

Business In Russia In Times of Crisis: Do You Know With Whom You Do Business? - Executive Orders 13660, 13661 and 13662 and Revocation of Export Licenses

In response to the situation in Ukraine, the President of the United States has issued a series of executive orders imposing sanctions on Russian government officials and members of the inner circle in order to pressure the Russian government to alter its policies toward Ukraine. Americans may not deal with sanctioned persons and must take measures to ensure compliance with U.S. law.

Ukraine 1: On March 6, 2014, President Obama issued Executive Order (“E.O. 13660”) declaring a national emergency and authorizing the imposition of sanctions upon individuals involved in: (a) undermining the democratic processes or institutions of Ukraine; (b) threatening the peace security, stability, sovereignty or territorial integrity of Ukraine; (c) misappropriating state assets of Ukraine; or (d) asserting government authority without authorization from the Ukraine government.

This first round sanction authorized blocking property and interests in property of persons to be designated and added to the Treasury Department’s Office of Foreign Assets Control’s (“OFAC”) Specially Designated Nationals (“SDN”) List. Blocked property includes property, or interests in property, of any persons owned, controlled or acting for any SDN. OFAC considers a person controlled by an SDN if, among other factual scenarios, the SDN has a 50% or more ownership interest in the person. Such a person is blocked even if the person is not specifically listed on the SDN list. Blocking immediately imposes an across-the-board prohibition against transfers or dealings of any kind with regard to the property by “United States persons.” Entry into the United States of blocked persons has also been suspended.

Ukraine 2: On March 16, 2014, President Obama issued Executive Order (“E.O. 13661”) blocking property of seven listed Russian government officials and authorizing OFAC to add to the SDN list, Russian government officials and any individual or entity that is owned or controlled by, or provided material or other support to, a senior Russian government official.

On March 17, 2014, pursuant to E.O. 13660, OFAC added four persons to the SDN list, including Crimean separatists and ousted Ukrainian President Viktor Yanukovich.

Ukraine 3: On March 20, 2014, President Obama issued Executive Order (“E.O. 13662”) authorizing sanctions to target sectors of the Russian economy, such as financial services, energy, metals and mining, engineering, and defense and related materiel, as to be determined by the Secretary of Treasury.

On March 20, 2014, pursuant to E.O. 13661, OFAC added to the SDN list, sixteen Russian government officials and members of the inner circle that support them. In addition, four persons plus Bank Rossiya were added to the SDN list for providing material support to Russian government officials.

On April 11, 2014, pursuant to E.O. 13660, OFAC added seven Crimean separatist leaders, a former Ukrainian official and a Crimea-based gas company to the SDN list. On April 28, 2014, pursuant to E.O. 13661, OFAC added to the SDN list, seven Russian government officials, including two key members of Russian leadership’s inner circle, plus seventeen entities because they are owned or controlled by persons whose property and interests in property are blocked pursuant to E.O. 13661.

In addition, on April 28, 2014, the U.S. Department of Commerce's Bureau of Industry and Security announced expansion of export restrictions on items subject to the Export Administration Regulations, and that it will deny pending applications for licenses to export or re-export any high technology items to Russia or occupied Crimea that contribute to Russia's military capabilities. In addition, the Commerce Department is taking actions to revoke any existing export licenses which meet these conditions.

Any U.S. company doing or planning to do business with Russian companies should seek guidance regarding compliance with these Executive Orders which apply to U.S. companies, as well as foreign companies which they control, and all U.S. citizens. Marks & Sokolov attorneys can assist with compliance by providing:

- A review of contracts with Russian parties, including an examination of Russian contract parties and their beneficial owners;
- Determination whether the sanctions apply and prohibit contract performance;
- Advice regarding potential liability to contract parties and the US Department of the Treasury,
- Advice regarding notification of termination of contracts and the disposition of deposits;
- Advice about possible defenses against liability such as justified non-performance due to force majeure circumstances and regulatory prohibition.

Marks & Sokolov, LLC has extensive experience representing multinational clients in the United States and Russia. For more information please contact, in the United States: Bruce Marks (marks@mslegal.com) or Thomas Sullivan (tsullivan@mslegal.com) at (215) 569-8901; or in Russia, Sergey Sokolov (ssokolov@mslegal.com) or Derek Bloom (dbloom@mslegal.com) at +7-495-626-0606.



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