

Singapore's autonomous sanctions on Russia: lack of clarity will cause business uncertainty

Background

On 28 February 2022, Singapore's Minister for Foreign Affairs announced that Singapore would join other like-minded countries to impose sanctions and restrictions against Russia. This comes after Russia's invasion of Ukraine and the failure of the United Nations Security Council's resolution to condemn Russia's aggression against Ukraine due to Russia's veto.

On 5 March 2022, Singapore's Ministry of Foreign Affairs ("MFA") issued a statement that detailed the specific sanctions to be imposed on Russia. The two categories of sanctions – export control measures and financial measures – are set out in factsheets annexed to the statement. On 7 March 2022, Singapore Exchange Regulation ("SGX RegCo") published "What SGX expects of issuers in respect of sanctions-related risks, subject or activity" ("Guidance") setting out Singapore Exchange Securities Trading Limited's ("SGX's") expectations of issuers, or any person or entity closely associated with the issuer listed on the SGX ("Issuers"), in respect of compliance with sanctions regimes.

Initial Comments

Singapore has unequivocally signaled her stance in relation to the invasion of Ukraine by announcing autonomous sanctions regimes on Russia. However, further guidance and regulations detailing the announced measures have not been issued. In their absence, businesses lack clarity regarding the scope of the export control and financial measures that have been imposed. Businesses need to proceed with great care in dealings which could potentially run afoul of these measures. A broad and expansive interpretation of the sanctions measures should be adopted pending further clarification from the authorities.

Scope of Singapore's Russia Sanctions

The factsheets annexed to the MFA statement of 8 March 2022 sets out the following sanctions measures:

Export control measures

To constrain Russia's capability to conduct its war in Ukraine and cyber aggression, all permit applications to Russia under the Strategic Goods (Control) Act 2002 ("SGCA") relating to the following category codes set out in the Strategic Goods (Control) Order 2021 ("SGCO")¹ will be rejected:

¹ <https://sso.agc.gov.sg/SL-Supp/S564-2021/Published/20210802?DocDate=20210802> (last accessed: 10 March 2022)

- a. All items with category codes from ML1 to ML22 on the List of Military Goods; and
- b. All items with category codes under Category 3 (Electronics), Category 4 (Computers) and Category 5 (Telecommunications and “Information Security”) on the List of Dual-Use Goods.

Please note that the SGCA deals with:

- i. the export and re-export of strategic goods and intangible transfers of strategic goods technology from Singapore which satisfy the technical perimeters for the items set out in the various category codes listed in (a) and (b) above;²
- ii. the transshipment and transit of strategic goods from some but not all of the category codes listed in (a) and (b) above;³ and
- iii. the brokerage of strategic goods with category codes ML1 to ML4 and ML8 and strategic goods technologies with category codes ML21 and ML22 that are necessary for the development, production or use of any strategic goods with category codes ML1 to ML4 and ML8.

In addition, please note that there are “catch-all” controls in the SGCA that will continue to apply. These “catch-all” controls regulate items based on the end-use and end-users of the items, and apply to goods or technologies which are intended or likely to be used for activities associated with nuclear, chemical or biological weapons.

Furthermore, while the MFA statement does not specifically address bulk permit holders, our view is that bulk permit holders with authorisation to ship strategic goods and strategic goods technologies which are currently prohibited by the Russia sanctions regime should seek confirmation whether their bulk authorisations continue to be effective. In the absence of such confirmation, we would caution businesses from relying on their bulk permits.

Financial Measures

Singapore has also announced the imposition of financial measures targeted at designated Russian banks, entities and certain identified activities, and fund-raising activities benefiting the Russian government. Further clarification on the financial measures will be issued by the Monetary Authority of Singapore (“MAS”).

The financial measures apply to all financial institutions in Singapore, including banks, finance companies, insurers, capital markets intermediaries, securities exchanges, and payment service providers. The financial measures prohibit all financial institutions in Singapore from:

- a. Entering into transactions or establishing business relationships with the following Russian banks:
 - i. VTB Bank Public Joint Stock Company;
 - ii. The Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;
 - iii. Promsvyazbank Public Joint Stock Company; and

² Please note that the SGCA defines technology very broadly to include information (including information comprised in such documents as specifications, blueprints, plans, manuals, models, diagrams, formulae, tables and designs) that is necessary for the development, production or use of any goods, and includes software.

³ Please see Schedules 4 and 5 of the Strategic Goods (Control) Regulations (“SGCR”).

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iv. Bank Rossiya.

Financial institutions in Singapore with existing business relationships must freeze any assets and funds of these four banks.

- b. Providing financing or financial services in relation to the export from Singapore or any other jurisdiction of goods subject to the export control measures discussed above. Although the MFA factsheet uses the term “goods”, we suggest that clarification from MAS be obtained should the financing or financial services relate to strategic goods technologies and intangible technology transfers that fall within the category codes subject to the export control measures on Russia.
- c. Providing financial services in relation to designated Russian non-bank entities which are involved in activities in (b). Where there are existing business relationships, financial institutions must freeze any assets and funds of these designated entities. Details on the designation of non-bank entities will be provided subsequently.
- d. Entering into transactions or arrangements or providing financial services that facilitate fund raising by: (i) the Russian government; (ii) the Central Bank of the Russian Federation; and (iii) any entity owned or controlled by them or acting on their direction or behalf. The prohibitions apply to buying and selling new securities, providing financial services that facilitate new fund raising by, and make or participate in the making of a new loan to the above entities. The Singapore Government and MAS will cease investing in newly issued securities of the above entities.
- e. Entering into transactions or providing financial services in relation to the following sectors, in the breakaway regions of Donetsk and Luhansk: (i) transport; (ii) telecommunications; (iii) energy; and (iv) prospecting, exploration and production of oil, gas and mineral resources.
- f. Entering into or facilitating any transactions involving cryptocurrencies, to circumvent any of the above prohibitions in (a) to (e). The prohibited transactions cover all transactions that involve cryptocurrencies and extend to the payment and settlement of transactions that relate to digital assets (such as non-fungible tokens).

SGX’s Guidance

The Guidance relates to sanctions-related risks generally and is not specific to Singapore’s Russian sanctions regime. It applies to all sanctions laws and regulations that are applicable to Issuers.

The Guidance consists of three parts – (a) exposure or nexus to sanctions-related risks; (b) sanctioned subject or sanctioned activity; and (c) prohibition on fundraising – as follows:

- a. **Exposure or nexus to sanctions-related risks.** Issuers must have adequate and effective systems of internal control systems to address sanctions-related risks. Issuers must assess if they have businesses that violate any applicable domestic and international sanctions law. If they do, they should immediately announce the inherent risk exposure on SGXNET in accordance with their continuing disclosure obligations.
- b. **Sanctioned subject or sanctioned activity.** If an Issuer is subject to sanctions or engages in a sanctioned activity, it should suspend trading in its listed securities, and immediately announce all relevant information. The Issuer should remain suspended until it has demonstrated to SGX that it is no longer considered a sanctioned subject, or it has ceased the sanctioned activity under MAS’s list of designated persons or entities.

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- c. **Prohibition on fundraising.** In line with financial measures announced by the MFA, Issuers are prohibited from facilitating fund raising activities to benefit sanctioned Russian related entities.

Conclusions: businesses beware!

Singapore's Russia sanctions regime is far reaching and reflects the country's stance in relation to the invasion of Ukraine. The sanctions regime is designed to blunt Russia's capacity to conduct war against Ukraine and undermine its sovereignty.

Businesses need to be cognisant of the scope of controls as well as put in place process and procedures to ensure that they comply with the sanctions requirements. Issuers will also need to take note of additional obligations imposed by the SGX RegCo in relation to sanctions-related risks.

In particular, businesses should consider the following:

- Businesses that deal with goods and technologies covered by the export control measures must engage in transaction screening and due diligence to ensure that their transactions are not destined for Russia. These measures include brokerage transactions where the goods or technologies are not exported from Singapore to Russia.
- Businesses must ensure that they do not engage in any activities set out in the financial measures. They will not be able to obtain financial services from financial institutions in Singapore to support such activities.
- Businesses must constantly monitor the list of designated non-bank entities and also whether additional Russian banks will be added to the financial measures. Currently, only four Russian banks have been designated under the sanctions regime but the measures envisage the possibility of designating additional entities.
- Businesses and financial institutions need to perform KYC checks and reviews to ensure that they do not enter into transactions or arrangements or provide financial services that facilitate fund raising by: (i) the Russian government; (ii) the Central Bank of the Russian Federation; and (iii) any entity owned or controlled by them or acting on their direction or behalf. In this regard, we note that there is lack of clarity as to the degree of ownership or control that is required in order for the prohibitions to apply. As such, we suggest businesses clarify whether the prohibitions apply before dealing with parties that are owned (directly or indirectly and in any percentage) or controlled (directly or indirectly and have positive or negative control) by the Russian government or the Central Bank of the Russian Federation.
- To the extent that businesses and financial institutions have existing relationships or have entered into any transactions with parties which are covered by the Russian sanctions regime, legal advice should be obtained to ascertain whether to continue performing and transacting with such parties or to suspend performance of these transaction.
- Businesses should take note that other countries have also introduced autonomous sanctions regimes targeting Russia. These will need to be observed where applicable to business transactions in Singapore or overseas.
- Issuers must take note of the compliance requirements and implement the necessary procedures set out in the Guidance.

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