

Impact of new US sanctions against Russia

In response to the escalating tensions involving the Crimean peninsula, Russia and Ukraine, the United States has now imposed sanctions against (i) the former President of Ukraine and certain Ukrainian persons associated with the crisis in Crimea, (ii) certain senior Russian government officials, (iii) certain politically-influential Russian businessmen, and (iv) a Russian bank associated with the inner circle of Russia's President Putin.

As discussed further below, the US Treasury Department's Office of Foreign Assets Control ("**OFAC**") imposed these sanctions under three successive US Executive Orders that give OFAC a broad authorization to designate not only persons but also companies and sectors of the Russian economy in order to obtain negotiating leverage and signal US resolve to deter any Russian military and other pressure directed at neighboring countries.

The obligation to comply with the sanctions applies to US persons globally and to non-US persons in regard to their USD dealings and other economic activity involving the United States. OFAC expects that persons with compliance obligations will conduct sufficient diligence of their Russia and Ukraine-related business to establish that such business does not involve the new sanctions targets, directly or indirectly.

Executive Order 13660

On 6 March 2014, the United States issued Executive Order 13660 ("**EO 13660**") authorizing an asset freeze and visa ban on individuals or entities determined to be responsible for, or complicit in, actions or policies that undermine democratic processes or institutions in Ukraine or that threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine. EO 13660 also authorizes sanctions on individuals or entities determined to have misappropriated Ukrainian state assets or asserted sovereign authority over any part or region of Ukraine without the authorization of the Government of Ukraine.

OFAC, on 17 March 2014, designated four individuals as sanctions targets (Specially Designated Nationals or "**SDNs**") under EO 13660.¹ On the same day, the US State Department began to impose US visa restrictions on certain individuals associated with the situation in Ukraine, who it has not publicly named.

Executive Order 13661

Following the referendum in Crimea, the United States issued Executive Order 13661 ("**EO 13661**") that authorizes an asset freeze and visa ban on designated officials of the Russian government, any designated individual or entity that operates in the Russian

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¹ The names of the SDNs designated under EO 13660 are: Sergey Aksyonov and Vladimir Konstantinov (Crimea-based separatist leaders), Viktor Medvedchuk (former presidential chief of staff), and former President Viktor Yanukovich.

arms industry, and any designated individual or entity that acts on behalf of, or provides material or other support to, any senior Russian government official. EO 13661 enables the Obama Administration to reach virtually anyone connected with the Russian Government for purposes of escalating pressure on President Putin in response to developments in Ukraine. Initially, on 17 March 2014, OFAC designated seven individual Russian officials under EO 13661, with the threat of more to come if Russia did not pursue a diplomatic resolution of the Crimea crisis.² Subsequently, on 20 March 2014, OFAC designated a further 16 Russian Government officials³, 4 Russian businessmen, and Bank Rossiya. A US Treasury Department press release indicated that the designated Russian businessmen, Gennady Timchenko, Arkady Rotenberg, Boris Rotenberg and Yuri Kovalchuk, belong to President Putin's "inner circle" and that Bank Rossiya operates as the personal bank for senior officials of the Russian Government.

Executive Order 13662

A further escalation of US sanctions in response to Russia's annexation of Crimea occurred on 20 March 2014 through Executive Order 13663 ("**EO 13662**") that authorizes OFAC to impose sanctions on individuals or entities that:

operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related material.

Further the EO 13662, authorizes OFAC to impose sanctions on individuals or entities that "have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person" that OFAC designates under this Order.

To date, OFAC has not issued designations under EO 13662. In a statement regarding EO 13662, President Obama stated:

This is not our preferred outcome. These sanctions would not only have a significant impact on the Russian economy, but could also be disruptive to the global economy. However, Russia must know that further escalation will only isolate it further from the international community.

Remarks by President Obama and other senior US officials indicate that the threat of sector-wide sanctions against Russia seeks to deter, what they would view as any new encroachment of Ukrainian sovereignty by Russia and demonstrate to

² The names of the SDNs designated under the EO 13661 on 17 March 2014 are: Vladislav Surkov (Presidential Aide), Sergey Glazyev (Presidential Adviser), Leonid Slutsky (State Duma deputy, including Chairman of the Duma Committee on CIS Affairs, Eurasian Integration, and Relations with Compatriots), Andrei Klishas (Member of the Council of Federation of the Federal Assembly of the Russian Federation and Chairman of the Russian Federation Council Committee on Constitutional Law, Judicial and Legal Affairs and the Development of Civil Society), Valentina Matviyenko (Head of the Russian Federation Council), Yelena Mizulina (State Duma Deputy), and Dmitry Rogozin (Deputy Prime Minister).

³ The names of the Russian Government officials designated under EO 13661 on 20 March 2014 are: Viktor Ozerov (Chairman of the Security and Defense Committee of the Federation Council), Vladimir Dzhabarov (First Deputy Chairman of the International Affairs Committee of the Federation Council), Evgeni Bushmin (Deputy Speaker of the Federation Council), Nikolai Ryzhkov (Senator in the Russian Upper House of Parliament (Federation Council)), Sergei Zheleznyak (Deputy Speaker of the State Duma of the Russian Federation), Sergei Mironov (Member of the Council of the State Duma, Member of the State Duma Committee on Housing Policy and Communal Services and Leader of the Fair Russia Faction in the Duma of the Russian Federation), Aleksandr Tootonov (Member of the Committee on Culture, Science, and Information, Federation Council), Oleg Panteleev (First Deputy Chairman of the Committee on Parliamentary Issues), Sergey Naryshkin (Chairman of the Government Duma of the Federal Gathering of the Russian Federation), Victor Ivanov (Director of the Federal Drug Control Service, Member of the Security Council of the Russian Federation), Igor Sergun (Head of Russia's military intelligence service (GRU) and Deputy Chief of the General Staff), Sergei Ivanov (Chief of Staff of the Presidential Executive Office), Alexei Gromov (First Deputy Chief of Staff of the Presidential Executive Office), Andrei Fursenko (Aide to the President of the Russian Federation), Vladimir Yakunin (Chairman of the board of the Russian state-owned company Russian Railways) and Vladimir Kozhin (Head of Administration under the President of the Russian Federation).

other former Soviet and Warsaw Pact countries that the United States has the political will to escalate sanctions and other pressure on Russia, if necessary.

Implications of US Sanctions

As noted above, the OFAC sanctions impose compliance obligations on US persons and transactions occurring through the US financial system or that involve US persons. Once OFAC lists specific individuals or entities as SDNs, US persons cannot invest in or do any business with those SDNs and US banks cannot process payments to or from them and must block and sequester any of their funds in the bank's possession or control. In addition, under OFAC policies and precedent, the same asset freeze and business prohibition would apply to all entities that are 50% or more owned by an SDN, directly or indirectly, including any such entities or their operations located in the United States or third countries. In order to complete transactions with or transfer property to/from such SDNs or entities owned 50% or more by them, US persons would first have to obtain a license or authorization from OFAC.

In contrast, the new sanctions do not target entities that have affiliations with SDNs where the SDNs own less than 50% of its shares, unless the entity operates as a front for the SDN with the objective of enabling the SDN and its counterparties to evade sanctions. For example, a Russian company that has an SDN as a director and a minority shareholder but conducts business on behalf of the company rather than as an agent or front for the SDN is not a US sanctions target. In a similar context, OFAC guidance in regard to its Burma sanctions provides that:

A government ministry is not blocked solely because the minister heading it is an SDN. U.S. persons should, however, be cautious in dealings with the ministry to ensure that they are not, for example, entering into any contracts that are signed by the SDN.

More broadly, the OFAC sanctions do not prevent US persons from working on Russia-related deals or investing in Russia-related deals that do not involve any SDNs or entities owned 50% or more by an SDN, as long as the Russian participants in the deal are not acting as a front or intermediary for an SDN. Persons with compliance obligations under the sanctions therefore may need to conduct additional due diligence of their Russian/Ukrainian-related transactions to confirm that no SDNs have indirect or concealed beneficial interests in the transaction. Similarly, Russian companies that have affiliations with SDNs need to ensure that they do not involve any US persons or the US financial system in their SDN-related dealings. However, the sanctions do not seek to deter "business as usual" between US and Russian companies where such business does not involve any SDNs, directly or indirectly.

This publication does not necessarily deal with every important topic or cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice.

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