "he is actually not a sanctioned entity," but he used to be the shareholder of a bank which is, according to the Cypriot professional.

Otkritie and National Bank Trust (NBT), both Russian state-owned banks, claim that Mints and others, which managed Otkritie, conspired to defraud the bank of hundreds of millions by replacing valuable security for worthless bonds, causing its collapse; what has followed is a litany of litigation across several jurisdictions, Antoniou said.

"What Mints tried to do is rely on the sanctions to halt the proceedings against him," Antoniou said.

Mints asked a court in London to indefinitely stay the legal actions because, it was claimed, money judgments could not be entered into in relation to a sanctioned entity, and that OFSI did not have the grounds to authorise litigation steps such as adverse and favourable costs orders and security for costs concerning a sanctioned person – such as Otkritie.

Also, according to Mints, NBT (its 99% shareholder is the **Central Bank of Russia**) is also caught by the sanctions because it is controlled by Vladimir Putin and/or the Governor of the Central Bank, which are sanctioned entities.

The first instance court rejected the Mints stay request, and the Court of Appeal dismissed Mints' challenge of the lower court ruling, holding that the right of access to justice, including entry of a judgment, was not curtailed by the sanctions and the litigation steps could be authorised by OFSI.

Although the Court of Appeal did not need to decide on the "control matter," it did, Antoniou said.

The court decided that 'control' can be established by whatever means, including political and corporate office, and therefore NBT was controlled by Putin and/or the Central Bank governor since they were able to exert influence over it by virtue of their political office, such that NBT too is sanctioned.

The decision of the court of appeal as to the matter of control was *obiter*, in that it is not binding precedent but persuasive authority. In practice, however, this raises questions as to whether the scope of the sanctions is widened, Antoniou said, because it may be claimed that any Russia state-owned company, whilst not included in the sanctions list, is also caught by the sanctioning regulations.

Additionally, professionals will need to consider whether they can act for Russian state-owned companies that, whilst not listed as sanctioned entities, may be caught by the sanctions, in which case they will need to obtain a licence before taking instructions, she said.

She also referred to measures against Cypriot professionals, sanctioned by the US in April this year for being "oligarch enablers."

This has had wider implications because they provided corporate services, including nominee director or nominee shareholder services to a "substantial number" of companies, which would not otherwise have been caught by the sanctions, Antoniou said.

Emails switched off

Job van Hooff, a partner who heads the restructuring practice of **Stibbe**'s Amsterdam, was the court-appointed bankruptcy trustee of **Amsterdam Trade Bank** (ATB), a Dutch legal entity and a subsidiary of Russian **Alfa Bank**. One of Alfa Bank's main owners was **Mikhail Fridman**, a well-known Russian oligarch.

ATB mainly had Dutch and German individuals as creditors, and few of them realised that they held their accounts with a Russia-related entity, while ATB was well capitalised under the requirements of Amsterdam Central Bank, van Hooff said.

The bank did not go bust because of lack of funds, but because it was unable to operationally meet its obligations, according to the practitioner.

After Russia invaded Ukraine in February 2022, the UK quickly imposed sanctions on ATB due to its links with Alfa Bank and US sanctions against the Dutch bank were announced on 7 April 2022.

That created, van Hooff said, an immediate problem because this bank was a fintech company very far ahead with putting its services on the cloud in cooperation with **Microsoft**.

Microsoft, he noted, has a "digital switch" button that, if turned off, causes employees to lose "their Outlook, their Excel files, actually all your files that were not locally saved on a laptop, and – guess what - that's what happened".

His firm was appointed as silent administrator on 14 April 2022 and on 22 April the bank went <u>bankrupt</u>.

As administrators, they had to apply for different US and UK licenses to operate within the sanctioning regime. Many companies applied a "general blanket policy" of not doing business with Russian-related entities, which posed problems even to find legal advice, van Hooff observed. EU sanctions, meanwhile, did not arrive until early 2023.

The current situation is that most ATB assets are liquidated, the vast majority of creditors have been repaid in an amount of around EUR 695m, while the administrators still have remaining assets that could not be sold with a face value of approximately EUR 50m, and a EUR 105m sum in cash, he added.

The new issue, according to Van Hooff, is what will happen at the end of the bankruptcy when there is a surplus – in the Netherlands there is often a "solvent liquidation" after a bankruptcy. ATB is still under EU sanctions and, in the Netherlands, it is not possible to take the role of a "solvent liquidator" without a specific license, he added.

by <u>Carmen Perales</u> in Lisbon

Related links:

<u>High Court of Ireland judgment on GTLK Europe of 31 July 2023</u>

Court of Appeal judgment on Mints of 6 October 2023



Issuer Summary

Issuer Ukraine

Likely To Distress 100

Location Ukraine

Issuer Summary

Issuer

State Transport Leasing Company (STLC GTLK)

Likely To Distress

Location

<u>100</u>

Moscow Bykovo Airport, Russian Federation

Issuer Summary

Issuer

Alfa Bank

(Parent Company: Alfa Group)

Likely To Distress

Location

100

Moscow Bykovo Airport, Russian Federation

Documents

Judgment of Justice Quinn of 31 July 2023

Court of Appeal 6 October 2023 judgment in Mints v PJSC

Relationships

Issuer

Alfa Bank

(Parent Company: Alfa Group)

Issuer

Bank Menatep SPb

Issuer

Otkritie Financial Corp Bank OAO
Issuer
Russia
Issuer
GTLK Europe Capital dac
(Parent Company: State Transport Leasing Co OAO - GTLK)
Issuer
GTLK Europe dac
(Parent Company: State Transport Leasing Co OAO - GTLK)
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State Transport Leasing Company (STLC GTLK)
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Other
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Russian Federation Government-Central Authorities

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