

Update

Syria and Myanmar/ Burma – lifting of sanctions: real opportunities for investors?

In recent years we have seen sanctions being used as a targeted geopolitical tool. Governments have tended to introduce sanctions rather more willingly than lift them, and, as a result, the ability of businesses to operate in certain sectors has been restricted. However we are now seeing, at least in relation to Myanmar/Burma and, to a lesser extent, Syria, sanctions being lifted in response to the evolving political landscape in both countries and it is hoped this will create some opportunities for the international investment community.

The European Council (“the Council”) has removed certain restrictive measures against both Myanmar/Burma and Syria. Although the Council has so far only published its Decisions, the implementing legislation, when published, is expected to reflect the Decisions without substantial amendment

Whilst it is acknowledged that, at least in relation to Syria, such opportunities may be limited, we can hope that opportunities in Myanmar/Burma may be more significant. In that regard, those in the energy sector will have picked up on the recent announcement that Myanmar/Burma has put on the market a substantial number of oil & gas blocks on a

production sharing basis. Apparently 59 prospective bidders have already registered their interest.

Set out below is a summary of the key changes, and their potential impact, which investors may find of interest.

Syria

The Council has issued Council Decision 2013/186/CFSP of 22 April 2013 (“the New Syria Decision”) which amends Council Decision 2012/739/CFSP (the “Existing Syrian Decision”) concerning restrictive measures against Syria, citing the need to help the Syrian civilian population, restore normal life, uphold basic services and reconstruct and restore normal economic activity to Syria.

The New Syria Decision entered into force on 23 April 2013 and provides for three derogations from the existing Syrian restrictions. Competent authorities may authorise the:

- Purchase, import or transport of crude oil and petroleum products from Syria and related financing or financial assistance including financial derivatives as well as insurance and reinsurance
- Sale, supply or transfer of key equipment and technology for the key sectors of the oil and natural gas industry in Syria as well as their sale or supply to Syrian and Syrian owned companies outside Syria and the provision of related technical assistance or training and other services as well as financing or financial assistance
- Grant of a financial loan or credit to, or the acquisition or extension of a participation in enterprises in Syria engaged in the Syrian oil industry or the creation of any joint venture with enterprises in Syria and companies they control which are engaged in the Syrian oil industry

For authorisation to be granted the following conditions must be met:

- The Syrian National Coalition for Opposition and Revolutionary Forces must be consulted in advance by the relevant Member State
- The activities concerned (i) must not be directly or indirectly for the benefit of a designated entity whose funds and economic resources have been frozen; and (ii) must not breach any other provisions of the Existing Syria Decision

The New Syria Decision will be kept under constant review and will apply initially until 1 June 2013.

Myanmar/Burma

Council Decision 2013/184/CFSP of 22 April 2013 (“the Myanmar/Burma Decision”) has repealed Decision 2010/232/CFSP which contained restrictive measures against Myanmar/Burma. As a means of encouraging development in Myanmar/Burma, all restrictive measures have now been lifted with the exception of an arms embargo and embargo on equipment which might be used for internal repression. The arms embargo applies to the sale, supply, transfer or export of arms and related material. There are limited exceptions to the embargo where a sale or supply has been approved in advance by the relevant competent authority of a Member State. Exceptions apply, for example, to the supply of non lethal military equipment intended solely for humanitarian or protective use, demining equipment and to any related technical or financial assistance or other services. The Myanmar/Burma Decision like the New Syria Decision will remain under constant review and apply until 30 April 2014.

Commentary

Syria

The relaxation of certain of sanctions against Syria comes amidst growing international support for the opposition forces to the Assad regime, leading to them being increasingly recognised as the legitimate representatives of the Syrian people, and mounting concern at the humanitarian crisis that is unfolding as a result of the ongoing conflict. While it is not yet clear how the application of the derogations and conditions will work in practice, the Council hopes that by lifting the embargo on Syrian oil exports the opposition groups will be able to obtain access to much needed funds and resources to support their activities. The Decision also provides opportunities for international parties to re-engage with the economic opportunities available in Syria and in particular the Syrian oil industry.

William Hague, the British Foreign Secretary, has expressed caution over how much real economic benefit the derogations will bring to Syria but acknowledged the political importance of the Decision, stating that: *“the security situation is so difficult that much of this will be difficult to do, but it is important for us to send the signal that we are open to helping in other ways, in all the ways possible”*. While the economic impact of the Council’s Decision remains to be seen the political message that the Council supports the opposition forces is clear.

With reports of growing tensions amongst the opposition groups it is unclear whether the relaxation of the sanctions will achieve the Council’s ambition to assist in bringing the conflict to an end. Although there have been reports that some EU members have been pushing for the arms embargo to be lifted to allow the opposition forces access to weapons, this has not happened because of the fear that any increase in arms in the region could escalate the conflict.

Myanmar/Burma

In lifting all sanctions except for the arms embargo against Myanmar/Burma, the Council has recognised the democratic reforms that have taken place and continue to take place in Myanmar/Burma. However, the timing of the Decision has been criticised by some commentators due to continuing ethnic violence predominantly targeting the Muslim minority. These competing pressures have been recognised by William Hague who noted that *“the problems of Burma are not over, but the progress that has been made is substantial”*.

Further information

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In contrast to the situation in Syria the lifting of sanctions against Myanmar/Burma appears to be driven by economic rather than political or humanitarian factors, and the EU has been criticised for focusing too much on the potential economic opportunities as Myanmar/Burma begins to open up following years of isolation at the expense of the humanitarian situation.

However, the opposition leader Aung San Suu Kyi has welcomed the lifting of sanctions commenting that lifting economic sanctions should not be linked to the continuing violence which relates to the rule of law and social and political problems which sanctions cannot resolve.

Notwithstanding the very real problems that continue to exist, the Council's decision to lift economic sanctions against Myanmar/Burma is a strong indicator that there is growing support for the nascent democracy that is developing following years of military dictatorship and for the economic opportunities that result from these developments.

Conclusion

These Decisions reflect the Council's continued use of so-called "smart sanctions"; strengthening or relaxing economic sanctions in response to the evolving political and humanitarian situation on the ground. Initial reports indicate that both Decisions have been met with cautious approval although serious concerns remain with respect to the political and humanitarian situation in both countries. The Decisions will be kept under review and renewed or amended, as appropriate, as the situation on the ground develops if the Council considers that its objectives have not been met.