

LEGAL UPDATES

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U.S. and Others Step Up Sanctions Against Russia

Services

Corporate

International

International Trade &
Supply Chain

In response to Russia's continuing actions in Ukraine, the United States and other nations have implemented increased economic sanctions that significantly broaden the scope of the sanctions previously in place. In addition to the U.S. actions, Canada, the European Union and Japan have imposed similar sanctions against Russia, including asset freezes and individual designations.

Industries

Manufacturing

Transportation

What This Means to You

Administrative and criminal penalties could result from a violation of the sanctions. If any doubt exists over whether or not a transaction is caught by any of the relevant financial or trade sanctions outlined above, legal advice should be sought before taking action.

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As an immediate step, U.S. companies should review existing customers and investors for compliance with Ukraine-related sanctions. U.S. companies should also review the scope of any pre-existing contracts with Russian businesses and their subsidiaries or those that relate to the provision of financing and relevant products and services. Financing agreements should also be checked as they may contain extensive prohibitions on proceeding with any contracts relating to Russian business now that sectoral sanctions and the more comprehensive restrictions are in place.

More generally, U.S. companies that conduct business overseas or with foreign businesses should have in place a compliance program based around a robust policy on sanctions and comprehensive systems to implement the policy effectively. U.S. companies should review and confirm that any new transactions with customers or investors do not violate the Ukraine-related sanctions. This includes screening all proposed investments or transactions involving Russian and Ukrainian individuals or entities against the most

updated Specially Designated Nationals and Blocked Persons List (SDN List). Under the Ukraine-related sanctions, it is also important to be aware that entities not on the SDN List may be subject to the sanctions due solely to the fact that the entity is owned or controlled by an individual or entity on the SDN List. Further, companies should be aware of potential anti-money laundering (AML) risks associated with these regions in light of the ongoing crisis in Ukraine.

A compliance program should include:

customer and transaction due diligence and screening against applicable financial sanctions target lists, including EU, U.S. and UK sanctions lists;

assessing if equipment and products are subject to the export control lists and ensuring that all necessary licenses to export are obtained;

checking if imported goods are in any way restricted;

contractual controls, including sanctions exclusions and warranties;

training in policies and procedures; and

routine monitoring of transactions and periodic audits of sanctions compliance.

Sectoral Sanctions

On July 16 and 29, 2014, the U.S. Department of Treasury's Office of Foreign Assets Control (OFAC) announced sanctions targeting key sectors of the Russian economy, including major banks, energy companies, and parts of the defense and shipping industries. These sanctions, for the most part, apply to new contracts.

The enhanced Ukraine-related sanctions in place affecting Russia include:

U.S. persons and persons within the U.S. are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity issued by major state-owned Russian banks, including Bank of Moscow, Gazprombank OAO, Vnesheconombank (VEB), Russian Agricultural Bank (Rosselkhozbank) and VTB Bank OAO (including any entity owned 50 percent or more by such person).

U.S. persons and persons within the U.S. are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity for two Russian energy firms, OAO Novatek and Rosneft (including any entity owned 50 percent or more by such person).

Exports of certain energy-related equipment and technology to Russia will require export licenses from the applicable U.S. government agency (U.S. Department of Commerce Bureau of Industry and Security for dual-use items and U.S. Department of State for defense items). Export licenses will likely be denied if the equipment is provided under a contract that takes effect after the sanctions effective date (July 29, 2014) and if the products are destined for deep water oil exploration or production, Arctic oil exploration, or production and shale oil projects in Russia.

As of April 28, 2014, any license applications submitted for the export and re-export of defense items listed on the U.S. Munitions List (USML) to Russia will be denied. Pre-existing contracts are exempt.

As of April 28, 2014, any license applications submitted for the export and re-export of dual-use items listed on the Commerce Control List (CCL) to Russia will be denied. Pre-existing contracts are exempt.

Asset Freezes and Financial Sanctions

The U.S. has also added dozens of Russian names to the Specially Designated Nationals and Blocked Persons List (SDN List) maintained by OFAC.

These new sanctions, issued primarily under the authority of the International Emergency Economic Powers Act (IEEPA), prohibit any U.S. person (entity or individual) and any overseas company or person while in the U.S. from making any funds, or economic resources from which funds could be generated, available to or for the benefit of certain designated persons. U.S. persons are prohibited from dealing with SDNs wherever they are located and all SDN assets are frozen. Furthermore, even if that entity does not appear on the SDN List, it is also subject to the sanctions if a person/entity on the SDN List has an ownership interest of 50 percent or more.

Most recently, the U.S. has designated eight (8) Russian arms firms responsible for small arms, mortar shells and tank production, as well as a key shipping facility in the Crimean peninsula and Russia's largest shipbuilding company (United Shipbuilding Corporation). Any assets of these designated entities that are within U.S. jurisdiction have been frozen. In addition, U.S. persons or persons within the U.S. are prohibited from transacting business with these designated entities.

Additionally, as a result of the increased sanctions against Russia, the Export-Import Bank of the United States (Ex-Im Bank) has placed a Temporary Administrative Hold on all business with the Russian Federation. While the temporary hold is in effect, letters of interest will not be issued, and new commitments will not be approved under any program and disbursements under operative commitments will not occur unless they are irrevocable commitments (i.e., issued letters of credit).

Money Laundering Concerns

The U.S. Department of Treasury's Financial Crimes Enforcement Network (FINCEN) has issued two advisories warning financial institutions of heightened money-laundering risks relating to the crisis in Ukraine. These advisories remind U.S. financial institutions that they are required to "apply enhanced scrutiny to private banking accounts held by or on behalf of senior foreign political figures" and to monitor transactions that could potentially represent misappropriated or diverted state assets, other illegal payments or public corruption proceeds.

Contact Us

If your company has questions concerning the applicability of these recent sanctions to its business or requires advice on handling specific transactions or investments, please contact Cortney Morgan in Husch Blackwell's Washington, D.C. office at 202.378.2389 or Linda Tiller in Husch Blackwell's Kansas City office at 816.983.8223.