



client alert

BANKING AND FINANCE | RUSSIA |

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RUSSIA - UPDATE ON US AND EU SANCTIONS

The United States and the European Union imposed further sanctions this week. The United States limited access to US financial markets to three additional Russian financial institutions and the EU has implemented its "Level 3" sanctions targeting key sectoral cooperation and exchanges with Russia.

For an update on the sanctions issued by the US and the EU earlier in July 2014 and associated guidance, we refer you to our Client Alert published on 18 July 2014.

US Sanctions

SSI List

On 29 July 2014, the US Department of the Treasury imposed prohibitions on additional entities operating within the financial services sector of the Russian economy pursuant to Executive Order (E.O.) 13662. The entities which have thus been added to Directive 1 of OFAC's Sectoral Sanctions Identifications List (SSI List) are the Bank of Moscow, Russian Agricultural Bank, and VTB Bank OAO (and their property, or their interests in property). Specifically, US persons and persons within the US are prohibited from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity for such financial institutions.

OFAC has also provided further guidance which applies to both Directives 1 and 2 of the SSI List:

- *"new equity"*: if a US person decides to transact or otherwise deal in equity issued by an SSI entity prior to the effective date of the sanctions, the US person should ensure that it is not transacting in, providing financing for, or otherwise dealing in, any newly issued equity, even if the SSI entity issues new equity that utilizes the same identifier as equity issued prior to the effective date of sanctions;
- *derivative transactions*: OFAC does not consider normal counterparty credit exposure encountered by a US person to be an extension of credit when the US person enters into a derivatives transaction permitted pursuant to General License 1 to Executive Order 13662;

- *long-term loan and revolving credit facilities*: if a US person entered into a long-term credit facility or loan agreement prior to the effective date of the sanctions, drawdowns and disbursements with repayment terms of 90 days or less are permitted. Drawdowns and disbursements whose repayment terms exceeds 90 days are not prohibited if the terms of such drawdowns and disbursements (including the length of the repayment period, the interest rate applied to the drawdown, and the maximum drawdown amount) were contractually agreed to prior to the effective date of the sanctions and are not modified on or after the effective date. Any newly negotiated drawdown or disbursement would constitute a prohibited extension of credit;
- *letters of credit*: US persons may advise or confirm a letter of credit issued on or after the effective date of the sanctions and which carries a term of longer than 90 days maturity where an SSI entity is the beneficiary (i.e. the exporter or seller of the underlying goods) because the subject letter of credit does not represent an extension of credit to the SSI entity, but not if the applicant of the letter of credit (i.e. the importer or buyer of the underlying goods or services) is an SSI entity.

SDN List

On the same day, OFAC announced the addition of United Shipbuilding Corporation to the Specially Designated Nationals and Blocked Persons List ("SDN List").

EU Sanctions

EU Designations

On 25 July 2014, the EC designated 15 individuals and 18 entities and on 30 July 2014 it designated a further 8 individuals and 3 entities, pursuant to Council Implementing Regulation (EU) No 810/2014 and Council Implementing Regulation (EU) No 826/2014, respectively, implementing Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine. The designated entities include Joint-Stock Company Concern Almaz-Antey, Dobrolet and Russian National Commercial Bank. The EC also expanded the legal criteria for future designations, enabling a broader range of persons or entities to be targeted.

"Level 3" Sanctions

On 29 July 2014, the EC confirmed that it had agreed on a package of significant additional restrictive measures targeting sectoral cooperation and exchanges with Russia. These measures will:

- limit access to EU capital markets for Russian State-owned financial institutions;
- impose an embargo on trade in arms;
- establish an export ban for dual use goods for military end users; and
- curtail Russian access to sensitive technologies, particularly in the oil and gas sector.

Sectoral Sanctions and Equipment and Technology Restrictions in Crimea and Sevastopol:

Some of these measures came into force on 30 July through Council Regulation (EU) No 825/2014 which introduced a ban on new investments related to the following activities and industry sectors:

- the creation, acquisition or development of infrastructure in the areas of transport, telecommunications or energy in Crimea or Sevastopol; and
- the exploitation of oil, gas or mineral resources in Crimea or Sevastopol.

The Regulation prohibits:

- the granting of any financial loan or credit specifically relating to any of the above activities;
- the creation of any joint venture relating to any of the above activities;
- the acquisition or extension of a participation, including the acquisition in full and the acquisition of shares and securities of a participating nature, in enterprises established in Crimea or Sevastopol that are engaged in the above activities; and
- the provision, directly or indirectly, of technical assistance or brokering services related to the above activities.

The Regulation also provides for an export ban on key equipment and technology related to those sectors. Annex III to the Regulation provides a list of such key equipment and technology. Specifically, it is prohibited to:

- sell, supply, transfer, export, directly or indirectly, such key equipment and technology;
- provide, directly or indirectly, financing or financial assistance related to such key equipment and technology; and
- provide technical assistance or brokering services related to such key equipment and technology, or related to the provision, manufacture, maintenance and use of such items,

to any natural or legal person, entity or body in Crimea or Sevastopol or for use in Crimea or Sevastopol.

Restrictions on Dual-Use Goods and Technology and Military Assistance:

The EC implemented the bulk of its "Level 3" sanctions on 31 July 2014 through Council Regulation (EU) No 833/2014. The Regulation imposes restrictions relating to dual-use goods and technology listed in Annex I to Regulation (EC) No 428/2009, whether or not originating in the EU, if those items are or may be intended, in their entirety or in part, for military use or for a military end-user. It is prohibited to:

- directly or indirectly sell, supply, transfer or export such items;
- provide, directly or indirectly, any technical assistance or brokering services related to such items or their provision, manufacture, maintenance and use; and
- provide, directly or indirectly, any financing or financial assistance related to such items or related technical assistance,

to any natural or legal person entity or body in Russia or for use in Russia.

The Regulation provides restrictions concerning goods and technology listed in the Common Military List. It is prohibited to:

- provide, directly or indirectly, any technical assistance in relation to such items or their provision, manufacture, maintenance and use; and
- provide, directly or indirectly, any financing or financial assistance related to such items or related technical assistance,

to any natural or legal person entity or body in Russia or for use in Russia.

It is important to note that:

- these prohibitions are not retroactive and an authorization may be granted in relation to the execution of obligations arising from contracts concluded prior to 1 August 2014;
- the prohibition on the provision of technical or financial assistance does not apply to "the provision of assistance necessary to the maintenance and safety of existing capabilities within the EU";
- the embargo applies to the military sector only, and should not affect the exports of dual-use goods and technology for non-military use, such as in the aeronautics and space industries; and
- financial assistance includes in particular grants, loans and export credit insurance, for any sale, supply, transfer or export of such items.

The Regulation further provides a list of technologies in Annex II which are not subject to a prohibition but in relation to which an authorization will be required for the provision of technical assistance, brokering services, financing or financial assistance in relation to such items.

Oil and Gas Technologies Restrictions:

The Regulation imposes restrictions on the sale, supply, transfer or export, directly or indirectly, of technologies listed in Annex II, whether or not originating in the EU, to any natural or legal person, entity or body in Russia or in any other country, if such equipment or technology is for use in Russia. Specifically:

- such activities are prohibited if they relate to projects pertaining to deep water oil exploration and production, Arctic oil exploration and production, or shale oil projects in Russia; and
- for any other purpose, an authorization is nonetheless required to carry out such activities.

It is important to note that:

- this prohibition is not retroactive and an authorization may be granted in relation to the execution of obligations arising from contracts concluded prior to 1 August 2014;
- the scope of the goods listed in Annex II, which are referred to by their CN Code, is restricted by the associated description of the goods; and

- the phrase "sale, supply, transfer or export" (used in relation to the above two classes of restrictions) is not defined and therefore open to interpretation by Member States. This could range from including only the export of goods outside of the EU, or the export of good outside of a Member State to any other country (whether within or outside the EU), to capturing any sale or transfer within a Member State.

Financial Sector Restrictions:

The Regulation prohibits directly or indirectly purchasing, selling, providing brokering or assistance in the issuance of, or otherwise dealing with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 by five Russian banks: Sberbank, VTB Bank, Gazprombank, Vnesheconombank and Rosselkhozbank. The prohibition extends to new transferable securities and money-market instruments issued by entities owned 50% or more by any of the listed banks, as well as by any person acting on behalf or at the discretion of such entities or any of the listed banks. It is important to note that:

- as the prohibition specifically refers to entities outside of the EU, it does not apply to 50% owned subsidiaries of the listed banks which are incorporated in the EU, unless they are acting on behalf of a listed bank or a non-EU entity which is 50% owned by a listed bank;
- other financial services, such as deposit business, payment services and loans to or from these banks are not covered by the Regulation;
- "*transferable securities*" are defined as securities which are negotiable on the capital market (other than instruments of payment) and includes shares in companies and equivalent securities, bonds and other forms of securitized debt, depositary receipts in relation to such securities and any other securities giving rise to the right to acquire or sell any such transferable securities or giving rise to a cash settlement;
- "*money-market instruments*" are defined as instruments which are normally dealt in on the money market, such as treasury bills, certificates of deposit and commercial papers and excluding instruments of payment; and
- the five Russian entities identified in this Regulation are to date not designated under Council Regulation (EU) No 269/2014, which means that currently the prohibitions on dealing with such entities (and their property and property interests) are limited to new transferable securities and money-market instruments and any other dealings with them are permitted.

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