

Construction - Switzerland

Will new Swiss sanctions against Russia affect construction projects?

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Introduction

An awareness of international sanctions imposed by the Swiss government is of particular importance to the international construction industry, given the prevalence of Swiss law as the law chosen to be applicable to construction contracts. Contracts governed by Swiss law may be deemed null and void if they are in breach of sanctions, regardless of whether the parties have any link to Switzerland (for further details please see "[Impact of embargoes on construction contracts – Swiss sanctions against Iran](#)").

Construction practitioners should therefore take note of a new ordinance issued by the Swiss Federal Council on August 27 2014 imposing several commercial and financial restrictions against mainly Russian interests in relation to recent events in Ukraine. Although the measures are aimed merely at preventing the circumvention of sanctions imposed by the international community, they could impact on certain construction projects, particularly in the Russian oil and gas sector.

Impact on construction projects

The ordinance imposes three different categories of restriction which could have repercussions for certain construction projects.

Restrictions relating to infrastructure and other projects in Crimea and Sevastopol

The ordinance prohibits the creation of joint ventures or the granting of loans or credit for infrastructure projects in the transport, energy or telecommunications industries in Crimea and Sevastopol. Joint ventures and loans or credit for projects aimed at exploiting oil, gas or mineral resources in Crimea and Sevastopol are also banned.

Restrictions on oil and gas industry goods

The ordinance requires that the sale, supply, exportation or transit of certain listed goods used in the oil and gas industry be declared as early as possible to the State Secretariat of Economic Affairs (SECO). The requirement applies to goods destined for deep water or Arctic oil and gas exploration or extraction and shale oil projects in Russia. The targeted goods include goods that may be used in construction projects, namely:

- various types of tubing used for pipelines or oil and gas extraction;
- certain types of gas recipients;
- certain types of tools and equipment used for drilling or surveying;
- certain types of liquid pumps; and
- drilling or extraction platforms.

The ordinance also specifically prohibits the sale, supply, export and transit of such listed goods if they are destined for individuals or entities in Crimea or Sevastopol.

Restrictions on certain financial instruments

Construction contractors and owners may also face some difficulties in obtaining financing, performance or advance payment guarantees and insurance coverage in respect of their projects.

The ordinance imposes an obligation to obtain authorisation from SECO for the issuance of financial instruments with a maturity exceeding 90 days by certain designated Russian banks (including Sberbank, VTB Bank, Gazprombank, Vnesheconombank and Rosselkhozbank), entities controlled by those banks outside Switzerland and entities acting on behalf of those banks. The ordinance provides that the authorisation will be granted if the contemplated loan does not cause the total value of the financial instruments held by the applicant to exceed the average value of that total during the

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preceding three years.

The ordinance also imposes a prohibition against financial intermediaries (eg, insurance companies and banks) establishing new business relationships with certain designated entities or entities controlled by designated entities or acting on their behalf.

Consequences of breach

A failure to comply with the measures can lead to fines of up to Sfr1 million and imprisonment of up to five years, depending on the measure. In addition, construction contracts entered into in breach of an international sanction are illegal and will be null and void (Article 20 of the Code of Obligations).

The critical date for determining the illegality of a construction contract under Article 20 is the moment of its conclusion. Therefore, if a construction contract was entered into before the enactment of the relevant sanction, it cannot be null and void under Article 20, although its performance may be considered impossible. In addition, even if a dispute arises at a time when a contract is no longer unlawful (eg, because the sanction has been lifted), a contract which was illegal when it was entered into may remain null and void. However, this view is controversial and some scholars believe that in such a case the contract would be enforceable.

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