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The Russia – Ukraine Conflict: Making Difficult Decisions in Uncertain Times

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It was 1993. I was 25, a young American lawyer living and working in Moscow. As events are now unfolding in Russia and Ukraine, I am reminded of the images of tanks rolling down the street outside my window and the fear of uncertainty from the 1993 October Coup. Uncertain about whether to stay or to leave or if it would even be possible to get out. Uncertain when the conflict would end and what life would be like after.

In the early hours of February 24, 2022, Russian President Vladimir Putin announced a “special military operation” in Ukraine during a televised address as Russian troops began pouring across Ukraine's borders. While the conflict will have a global impact as a result of rising prices for certain commodities and instability in stock markets, foreign companies operating in the region are grappling with difficult decisions amidst extreme uncertainty about their future in the region.

When a geopolitical crisis creates uncertainty, it is important to assess available information to make critical small choices that lead to the bigger decisions. The questions and decisions differ for each country involved in the conflict, currently Russia, Ukraine and Belarus.

Some of the immediate considerations for businesses evaluating operations in this region include:

Sanctions

Initial sanctions have been swift and far reaching but are not a full embargo against Russia or Belarus. Additional sanctions are expected in the days and weeks ahead. To add to the complexity, there is currently no uniformity among the sanctioning countries, making it difficult for multinationals to know what is and will be permitted.

- How do the current sanctions impact operations?
- What parties and institutions have been placed on blocked lists that may impact existing operations?
- What immediate steps can be taken to mitigate risk prior to full implementation of sanctions that include wind down periods?

Currency Devaluation

On the day of the invasion, the Russian ruble plunged to its lowest level against the US dollar since 2016. The Ukrainian hryvnia has seen a steady decline of value in 2022. The National Bank of Ukraine temporarily

suspended the foreign exchange market, limited withdrawals from consumers' bank accounts and prohibited the withdrawal of foreign currency from customer accounts.

- How will ongoing currency instability affect the viability of maintaining operations in a country?
- Are pricing model changes needed to better account for currency instability?

Personnel Safety

At the urging of President Biden prior to the attack, many Americans and expatriates living in Ukraine left. Some factories and offices have also shut down in the region in anticipation of the conflict.

- For local and foreign employees who remain, what plan is in place to protect staff?
- If offices are located in areas of conflict, are there other more secure areas where they can be temporarily located?
- What safeguards are in place to help with medical assistance or evacuations in the event of emergencies?

Cyber-attacks

Ukrainian banks and government department websites have been hit by cyber-attacks, and attacks launched against other Ukrainian organizations. The risk of cyberattacks and data and system security breaches is significant.

- What measures are in place to protect data, both locally and abroad?
- Do these need to be adjusted due to increased risk of cyber-attacks?

Contracts

Agreements often include force majeure clauses as a way to allocate risk of loss when performance is hindered or prohibited due to certain acts that are outside of the party's control. These provisions commonly allow for a temporary delay of performance but over time it can be grounds to terminate an agreement. Agreements may also contain provisions requiring specific performance or allowing termination upon specific events.

- Has a comprehensive review of agreements involving parties in the region been carried out?
- What clauses exist in these agreements that mitigate or increase risk under the circumstances?
- Is it time to invoke certain clauses, such as force majeure, and, if so, what are the notice and other requirements to do so?

Supply Chain

Ukraine is often referred to as the 'breadbasket of Europe' and a major exporter of wheat and sunflower products, including seeds and oil. Russia's top export is fuel and energy products. With Germany halting the Nord Stream 2 pipeline project, oil prices are surging, and the conflict will exert additional pressure on an already taxed global supply chain.

- For companies that rely on products from this region, what other suppliers are available for sourcing?
- What additional steps can be taken to reduce the supply chain strain or increased costs arising from the conflict?

Compliance

While a company may have some flexibility in performance of agreements, companies do not have the same flexibility with government-required compliance. Tax filings and payments are still required, along with other reporting, licensing, and regulatory compliance.

- Has a strategy been developed to ensure continued compliance?
- What additional resources need to be secured to ensure regulatory compliance during a time of conflict?

These are a few of the complex issues companies operating in this region need to navigate, ideally with help from experts who have experience managing geopolitical crises. Holland & Hart's international legal services group is hosting a webinar on Wednesday, March 2, 2022 at 8:30 a.m. (MST) to explore some of the key legal issues and the unfolding events taking place in the region. [RSVP here](#) to attend.

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