

SANCTIONS IMPOSED ON TURKEY AND THE CONSTRUCTION SECTOR

Newsletter

Special economic measures (sanctions) were imposed against the Republic of Turkey by Decree No. 583 of the President of the Russian Federation dated 28 November 2015¹ (hereinafter **Presidential Decree No. 583**). These measures imply a ban on the import of specific Turkish goods, the sale of tourism products that involve a visit to Turkey, a ban on charter flights, the employment of Turkish citizens or engagement of Turkish citizens on the basis of a civil law contract in Russia, and abolition of the visa-free regime with Turkey. One area of the Russian economy seriously affected by the sanctions imposed on Turkey is the construction sector, where Turkish companies and specialists have built up solid positions dating back to the 1990s. According to available data, today the "Turkish segment" of Russia's construction market is made up of approximately 300 companies with total orders of approximately USD 50 billion, inter alia, within the framework of the implementation of high-profile private and public projects. Turkish construction firms rank highly in the "price-quality" criterion when a contractor (general contractor, subcontractor) is selected to implement a construction project.

What should Russian clients bear in mind now when dealing with a Turkish construction firm, or Russian employers when hiring Turkish specialists?

1. Ban on lines of business

Resolution No. 1457 of the Government of the Russian Federation dated 29 December 2015² was adopted to enforce Presidential Decree No. 583. The Resolution approved the list of types of work (services) that, effective 1 January 2016, may not be performed (provided) in Russia by companies under the jurisdiction of the Republic of Turkey (hereinafter Turkish companies), and also by organisations controlled by Turkish companies and/or Turkish citizens (hereinafter controlled companies).

In particular, this affects the following lines of business in the construction sector:

- the construction of buildings and engineering structures;
- the performance of specialised construction work;
- activities relating to architecture, design and engineering, technical tests, research and analysis;
- the performance of work, provision of services to meet state and municipal needs.

The specific lines of business covered by the ban are determined in accordance with the codes of the Russian National Classifier of Types of Activity "OK 029-2014 (KDES Version 2)". According to these codes, the ban covers all the core lines of business in the areas of project design, construction and management, and also the main civil and industrial construction sectors, for example:

- the construction of new buildings;
- reconstruction, capital repairs, routine repairs and additional work;
- the construction of residential and non-residential buildings, including administrative, industrial and public buildings: hospitals, schools, hotels, shopping centres and indoor sports facilities;
- the construction of roads and railways, underground railways, bridges, tunnels and utilities;
- design and engineering;
- the provision of construction project management services, construction supervision and design supervision.

The bans on the aforementioned lines of business apply to any forms of contractual arrangements with Turkish partners affected by the sanctions (general contractor, subcontractor).

At the same time, however, the sanctions do not apply to work and services, the performance and provision of which was stipulated by contracts concluded before 30 December 2015.

¹ Decree No. 583 of the President of the Russian Federation dated 28 November 2015 "On Measures to Ensure the National Security of the Russian Federation and Protect Russian Citizens from Criminal and Other Unlawful Acts and on the Application of Special Economic Measures in Respect of the Republic of Turkey" (in the version of Decree No. 669 of the President of the Russian Federation dated 28 December 2015).

² Resolution No. 1457 of the Government of the Russian Federation dated 29 December 2015 "On the List of Certain Types of Work (Services) the Performance (Provision) of which in the Russian Federation by Organisations under the Jurisdiction of the Republic of Turkey, and also Organisations Controlled by Turkish Citizens and/or Organisations under the Jurisdiction of the Republic of Turkey is Banned".



SANCTIONS IMPOSED ON TURKEY AND THE CONSTRUCTION SECTOR

Digression: definition of a controlled company

Companies are classified as controlled companies based on indicia that the companies are under the control of another person in accordance with Parts 1 and 2 of Article 5 of Federal Law No. 57-FZ dated 29 April 2008³. A company is deemed to be controlled in the event of the existence of one of the following indicia:

- the controlling person (Turkish citizen or Turkish company) has the right to dispose either directly or indirectly of more than 50 per cent of the total number of votes attributable to the voting shares (interests) constituting the charter capital of the controlled person;*
- the controlling person received the right or authority to determine the decisions being adopted by the controlled person, inter alia, the terms and conditions for doing business;*
- the controlling person has the right to appoint the chief executive officer and/or more than 50 per cent of the collective executive body of the controlled person and/or has the unrestricted ability to elect more than 50 per cent of the board of directors (supervisory board) or other collective management body of the controlled person;*
- the controlling person exercises the authority of the management company of the controlled person;*
- the controlling person has the right to dispose directly or indirectly of less than 50 per cent of the total number of votes of the charter capital of the controlled person, provided that the ratio of votes is such that the controlling person is able to determine the decisions being adopted by the controlled person.*

2. Employment ban

Pursuant to Presidential Decree No. 583, clients for work (services) not included in the list to be determined by the Russian Government (see below) are banned, effective 1 January 2016, from engaging employees that are Turkish citizens, who were not in employment and/or civil law relations with the aforementioned clients for the work (services) as at 31 December 2015, to perform job duties, perform work (provide services). In our opinion, this ban applies not only to Turkish citizens planning to conclude direct labour or civil-law contracts in Russia (requiring the receipt

of a work visa), but also to Turkish citizens, who are the employees of foreign legal entities (manufacturers or suppliers) performing installation (installation and supervision) work (requiring the receipt of a "Maintenance" business visa).

Resolution No. 1458 of the Government of the Russian Federation dated 29 December 2015⁴ approved the list of companies permitted from 1 January 2016 to engage Turkish citizens to perform job duties and perform work (provide services). This list included both Russian and Turkish companies and controlled companies operating in the construction sector (<http://government.ru/orders/21227/>).

Please note that Resolution No. 1296 of the Government of the Russian Federation dated 30 November 2015⁵ states that the bodies of the Federal Migration Service of the Russian Federation are entitled, pursuant to the procedure established by the legislation of the Russian Federation, and within the limits of the quota approved by the Government on the employment of foreign workers, to extend the effective term of the work permits (issue new work permits) to Turkish citizens in employment and/or civil-law relations with legal entities incorporated in accordance with the laws of the Russian Federation, organisations and individuals under the jurisdiction of the Russian Federation as at 31 December 2015. However, this procedure does not apply to the representative offices and branches of foreign companies. In addition, in our opinion, there is a risk that the aforementioned procedure for extending work permits might not apply to highly skilled specialists and other employees among Turkish citizens, who have received work permits separately from established quotas (for example, individuals holding the position of electrical engineer).

We would also like to draw your attention to the prevalent practice where Turkish citizens are refused entry into the Russian Federation, including individuals holding a valid work permit, by the border authorities of the Russian Federation (inter alia, located in Russian airports) without any disclosure of the reasons. It is not advisable to challenge such a refusal, as the border authorities are entitled to refuse entry without disclosing the reasons.

3. Execute, no pardon: what can one expect of the sanctions regime?

Against the backdrop of continuing tension in Russian-Turkish foreign policy, Russia's state authorities have been making mutually

³ Federal Law No. 57-FZ dated 29 April 2008 "On the Procedure for Foreign Investments in Business Entities of Strategic Importance for National Defence and State Security".

⁴ Resolution No. 1458 of the Government of the Russian Federation dated 29 December 2015 "On the Approval of the List of Employers, Clients for Work (Services) Not Covered by the Ban Effective 1 January 2016 on the Engagement of Employees from Turkish Citizens Not in Employment and/or Civil Law Relations with the Aforementioned Employers, Clients for Work (Services) as at 31 December 2015 to Perform Job Duties, Perform Work (Provide Services)".

⁵ Resolution No. 1296 of the Government of the Russian Federation dated 30 November 2015 "On Measures to Implement Decree No. 583 of the President of the Russian Federation dated 28 November 2015 "On Measures to Ensure the National Security of the Russian Federation and Protect Russian Citizens from Criminal and Other Unlawful Acts and on the Application of Special Economic Measures in Respect of the Republic of Turkey".



SANCTIONS IMPOSED ON TURKEY AND THE CONSTRUCTION SECTOR

exclusive statements regarding the fate of construction contractors on the Russian market.

On the one hand, fully aware that the enactment of the prohibitive measures would adversely affect prospects for the implementation of numerous important projects in the Russian economy, the Ministry of Economic Development of Russia has prepared a draft Resolution of the RF Government (<https://regulation.gov.ru/projects#npa=45238>), stipulating the possibility of concluding contracts with Turkish companies and controlled companies, whereby the bans and restrictions will not apply to them. The inclusion of the contracts in a special list selected according to the rules approved by this Resolution (hereinafter the Rules) would serve as the grounds for the conclusion of such contracts.

To be included in the list, the contract must comply with specific criteria established by the Rules. For example, the contract may be concluded with a Turkish company if the failure to conclude such a contract would affect the performance of the internal or external obligations of the Russian Federation, as the goods (work, services) cannot be replaced from other sources, or if such a replacement would result in disproportionately high costs.

The need to conclude a contract with a Turkish company or controlled company, and its inclusion in the list, should be substantiated by the applicant participating in the selection and planning to conclude the contract with the Turkish party. In addition, the applicant must submit a set of documents containing information both on the contract to be concluded, and also on the Turkish counterparty.

The Inter-Departmental Commission under the Ministry of Economic Development of Russia will assess whether a corresponding construction contract may be included in this list.

Even though the Rules establish an exhaustive list of grounds for refusing the conclusion of a contract, such a refusal may be attributed, for example, to the existence of a possibility to replace the supplier, the lack of "significant losses" of the Russian company or the absence of threats to the country's security. Such wording will make it possible to apply similar grounds liberally and prohibit Russian companies from concluding corresponding contracts with Turkish partners.

On the other hand, the President of Russia declared on 25 January 2016 at the Inter-Regional Forum of the People's Front for Russia that "restrictions against Turkey in the construction sector will be expanded".

4. Consequences of the imposition of sanctions against Turkey for contract practice

From the perspective of civil law, the conclusion of a contract with a Turkish company or controlled company stipulating the

performance of lines of business covered by the sanctions will result in the invalidity (nullity) of the contract in accordance with Article 168 of the Civil Code of the Russian Federation. Null and void transactions do not engender legal consequences as of the time of their conclusion, with the exception of the consequences related to their invalidity.

In connection with this fact, the introduction of further sanctions will require companies to adapt their sanctions compliance procedures, and also to include in contracts additional terms and conditions that make it possible to prevent the conclusion of invalid transactions, and if this does happen, to mitigate the negative property consequences of their termination. Accordingly, the following measures could be included among recommended measures:

- The counterparty is required to disclose information on the ownership and management structure of the company;
- The counterparty provides assurances that it has not violated the sanctions regime;
- The counterparty assumes liability for the submission of false information and misrepresentation of the facts;
- The submission of false information and misrepresentation of the facts serves as grounds for the termination of the contract;
- The imposition of sanctions is stipulated as independent grounds for the termination of the contract.



Falk Tischendorf
Attorney-at-law, Partner
Head of the Representative Office
BEITEN BURKHARDT Moscow
E-mail: Falk.Tischendorf@bblaw.com



Kamil Karibov
Lawyer, Ph.D.
Partner
BEITEN BURKHARDT Moscow
E-mail: Kamil.Karibov@bblaw.com



Andrey Slepov
Lawyer, Associate
BEITEN BURKHARDT Moscow
E-mail: Andrey.Slepov@bblaw.com

SANCTIONS IMPOSED ON TURKEY AND THE CONSTRUCTION SECTOR

Upcoming events

- [V. annual ICA conference "Compliance: optimization and effectiveness", 18 February 2016, Moscow](#)
- [AEB Migration Committee Conference "Current issues of migration legislation application in the Russian Federation", 18 February 2016, Moscow](#)
- [Conference on improving Russia's investment image in Germany "Growing market. Modernization. Medium-sized enterprises.", 19 February 2016, Berlin](#)
- [Exports to Russia – Topical issues regarding imports, sales and distribution and e-commerce, 22 February 2016, Nuremberg](#)
- [Information day of the German Engineering Federation \(VDMA\) "Russia: from export market to the organization of production?", 29 February 2016, Frankfurt am Main](#)
- [14th Annual Euroforum Conference "Law in the automobile industry", 2-3 March 2016, Stuttgart](#)

Please note

This publication cannot replace consultation with a trained legal professional.

If you no longer wish to receive this newsletter, you can unsubscribe at any time by e-mail (please send an e-mail with the heading "Unsubscribe" to Ekaterina.Leonova@bblaw.com) or any other declaration made to BEITEN BURKHARDT.

© BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH.
All rights reserved 2016.

Imprint

This publication is issued by
BEITEN BURKHARDT Rechtsanwaltsgesellschaft mbH
Ganghoferstrasse 33, D-80339 Munich
Registered under HR B 155350 at the Regional Court Munich/
VAT Reg. No.: DE811218811

For more information see:
www.beitenburkhardt.com/imprint

Editor in charge

Kamil Karibov

Andrey Slepov

Anastasia Vasilieva



You will find further interesting topics
and information about our experience
on our website.

BEITEN BURKHARDT · RECHTSANWÄLTE (ATTORNEYS-AT-LAW)

MOSCOW · TURCHANINOV PER. 6/2 · 119034 MOSCOW · TEL.: +7 495 2329635 · FAX: +7 495 2329633
FALK TISCHENDORF · FALK.TISCHENDORF@BBLAW.COM

ST. PETERSBURG · MARATA STR. 47-49 LIT. A · OFFICE 402 · 191002 ST. PETERSBURG · TEL.: +7 812 4496000 · FAX: +7 812 4496001
NATALIA WILKE · NATALIA.WILKE@BBLAW.COM

BEIJING · BERLIN · BRUSSELS · DUSSELDORF · FRANKFURT AM MAIN
MOSCOW · MUNICH · NUREMBERG · SHANGHAI · ST. PETERSBURG

WWW.BEITENBURKHARDT.COM