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Standing in the Way of Control – When is a Company Controlled by a Sanctioned Russian Entity?

Introduction

In the High Court case of *Litasco SA -v- (1) Der Mond Oil and Gas Africa Sa (2) Locafrique Holding SA* [2023] EWHC 2866 (Comm), Litasco SA (**Litasco**) was awarded summary judgment against the Senegalese entities Der Mond Oil and Gas Africa Sa (**Der Mond**) and Locafrique Holding SA (**Locafrique**) in connection with a breach of contract claim relating to the delivery of 950,000 barrels of Nigerian crude oil.

The case is of interest regarding the scope of UK sanctions in the wake of the Russia-Ukraine war, specifically whether a party, who is not themselves the subject of direct sanctions, is 'controlled' by a party who is the subject to sanctions, and therefore whether a counterparty is prohibited from making payments to such party.

Background

Litasco entered a supply contract for crude oil with Der Mond and Locafrique (the parent of Der Mond) in April 2021, which contained fairly standard provisions on sanctions whereby each party agreed that contractual performance should be "in compliance" with a wide array of sanctions laws, including those of the UK, where such laws are "directly or indirectly applicable".

Der Mond did not meet its payment obligations to Litasco, and a series of negotiations ensued to hash out revised terms, resulting in an addendum to the contract under which a series of instalment payments were to be made. Following Der Mond's failure to pay the third such instalment, Litasco accelerated the debt and brought proceedings.

In one of its defences to these proceedings, Der Mond sought to rely on the application of the [Russia \(Sanctions\) \(EU Exit\) \(Amendment\) Regulations](#)

[2019](#) (the **Sanctions Regulations**). While Litasco is a Swiss incorporated trading company, it is a subsidiary of the Lukoil PJSC (**Lukoil**), one of Russia's largest oil companies.

Der Mond cited regulation 12 of the Sanctions Regulations as a basis for not making payment to Litasco. Regulation 12(1) stipulates that "A person ("P") must not make funds available directly or indirectly to a designated person if P knows, or has reasonable cause to suspect, that P is making the funds so available", as to do so constitutes an offence. A "designated person" for the purposes of the Sanctions Regulations is a person, designated by the Secretary of State, with whom other parties are prohibited from dealing. The indirect provision of funds to such a person includes making funds "available to a person who is owned or controlled directly or indirectly (within the meaning of regulation 7) by the designated person".

The Concept of Control

As set out in regulation 7 of the Sanctions Regulations, a person (**Party A**) is considered to be "owned or controlled directly or indirectly" by another (**Party B**) if either (or both) of the following conditions are satisfied:

1. **Condition 1** – Party B directly or indirectly: (a) holds over 50% of shares in Party A, (b) holds more than 50% of voting rights in Party A, or (c) holds the right to appoint or remove the majority of the board of directors of Party A.
2. **Condition 2** – It is reasonable, with regard to all the circumstances, to expect that Party B would be able in most cases or in significant respects, by whatever direct or indirect means, to ensure that the affairs of Party A are conducted in accordance with Party B's wishes.

Der Mond argued that the identity of the persons in control of Litasco triggered the application of

regulation 12, citing the Lukoil shareholder, and former CEO and president Vagit Alekperov, and Vladimir Putin, President of the Russian Federation, both of whom are designated persons on the UK sanctions list.

Testing the Limits of Control

The court held that Mr Alekperov, who stood down from the board of Lukoil in April 2022, was not caught within regulation 7 as his shareholding of 8.5% failed to trigger Condition 1, and no evidence suggested he had sufficient control to trigger Condition 2.

As to the control exercised by President Putin, reference was made to the previous case of *PJSC National Bank Trust and another v Mints and others* [2023] EWHC 118 (Comm) (the **Mints**). In the *Mints*, the claimant was a bank owned and controlled by the Central Bank of Russia, whose governor is appointed on the recommendation of President Putin. It was argued that the Central Bank of Russia was "an organ of the Russian state" under President Putin's de facto control. The Court of Appeal in the *Mints* had applied the concept of control under the Sanctions Regulations broadly, acknowledging that President Putin could be said to exercise the requisite level of control.

However, the judge distinguished the facts of the *Mints* from those of the present case, noting that no evidence demonstrated that Litasco was under President Putin's de facto control, and that Lukoil, as a non-state-owned entity, could not be shown to operate as an organ of the state in the same manner as the Central Bank of Russia. In particular, the judge noted that in relation to Condition 2, it could not be shown that any contractual funds payable by Der Mond to Litasco would be used in accordance with the wishes of President Putin.

While it was conceded that, in theory, President Putin may well have the means of placing Litasco and/or its assets under his de facto control, it was held that the correct interpretation of control for Condition 2 concerns the "existing influence of a designated person over a relevant affair of the company... not a state of affairs which a designated person is in a position to bring about". Otherwise, the scope of President Putin's control could be interpreted to extend almost limitlessly, including to companies of which he is wholly ignorant.

Conclusion

While the defendants' arguments regarding the application of the Sanctions Regulation were dismissed as baseless, the case of *Litasco* is pertinent as the first binding case to consider and apply the regulation 7 test of control. It represents a balanced approach which is unlikely to risk opening the 'floodgates' to an onslaught of claims that practically any entity with Russian lineage is ultimately controlled by the Russian state and therefore by President Putin. The case for control must be positively established by demonstrating a factual matrix between the dealings of the alleged 'controlled' entity and those of the 'controlling' entity.

The court's interpretation aligns with recent joint Foreign, Commonwealth & Development Office (FCDO) and Office of Financial Sanctions Implementation HM Treasury (OFSI) [guidance on all UK sanctions laws](#), including the Sanctions Regulations (the **Guidance**). The Guidance states that there is no presumption that "a private entity is subject to the control of a designated public official simply because that entity is based or incorporated in a jurisdiction in which that official has a leading role in economic policy or decision-making" and evidence on a case-by-case basis is required to demonstrate that an official exercises control over any such entity. Specifically on President Putin, the Guidance confirms that he is not considered to exercise indirect or de facto control over the entire Russian economy.

It is also worthy of note that the case confirms the *Mints* position that the application of the Sanctions Regulations would not have prevented the court from giving a money judgment in *Litasco's* favour.

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