



Sanctions Against Russia - Part 3: Implications for Your Company

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Executive Orders

President Obama has signed his third executive order in two weeks, expanding U.S. sanctions relating to Ukraine. Executive Order No. 13662 (March 20, 2014), enables the Secretary of the Treasury to sanction entire sectors of Russian economy, including financial services, energy, metals and mining, engineering and defense, and not just specific people. This list is subject to further expansion by the Secretary of Treasury.

Twenty more individuals and one entity have been added to the Ukraine-related sanctions list, including Russian government officials and other persons which the US government believes have significant resources and influence in the Russian system. The blocked entity is a Russian bank allegedly holding significant resources associated with the Russian leadership. Thus far, a total of twenty-four individuals and one entity have been included on the Specially Designated Nationals (SDN) list as a result of Ukraine-related sanctions.

Legislative Action

The scope of U.S.-initiated economic sanctions could expand, based on Senate Bill S. 2124 and House Bill H.R. 4278. The Senate Bill was introduced by Sen. Menendez (D-NJ) on March 12 and cleared a procedural vote on March 24, setting the bill for passage.

S. 2124 **directs** the President to impose sanctions against (i) Ukrainian government officials involved in violence against protesters after November 21, 2013; (ii) persons involved in undermining Ukrainian sovereignty; (iii) Russian government officials who were involved in the acts of significant corruption in Ukraine; and (iv) any persons who provided material support for such acts. Further, S. 2124 **authorizes** but does not direct imposition of actions against (i) Russian government officials who were involved in the acts of significant corruption in Russia; and (ii) any person who provided materials support for such act. H.R. 4278 introduced by Representatives Royce and Engel on March 21 contains similar sanction provisions. Both, the House and the Senate will need to agree to the text of the legislation before it can be submitted for the signature to the President

Imposed Sanctions

Asset Freeze. The assets of persons on the SDN list are subject to freezing (also called blocking), an immediate across-the-board prohibition against transfers or dealings of any kind with regard to the property. Blocking is **not** forfeiture because title to the blocked property remains with the target, but the exercise of powers and privileges normally associated with ownership is prohibited without authorization from Office of Foreign Assets Control (OFAC). The assets are required to be separated, placed in trust and the person holding the assets is required to notify OFAC. Blocking extends to the entities in which a person on the SDN List owns (defined as a direct or indirect ownership interest of 50% or more), regardless of whether that entity is separately named on the SDN List.

- *Bottom line:* Financial institutions and businesses, especially those with Russian and Ukrainian counterparts, should screen existing and future customers, clients, and accounts against the names of the persons subject to the orders. Given the fluidity of this situation, additional persons and groups could be added to the list of targets for asset blocking. Therefore, it is advisable to check the list on a regular basis for updates.

No U.S. Entry. The Ukraine-related sanctions ban SDN-listed persons from entering the U.S. In addition, entry may be denied to unlisted persons in the discretion of the Department of State.

- *Bottom line:* As with the advice on the first point, U.S. businesses must make themselves aware of whether current or potential clients or customers or are 'listed.' The ban on entry into the U.S. could impact the ability of U.S. companies to do business with 'listed' persons or entities.

Prohibition on Donations. Sanctions prohibit donations by or to sanctioned persons and entities.

- *Bottom line:* Non-profit organizations should review the list of their donors to determine whether any of the listed nationals are on their donor lists. Further donations from these persons are prohibited.

Who Must Comply With Sanctions

All U.S. persons must comply with OFAC regulations, including all U.S. citizens and permanent resident aliens regardless of where they are located, all persons and entities within the United States, all U.S. incorporated entities and their foreign branches. As discussed below, even foreign entities when engaging in transactions that have nexus with the United States may be required to comply with OFAC regulations.

Potential Penalties

Violation of sanctions can trigger substantial fines and even imprisonment. Civil penalties can range up to \$250,000 or twice the amount of the underlying transaction for each violation. Criminal penalties can range to \$1,000,000 in fines and up to 20 years of imprisonment.

- *Bottom line:* Companies should review their business operations with, and in, Russia, and determine how best to manage their operations in light of potentially tighter sanctions. For example, public companies may consider including a Russia sanction-specific risk factor in their filings. Companies may also consider whether to move more liquid assets out of Russia. Companies should also review their contracts with Russian exposure to determine whether they can be terminated in the event of sanctions or the consequences could be alleviated.

Compliance by Foreign Companies

Recent OFAC enforcement actions demonstrate that compliance with US sanctions may be expected of foreign institutions. Cases on point are OFAC settlements with Russia-based Bank of Moscow for \$9.5 million and with English Royal Bank of Scotland for \$33 million. In both cases, foreign banks processed dollar-denominated wire transfers for Iranian banks without providing adequate identifying information, ostensibly to conceal the transfer. In another case, a Luxemburg-based Clearstream Banking S.A. maintained a U.S. bank account in which an Iranian bank maintained an undisclosed interest. Clearstream agreed to pay fine of approximately \$152 million.

- *Bottom line:* Foreign and multinational companies face significant compliance risk if they engage in any business with sanctioned persons or entities. Even a minimal nexus with the United States in transactions with such persons can create liability. Activities to watch include clearing transactions in U.S. dollars, providing financial

services through institutions in the United States, processing payments through foreign branches of U.S. financial institution, or knowingly relying on services of U.S. persons anywhere in the world to facilitate, participate in, approve, or support restricted transactions.

Sanctions by Other Countries

The EU, Canada, and Australia have imposed their own Ukraine-related sanctions against specific individuals. Any misalignment of international sanctions would create a compliance challenge for U.S. companies.

- *Bottom line:* Multinationals should be aware of the potential misalignment between the focus of a U.S. sanctions program and a similar program administered in the European Union and Canada. Actions taken in the EU that would not be permitted under a U.S. sanctions program could be construed by U.S. regulators as evasion of the U.S. program — and such evasion is punished through significant fines. Companies should ensure that adequate compliance controls are in place to reduce such risk.

Russian Economic Retaliation

The Russian government has retaliated with sanctions imposed on five Senators and three Obama administration officials. Given fluidity of the situation, more Russian sanctions are not out of the question, including termination of government contracts and confiscation of assets.

- *Bottom line:* Companies should determine whether they have political risk insurance that covers expropriation. If not, they should determine the quantity and quality of assets possibly at risk, and take appropriate protective steps.

We will update this guidance as events warrant. Contact the authors if you have any questions.

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