

client alert

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RUSSIA - NEW US AND EU SANCTIONS

In response to the ongoing unrest in Ukraine, the United States and the European Union have expanded and strengthened restrictive measures against Russia. The US has targeted key companies in the financial and energy sectors of the Russian economy, while the EU intend to block loans to finance projects in Russia from two key international financial institutions.

US - The New OFAC Sanctions

On 16 July 2014, the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury introduced the Sectoral Sanctions Identifications (SSI) List identifying four Russian companies operating in the financial and energy sectors of the Russian economy pursuant to Executive Order 13662. Two directives describe prohibitions on dealings with the persons identified:

- Directive 1 prohibits transacting in, providing financing for, or otherwise dealing in *debt* with a maturity of longer than 90 days *or equity* if that debt or equity is *issued after on or after 16 July 2014* (the applicable sanctions effective date) ("new debt" or "new equity") by, on behalf of, or for the benefit of the persons operating in Russia's *financial sector* named under Directive 1, their property, or their interests in property. Persons named under Directive 1 include Vnesheconombank and Gazprombank.
- Directive 2 separately prohibits transacting in, providing financing for, or otherwise dealing in *new debt—issued on or after July 16, 2014*—of greater than 90 days maturity by, on behalf of, or for the benefit of the persons operating in Russia's *energy sector* named under the Directive 2, their property, or their interests in property. Persons named under Directive 2 include Novatek and Rosneft Oil Co.

OFAC has also issued the following guidance in relation to Executive Order 13662:

- A "*US Person*" is defined to include any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches) or any person in the United States. As currently defined, this does not seem to capture all foreign subsidiaries owned or controlled by U.S. entities. However, they may be subject to US jurisdiction if they cause prohibited transactions to occur in whole or in part in the United States or anywhere by US Persons.
- The term "*debt*" includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.
- The prohibitions extend to rollover of existing debt, if such rollover results in the creation of new debt with a maturity of longer than 90 days.

- The term "*equity*" includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership.
- Transacting in, providing financing for, or otherwise dealing in any debt or equity issued prior to the sanctions' effective date by, on behalf of, or for the benefit of the entities operating in the financial and energy sectors that are identified in these directives is permissible.
- "*Property*" is broadly defined to include any property, tangible or intangible and includes most products that financial institutions offer to their clients.
- "*Property interest*" includes any interest whatsoever, direct or indirect, present, future or contingent.
- The prohibitions also extend to new debt and equity issued by entities owned 50 percent or more by the entities identified in the SSI List. A person whose property and interests in property are subject to the sanctions is considered to have an interest in all property and interests in property of an entity in which it owns, directly or indirectly, a 50% or greater interest. The property and interests in property of such an entity are also subject to sanctions regardless of whether the entity itself is listed.
- Persons identified in the SSI List are not blocked unless they also appear in the List of Specially Designated Nationals and Blocked Persons (SDN List). The four Russian entities (Vnesheconombank, Gazprombank, Novatek and Rosneft) do not appear in the SDN List, which means that currently prohibitions on dealing with such entities are limited to new debt and new equity.
- U.S. financial institutions may continue to maintain correspondent accounts and process U.S. dollar-clearing transactions for the persons identified in the directives, so long as those activities do not involve transacting in, providing financing for, or otherwise dealing in prohibited transaction types identified by these directives.
- OFAC has simultaneously issued a new general license (General License 1) to authorize certain transactions with persons identified on the SSI List, which specifically includes transactions involving derivative products.

On the same day, the US separately announced the addition of new entities and individuals on the SDN list pursuant to Executive Orders 13660 and 13661.

EU - The EC Conclusions at the Brussels Summit

On 16 July 2014, the European Council (EC) issued its conclusion on external relations in relation to Ukraine reached during the Brussels summit. European leaders have agreed to expand the restrictive measures against Russia and have agreed on the following actions and intentions:

- The EC has asked the European Investment Bank (EIB) to suspend new lending for Russia.
- The EC will seek the suspension of new lending to Russia by the European Bank for Reconstruction and Development (EBRD). Russia is one of 64 countries that are shareholders of the EBRD, but with the support of other countries, the EU could block loans for new Russian projects.
- The EC stated that it expected international financial institutions to refuse to finance any project that recognises the annexation of Crimea and will draw up proposals for further measures to restrict investment in Crimea.

- The restrictive measures imposed by the EC will target individuals and companies that support actions undermining or threatening Ukraine's sovereignty, territorial integrity and independence. The EC will draw up by the end of July a first list of companies and people to be hit with asset freezes under the enhanced criteria.
- The EC will also look into the possibility of targeting with sanctions individuals and entities that support Russian decision-makers responsible for the annexation of Crimea or the destabilization of Eastern-Ukraine.
- The EC has also asked the EU's Commission to look into suspending some of the EU's cooperation programmes, other than projects dealing exclusively with cross-border co-operation and civil society.

Furthermore, the EU agreed to discontinue the application of their agreement of 20 February 2014 on export licenses, which included the suspension of all export licensing to Ukraine for equipment which may be used for internal repression and the reassessment of export licenses of certain military technology and equipment that are covered under Common Position 2008/944/CFSP.

CONTACTS

DAVID LASFARGUE
david.lasfargue@gide.com

BORIS PROZOROV
boris.prozorov@gide.com

TIM THEROUX
tim.theroux@gide.com

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