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Dear Sirs

Re: **Sanctions advice**

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We have considered the queries you have raised, and our responses are as follows:

- 1) **SANCTIONS EXCLUSION CLAUSES APPLICABLE IN INSURANCE POLICIES USUALLY TAKE INTO ACCOUNT SANCTIONS OF US, EU, UK AND UN. WHAT ARE THE KEY SANCTION RESTRICTIONS OF THOSE COUNTRIES IN RESPECT OF VOYAGES TO AND FROM NOVOROSSIYSK PORTS?**

As you are aware, sanctions can be very wide-ranging and can be triggered not just by the geographical area, but also where a particular terminal is run by a sanctioned entity or only loads a specific cargo which is sanctioned under certain sanction regimes.

It may also be the case that although a particular entity is not listed on a sanctions list, they may still be subject to sanctions if they are owned or controlled by a sanctioned entity. The various sanctions regimes vary slightly in their requirements, but under the US, EU and UK regimes, if a sanctioned entity/individual owns/controls a non-sanctioned entity, then that non-sanctioned entity will also be considered sanctioned. In the US this is called the 50% Rule, as it requires the sanctioned entity/individual to own directly or indirectly 50% of the shares for the non-sanctioned entity to be caught by sanctions. The US also aggregates the shareholding of sanctioned individuals and entities in a company (i.e. it 'adds up' the shareholding of more than one sanctioned individual to determine if it comes to 50% or more in total). Thus, the US focusses on ownership rather than control. The EU/UK position is slightly different - what is required is more than 50%

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ownership. In the EU, this can be an aggregate total across multiple sanctioned entities/individuals, but the UK does not aggregate. Both the EU and UK also look at the issue of control.

Bearing all this in mind, we understand that the port authority/operator at Novorossiysk is Novorossiysk Commercial Sea Port PJSC (“NCSP”). We have run searches on this entity and set out the results in the following table.

Entity:	Role:	US:	UN:	EU:	UK:
Novorossiysk Commercial Sea Port PJSC	Port operator and/or authority	No Results	No Results	Sectoral sanctions pursuant to Council Regulation 2022/328 and Council Decision 2022/327 of 25 Feb 2022  Please see below.	No Results

As you will note, NCSP is subject to EU sectoral sanctions pursuant to Council Regulation 2022/328 and Council Decision 2022/327 of 25 February 2022. Specifically, article 1(4)(a) of EU Council Decision 2022/327, as well as Annex XIII of the EU Regulation 2022/328, it states that it shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments, issued after 12 April 2022 with Novorossiysk Commercial Sea Port.

It has also come to our attention that PJSC Transneft may have a 62% (50.11% indirect and 10.52% directly) share in NCSP.

We have run searches on this entity and set out the results in the following table.

Entity:	Role:	US:	UN:	EU:	UK:
PJSC Transneft	Port operator and/or authority	Please see below	No results	Please see below	Please see below

a. US position

Transneft is listed on the Sectoral Sanctions Identifications List (“SSI List”) as a “Non-SDN”, which, unlike the Specially Designated Nationals and Blocked Persons list (“SDN List”), does not result in blocking and asset freezing, and does not impose a blanket ban on all forms of dealings with SSI entities. Each Directive governs activities between US persons and those listed on SSI List. Unlike the SDN List, which includes blocked persons and prohibits virtually all activity with so-called SDNs, the SSI List designations result in narrow prohibitions that are limited to those activities in the identified sectors targeted by the Directives. Both US and non-US persons or entities can continue to deal generally with parties on the SSI list (unlike SDNs) - the only prohibition is on the specific activities targeted by the sectoral sanctions.

The sectoral sanctions applicable to Transneft are, directive 2 of EO 13662 and 3 of EO 14024.

Directive 2 prohibits the following transactions by U.S. persons and within the United States:

- (1) For new debt issued on or after July 16, 2014 and before November 28, 2017, all transactions in, provision of financing for, and other dealings in new debt of longer than 90 days maturity of persons determined to be subject to this Directive or any earlier version thereof, their property, or their interests in property.
- (2) For new debt issued on or after November 28, 2017, all transactions in, provision of financing for, and other dealings in new debt of longer than 60 days maturity of persons determined to be subject to this Directive or any earlier version thereof, their property, or their interests in property.

Directive 3 provides that for new debt or new equity of entities listed in Annex 1 (in which Transneft is listed), or their property or interests in property, US persons, or persons within the United States, are prohibited from

all transactions in, provision of financing for, and other dealings in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after 12:01 a.m. eastern daylight time on 26 March 2022.

With all the Directives, sanctions that apply to entities on the SSI List, also apply to any entities that are owned 50% or more by one or more persons on the SSI List (50% Rule). Therefore, the US sanctions which apply to Transneft, will also apply to NCSP.

(Please note for good order that we are not US lawyers, and have simply reviewed the sanctions lists and Directives).

b. EU position

In respect of the EU position, Transneft are subject to Article 5aa of Council Regulation (EU) 2022/428. This regulation provides as follows:

*“1. It shall be prohibited to directly or indirectly engage in any transaction with:*

*(a) a legal person, entity or body established in Russia, which is publically controlled or with over 50 % public ownership or in which Russia, its Government or Central Bank has the right to participate in profits or with which Russia, its Government or Central Bank has other substantial economic relationship, as listed in Annex XIX;*

*(b) a legal person, entity or body established outside the Union whose proprietary rights are directly or indirectly owned for more than 50 % by an entity listed in Annex XIX; or*

*(c) a legal person, entity or body acting on behalf or at the direction of an entity referred to in point (a) or (b) of this paragraph.*

*2. The prohibition in paragraph 1 shall not apply to the execution until 15 May 2022 of contracts concluded before 16 March 2022 or ancillary contracts necessary for the execution of such contracts.*

*3. The prohibition in paragraph 1 shall not apply to:*

*(a) transactions which are strictly necessary for the purchase, import or transport of fossil fuels, in particular coal, oil and natural gas, as well as titanium, aluminium, copper, nickel, palladium and iron ore from or through Russia into the Union;*

*(b) transactions related to energy projects outside Russia in which a legal person, entity or body listed in Annex XIX is a minority shareholder.’;*

Annex XIX includes Transneft.

Transneft is also subject to Article 5(2)(b) of Council Regulation (EU) 960/2014. This provides that it shall be prohibited to directly or indirectly purchase, sell, provide investment services for or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 30 days, issued after 12 September 2014 by Transneft.

If it is correct that Transneft owns more than 50% of NCSP, the EU sanctions will also apply to NCSP.

Finally, it is also worth noting that Nikolai Petrovich TOKAREV, as CEO of Transneft, is listed on the EU's sanctions list, and is subject to an asset freeze by the EU.

It is unclear whether he has the necessary level of control to be caught by EU sanctions.

The EU has issued some guidance on the meaning of control, stating as follows:

*“When assessing whether a legal person or entity is controlled by another person or entity, it is necessary to carry out a factual assessment of all the organisational, structural and economic links between the two undertakings/entities. The determining factor is whether the listed entity is able to and effectively asserts a decisive influence over the conduct of the other entity in question. Whilst a significant shareholding is one factor that may suggest control, there is no minimum threshold. Even a minority shareholding may be*

sufficient if it is allied to rights greater than those normally granted to minority shareholders and if 'consistent legal or economic indicia' show that the listed entity is in fact influencing the other entity.

The indicia of decisive influence include:

- a. the power to appoint or remove a majority of the members of the administrative, management or supervisory body of such legal person or entity;
- b. using all or part of the assets of a legal person or entity;
- c. sharing jointly and severally the financial liabilities of a legal person or entity, or guaranteeing them;
- d. having influence as regards corporate strategy, operational policy, business plans, investment, capacity, provision of finance, human resources and legal matters
- e. putting in place or maintaining mechanisms to monitor the commercial conduct of the legal person or entity;
- f. other indicia such as sharing a business address or using the same name which could cause third parties to have the impression that the two entities are in fact part of the same undertaking."

Without any evidence showing that Nikolai Petrovich TOKAREV has the necessary level of control of Transneft, it is unclear whether the fact that Nikolai Petrovich TOKAREV is sanctioned will also trigger EU sanctions in relation to NCSP.

c. UK position

Similarly to the EU position, the UK has also listed and, therefore, frozen the assets of Nikolai Petrovich TOKAREV. The UK list states that he is the president and director of Transneft. As with the EU position, it then becomes a question of fact as to whether Nikolai Petrovich TOKAREV has the necessary level of control of Transneft for NCSP to be considered sanctioned by the UK. The indicia of decisive influence for the EU applies equally to determining the position of control under UK sanctions. Mirroring the EU position, without any evidence showing that Nikolai Petrovich TOKAREV has the necessary level of control of Transneft, it is unclear whether the fact that Nikolai Petrovich TOKAREV is sanctioned will trigger UK sanctions in relation to NCSP.

d. Summary in relation to NCSP/Transneft

Therefore, in summary, there is a sanctions risk in using the port if it is the case that PJSC Transneft has a 62% share in NCSP.

That said, it appears that trade to the port continues and, thus far, we are not aware of any adverse sanctions consequences as a result of calling at the port.

2) **IS IT POSSIBLE TO BE ABLE TO DEFINE VOYAGE TYPES TO AND FROM NOVOROSSIYSK WHICH WOULD NOT CONSTITUTE BREACH OF SANCTIONS OF THOSE COUNTRIES (EU, US, UK, UN Sanctions)?**

Unfortunately, without knowing the specific entities and cargo involved, it is very difficult to define which voyages would trigger sanctions. Each case is fact-specific.

For every proposed voyage, we would advise undertaking due diligence on:

- all direct and indirect parties involved, including: the vessel, owners, charterers, shippers, consignee, seller, buyer, end user, load and discharge port agents.
- the cargo, including where it originated and its proposed end use. This is relevant as certain sanctions prevent particular uses; for example, the EU has a dual use rule which prohibits exporting to Russia items which can be used for both civilian and military applications.

- the load and discharge ports and any intermediate ports and, if possible, estimated timings. This is relevant as some sanctions have wind-down periods in which certain activities which would otherwise be prohibited are allowed, if the applicable contract has been entered before a certain date, and the activity is executed before a certain date.

Examples of recent trades involving NOVOROSSIYSK port where we have been instructed to undertake due diligence include:

- a. A cargo of steel from Novorossiysk, Russia to Mobile, USA.
- b. A cargo of oil from Novorossiysk, Russia to 1/2 safe ports Euromed.
- c. A cargo of oil from Novorossiysk, Russia to Bourgas, Bulgaria.

3) **WHAT WILL HAPPEN TO THE TIME CHARTER CONTRACTS THAT HAVE BEEN FIXED BEFORE SANCTIONS?**

As to whether those contracts will trigger sanctions, it again depends on the specific trade in question. It is not the case that all trade to NOVOROSSIYSK will be sanctionable - there will be a number of voyages that fall outside the scope of the sanctions.

For those voyages which do trigger sanctions, then the potential options available will be determined by the applicable charterparty terms that have been agreed. For example, if the charterparty contains a BIMCO Sanctions Clause for Time Charterparties 2020, and the vessel is already performing an employment which involves a sanctioned party or is a sanctioned activity, Owners shall have the right to refuse to proceed with the employment and Charterers shall be obliged to issue alternative voyage orders within forty-eight (48) hours of receipt of Owners' notification of their refusal to proceed.

If you have any concerns about particular voyages, we would be happy to consider the charterparty in question in order to advise further.

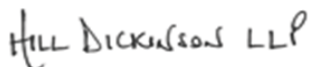
4) **OTHER THAN SANCTION IMPOSING COUNTRIES ARE THERE ANY THIRD PARTIES TRYING TO FORM BLACK LISTS FOR VESSELS, THEIR OWNERS OR MANAGERS WHO MAY HAVE BREACHED SANCTIONS?**

It is not just the US, EU, UK and UN who are imposing sanctions in relation to Russia. We have seen sanctions being implemented by a number of countries, including Australia and Canada. We have also seen individuals, entities and industrial bodies self-sanction. i.e. the activity in question is not sanctionable, but they choose not to carry it out in any event.

As to a blacklist of vessels, owners or managers who are not sanctioned, but may have breached sanctions, sometimes appear in reports issued by the US and the UN and, in our experience, it can have a highly detrimental effect on those listed despite not being binding. Example lists include: [Guidance to Address Illicit Shipping and Sanctions Evasion Practices | U.S. Department of the Treasury](#) and the UN panel reports [Reports | United Nations Security Council](#). This can affect the tradeability of the vessel and, in a worst-case scenario lead to the closure of bank accounts where the relevant person or entity is listed in such guidance material, even where that individual or entity is not sanctioned and was not involved in the sanctions' breach.

We hope the above assists.

Yours faithfully



**Hill Dickinson LLP**