

The amended Sanction Act enters into force

LEGAL ALERT

The Polish Act on Special Measures to Prevent and Counteract Aggression against Ukraine and to Safeguard National Security¹ dated 13 April 2022 (Polish: *Ustawa z dnia 13 kwietnia 2022 r. o szczególnych rozwiązaniach w zakresie przeciwdziałania wspieraniu agresji na Ukrainę oraz służących ochronie bezpieczeństwa narodowego*) (the “**Sanction Act**”) entered into force in Poland on 16 April 2022. The Sanction Act regulates the application of restrictive measures at the national level and introduces a list of persons and entities (the “**Sanction List**”) to whom certain restrictive measures specified in EU regulations, including Council Regulation (EU) No. 765/2006 (“**Regulation 765/2006**”) and Council Regulation (EU) No. 269/2014 (“**Regulation 269/2014**”) have been applied.

The Sanction Act specifies certain administrative fines (**up to PLN 20 million**) and penal sanctions (**imprisonment for up to three years**) for a breach of its provisions or for a breach of the EU sanction provisions.

As practice has shown, interpreting and applying domestic and EU sanctions may lead to trade difficulties. Businesses are often unable to clearly identify whether or not their contractor, or the execution of a specific contract, is subject to the sanctions. As a result, the Head of the National Revenue Administration (*Szef Krajowej Administracji Skarbowej*) has received numerous applications for rulings from businesses fearful of potentially violating the Sanction Act. This legal alert summarises basic information on the applicable laws in this respect, including the amended Sanction Act which was passed on 5 August 2022 and enters into force on 18 August 2022.

1. Journal of Laws of 2022 item 835.

1. SANCTION LIST

A list of persons and entities to whom restrictive measures are applied is maintained by the **minister competent for internal affairs**, who adds a person or entity to the Sanction List with an administrative decision. The Sanction List and the restrictive measures resulting from being added to the Sanction List **are complementary to the restrictive measures stipulated by the EU regulations**, and the measures applied to persons and entities appearing on the Sanction List pursuant to the Sanction Act (“**Sanctioned Parties**”) cannot add to the measures already applied to such persons and entities under Regulation 765/2006 and/or Regulation 269/2014. In practice, this means that if a given person or entity is included in any of the lists attached to the EU regulations that impose restrictive measures at an EU level, there is no reason to add such person or entity to the Sanction List.

> Restrictive Measures

Pursuant to the Sanction Act, the following restrictive measures may be applied to Sanctioned Parties:

- a. **the freezing of funds and economic resources**, within the meaning of Regulation 269/2014 and Regulation 765/2006, belonging to, owned, held or controlled by the Sanctioned Parties;
- b. **a prohibition to make funds or economic resources**, within the meaning of Regulation 269/2014 and Regulation 765/2006, available, directly or indirectly, to or for the benefit of the Sanctioned Parties;
- c. **a prohibition to participate, knowingly and intentionally, in activities whose object or effect is, directly or indirectly, to circumvent the prohibitions set out in points (a) and (b) above;**
- d. **exclusion from a contract award (public procurement) procedure or competition** under the Act dated 11 September 2019 – the Public Procurement Law²;
- e. **the entry on the list of foreigners whose stay in Poland is undesirable** under Article 434 of the Act on Foreigners dated 12 December 2013³.

The Sanction List includes information on the individuals and entities subject to restrictive measures and an indication of specific restrictive measures that are applied. Consequently, only the indicated restrictive measures apply to a given person or entity.

> Who may be included in the Sanction List?

Pursuant to the Sanction Act, a decision to add a person or entity to the Sanction List is issued with respect to those with financial resources, funds and economic resources, as defined by Regulation 765/2006 or Regulation 269/2014, who directly or indirectly support:

- a. **the aggression of the Russian Federation against Ukraine initiated on 24 February 2022; or**
- b. **serious violations of human rights and repression of civil society and democratic opposition, or whose activities constitute another serious threat to democracy or the rule of law in the Russian Federation or Belarus;**

- or to those who are directly related to these persons or entities, particularly **by personal, organisational, economic or financial links, or which are likely to use such funds, resources or economic resources for that purpose.**

When deciding whether to add a given person or entity to the Sanction List, the minister competent for internal affairs specifically examines **the nature and scope of the business and capital structure** of the person or entity, and relevant **national security** issues.

2. APPLICATION OF THE SANCTION ACT IN PRACTICE

Currently, the Sanction List includes **33 entities and 15 individuals**. An analysis of the grounds for the administrative decisions issued to date regarding the Sanction List leads to the conclusion that the leading reasons a given person or entity may be added to the Sanction List are specifically (i) the identification of a sanctioned oligarch as an ultimate beneficial owner of said entity; or (ii) the identification of links which said person or entity has with other sanctioned persons or entities.

In addition, when issuing a decision to add a given person or entity to the Sanction List, the sanctioning authority is not bound by any interpretations or understandings of any of the EU-defined terms used in Regulation 765/2006 and Regulation 269/2014. The authority specifically considers the reasons given by the Sanction Act. In accordance with the interpretation of the Sanction Act thus far applied by the minister competent for internal affairs, the provisions of the EU regulations do not constitute any premise for the inclusion of a person in the Sanction List.

2. Journal of Laws of 2021 item 1129, as amended.

3. Journal of Laws of 2021 item 2354, as amended.

As the premises of the Sanction Act are unspecified, and because the Sanction Act lacks any direct reference to the EU regulations on assessing the premises for entry to the Sanction List, the scope of the Sanction List may be relatively wide. As the ministry competent for internal affairs has publicly advised, the Sanction List will continue to be extended by each subsequent sanction decision. Meanwhile, the grounds specified in the administrative Sanction List decisions issued to date show that, in practice, the Sanction List includes persons for the mere existence of a link with a Russian sanctioned person or entity. It should be noted that the Sanction Act prohibits any knowing and intentional participation in activities whose object or effect is to directly or indirectly circumvent the restrictive measures already imposed. Consequently, we recommend adopting a precautionary approach and thoroughly verifying the contractors and entities who participate in your transactions.

3. PROCEEDINGS CONCERNING THE INCLUSION AND REMOVAL OF A PERSON OR AN ENTITY WITH REGARD TO THE SANCTION LIST

- > **Application for removal from the Sanction List** – a decision to remove a person or an entity from Sanction List is issued by the minister competent for internal affairs, either ex-officio or following an application by the person or entity concerned. In the application, the applicant must prove that there are no reasons to be included on the Sanction List, including the non-existence of any personal, organisational, economic or financial links between the applicant and the other sanctioned person or entity; or
- > **Applications for the release of certain frozen funds or economic resources, or to allow provision of certain funds or economic resources** – based on the delegation to Member States provided by Regulation 765/2006 and Regulation 269/2014, the Polish legislature has introduced a procedure for releasing frozen funds or economic resources. It is the Head of the National Revenue Administration who issues an administrative decision to authorise a release of frozen funds or economic resources. Such application must specify the scope of the frozen funds or economic resources to be released.

Given the wide scope in the manner the Sanction Act has been applied, and the broadening interpretation of the conditions for adding a person to the Sanction List, some of the Sanctioned Parties consider themselves unfairly targeted and have sought removal from the Sanction List. To date, such applications have mostly failed.

4. AMENDMENT TO THE SANCTION ACT:

On 5 August 2022, the act amending the Sanction Act and the Act on the National Revenue Administration⁴ (the “**Amendment**”) was passed by the legislature. It introduces the institution of temporary mandatory administration in entities subject to restrictive measures under the Sanction Act or the relevant EU regulations, and provides the employees of the Sanctioned Parties the opportunity to obtain payments from the Guaranteed Employee Benefits Fund (Polish: Fundusz Gwarantowanych Świadczeń Pracowniczych; or FGŚP).

- > **temporary mandatory administration** – if a given person is subject to restrictive measures, it is possible to impose temporary mandatory administration in order to:
 - a. enable the transfer of funds or economic resources as defined by Regulation 269/2014 and Regulation 765/2006; or
 - b. transfer the ownership of the funds or economic resources owned by the Sanctioned Parties to the State Treasury. The ownership is transferred in exchange for any compensation which is frozen and subject to restrictive measures.

Mandatory administration is imposed by an administrative decision issued by the minister competent for the economy. The decision identifies the entity over which mandatory administration is imposed, the scope of the funds or economic resources to be administered, and the person in charge of the administration thereof.

- > **payments from the Guaranteed Employee Benefits Fund** – employers subject to restrictive measures may apply for payments from the Guaranteed Employee Benefits Fund to pay their employees. If the employer has failed to make such application, an employee may also request payment from the Fund.

In addition, the Amendment references Article 268a of the Act dated 14 June 1960 – the Code of Administrative Procedure⁵ and allows the minister competent for internal affairs to authorise its employees to handle matters on its behalf and issue decisions on the inclusion of a person or entity on the Sanction List as well as the removal thereof from the List. The above amendment was introduced in order to accelerate the inclusion or removal proceedings.

The Amendment enters into force on the day following its publication in the Journal of Laws, i.e. 18 August 2022.

4. Amendment dated 5 August 2022 to the Act on Special Measures to Prevent and Counteract Aggression against Ukraine and to Safeguard National Security and the Act on the National Revenue Administration, Journal of Laws of 2022 item 1713.

5. Journal of Laws of 2021 item 735, as amended.

5. HOW CAN WE HELP

The Dispute Resolution practice at Rymarz Zdort advises Clients and represents them in proceedings involving the Sanction Act, including proceedings before the Head of the National Revenue Administration.

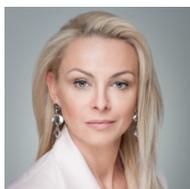
Our experts specifically assist with:

- deciding what actions the management board may take in connection with certain restrictive measures;

- assessing whether restrictive measures also apply to persons related to certain contractors of a company; and
- analysing how to apply the sanction regime to existing agreements.

Prepared based on the amendment dated 5 August 2022 to the Act on Special Measures to Prevent and Counteract Aggression against Ukraine and to Safeguard National Security and the Act on the National Revenue Administration.

CONTACT:



Karina Aust-Niewiadomska

PARTNER

+48 22 520 4237
KARINA.AUST-NIEWIADOMSKA
@RYMARZ-ZDORT.COM



Kamil Kozłowski

SENIOR ASSOCIATE

+48 22 520 4356
KAMIL.KOZLOWSKI
@RYMARZ-ZDORT.COM



Aleksandra Pliszek

ASSOCIATE

+48 22 520 4291
ALEKSANDRA.PLISZEK
@RYMARZ-ZDORT.COM

