

## **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**

The President of the United States has issued a series of executive orders imposing sanctions on Russian government officials, members of the inner circle and the financial, energy and defense sectors of the Russian economy 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. The most recent sanctions include finance, energy, and defense sectoral sanctions impacting companies such as **Gazprom, Lukoil, Rostec, Rosneft** and **Sberbank**.

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 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.

The Executive Orders and their implementation are summarized below in chronological order:

**Ukraine 13660:** 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 Ukraine’s 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.” Blocked persons may not enter the United States.

**Ukraine 13661:** 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 13662:** 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.

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.

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 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.

On June 20, 2014, OFAC added seven names to the SDN list. On July 16, 2014, five separatists and eleven entities including the Donetsk Peoples Republic were added to SDN list. In addition, under E.O. 13662, Directive 1 applying to the financial services sector, and Directive 2 applying to the energy sector, were issued prohibiting U.S. persons from transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity with these entities. **Gazprombank, Rosneft, Novatek** and **Vnesheconombank** were added to the sectoral sanctions list (“SSIL”), but not the SDN list. On July 29, 2014, **Bank of Moscow, Russian Agricultural Bank** and **VTB Bank** were added to the SSIL.

On September 12, 2014, **Sberbank** was added to the SSIL and Directive 1 was amended lowering the debt threshold to 30 days. Directive 3, applying to the defence sector, with similar measures as Directive 1 was issued and defense concern **Rostec** added to the SSIL. Russian energy sectoral sanctions were expanded with **Transneft, Lukoil, Gazprom** and **Surgutneftegas** added to the SSIL (but not SDN list) and Directive 4 was issued prohibiting U.S. persons from exporting goods and services to these companies in support of deepwater, arctic or shale projects with the potential to produce oil. In addition, the Russian defense concerns **Almaz-Antey, Tikhomirov Scientific Research Institute, Kalinin Machine Plant, Mytishchinski Mashinostroitelny** and **Dolgoprudny Research Production Enterprise** were added to the SDN list.

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