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UPDATE: Developments in the Ukraine and Impact on Investments

Further to the Alerts circulated on 10 and 18 March 2014, below is an update on developments in the EU and U.S. regarding sanctions.

EU Sanctions

Late on 20 March, the Council of EU agreed to add 12 more names to the list of 21 individuals subject to restrictive measures against Russia. As reported before, the sanctions include travel restrictions and a requirement that “all funds and economic resources belonging to, owned, held or controlled by” listed persons, entities and bodies are to be frozen and that “no funds or economic resources are to be made available, directly or indirectly, to or for the benefit of” such listed parties.

The new individuals added to the list, together with the reasons for their inclusion as described in the EU legislation, are as follows:

1. *Dmitry Olegovich Rogozin* (d.o.b. 21.12.1963 in Moscow). Deputy Prime Minister of the Russian Federation. Publicly called for the annexation of Crimea.
2. *Sergey Glazyev* (d.o.b. 01.01.1961, Zaporozhye, (Ukrainian SSR)). Adviser to the President of the Russian Federation. Publicly called for the annexation of Crimea.
3. *Valentina Ivanova Matviyenko* (d.o.b. 07.04.1949, Shepetovka, Khmelnytskyi oblast (Ukrainian SSR)). Speaker of the Federation Council. On 1 March 2014, publicly supported in the Federation Council the deployment of Russian forces in Ukraine.
4. *Sergei Evgenevich Naryshkin* (d.o.b. 27.10.1954, St. Petersburg (former Leningrad)). Speaker of the State Duma. Publicly supported the deployment of Russian forces in Ukraine. Publicly supported the Russia-Crimea reunification treaty and the related federal constitutional law.
5. *Dmitry Konstantinovich Kiselyov* (d.o.b. 26.04.1954). Appointed by Presidential Decree on 9 December 2013 Head of the Russian Federal State news agency "Rossiya Segodnya". Central figure of the government propaganda supporting the deployment of Russian forces in Ukraine.
6. *Alexander Mihailovich Nosatov* (d.o.b. 27.03.1963 Sevastopol, (Ukrainian SSR)). Deputy-Commander of the Black Sea Fleet. Rear-Admiral responsible for commanding Russian forces that have occupied Ukrainian sovereign territory.
7. *Valery Vladimirovich Kulikov* (d.o.b. 01.09.1956, Zaporozhye, (Ukrainian SSR)). Deputy-Commander of the Black Sea Fleet. Rear-Admiral responsible for commanding Russian forces that have occupied Ukrainian sovereign territory.
8. *Vladislav Yurievich Surkov* (d.o.b. 21.09.1964, Solntsevo, Lipetsk). Aide to the President of the Russian Federation. He was an organiser of the process in

UPDATE: Developments in the Ukraine and Impact on Investments

Crimea by which local Crimean communities were mobilised to stage actions undermining the Ukrainian authorities in Crimea.

9. *Mikhail Malyshev* (Chair of the Crimea Electoral Commission). Responsible for administering the Crimean referendum. Responsible under the Russian system for signing referendum results.
10. *Valery Medvedev* (Chair of Sevastopol Electoral Commission). Responsible for administering the Crimean referendum. Responsible under the Russian system for signing referendum results.
11. *Lt. Gen. Igor Turchenyuk* (Commander of the Russian forces in Crimea). The de-facto Commander of Russian troops deployed on the ground in Crimea (whom Russia continues to refer to officially as "local self-defence militias").
12. *Elena Borisovna Mizulina* (Deputy in the State Duma). Originator and co-sponsor of recent legislative proposals in Russia that would have allowed regions of other countries to join Russia without their central authorities' prior agreement.

The names are different from the U.S. list as the two countries use different legal bases for their sanctions and the EU is bound by the requirement that the individuals have a connection with the situation in Crimea and with Russia's decision to annex Crimea.

The European Council has also decided to cancel the next EU-Russia Summit in June in Sochi. The Member States will also cancel all bilateral summits with Russia.

The European Council has stated that any further steps by Russia to destabilise the situation in Ukraine would lead to additional and far reaching sanctions. In order to be ready for rapid implementation if a situation arises, the European Council has asked the European Commission and the Member States to prepare possible targeted measures on Russia. It has been reported that the European Commission is considering all economic areas and this includes Russia's energy, financial and defence sectors. Any economic sanctions on Russia will not only have a strong effect on Russia and its business environment but will also affect U.S. and EU businesses. Before such measures can be implemented, all EU Member States will have to meet as the Council of the EU and unanimously agree to adopt the sanctions.

On 21 March, the EU and Ukraine signed the political provisions of the Association Agreement, while the economic provisions are to be signed in the future. The first meeting in the political dialogue as envisaged under the Association Agreement should take place in April. The European Commission has also published a Proposal for temporary tariff cuts for Ukrainian exports to the EU which needs to be agreed upon by the European Parliament and the Council of the EU.

Russia is currently blocking the Organization for Security and Cooperation in Europe's mission to Ukraine and the EU is committed to drawing up plans for the EU mission in the absence of an agreement in the coming days. The EU is also committed to macro-financial assistance to Ukraine which also has to be finalised.

U.S. Sanctions

Also on 20 March 2014, President Obama issued a third Executive Order in connection with Russia's measures relating to Crimea, authorising the blocking of the property of additional categories of persons, and the Office of Foreign Assets Control ("OFAC") listed

UPDATE: Developments in the Ukraine and Impact on Investments

additional persons as Specially Designated Nationals and Blocked Persons (“SDN”) (which are identified below) under the previously issued Executive Order.

The newest Executive Order authorises the blocking of the property of “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State ...to operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel.” It does not appear any blockings yet have occurred under the newest Executive Order. However, the language of the new Order suggests blockings now could be imposed against companies in key sectors of the Russian economy.

The new SDN listings by OFAC are significant in that, for the first time, individuals with substantial connections to both governmental and private business enterprises have been designated as well as one business entity (BANK ROSSIYA). This will obviously increase the potential impact on U.S. persons doing business in Russia. Moreover, according to guidance issued by OFAC which preexisted the Ukraine sanctions but is now included on OFAC’s Ukraine sanctions webpage, any entity owned, directly or indirectly, 50% or more by an SDN also is considered an SDN without even being specifically identified on the SDN list. Based on this guidance, any unlisted entities owned by the listed bank or business persons also would now be considered SDNs whose property is blocked. As such, this 50% ownership rule may present due diligence and compliance challenges for U.S. persons doing business in Russia. It is our understanding that any entity otherwise controlled but not at least 50% owned by a Ukrainian sanctioned SDN would not automatically be considered an SDN absent a specific designation by OFAC (although the underlying Executive Orders authorise the listing of any entity controlled by a person listed under the Orders).

The following individuals have been added to OFAC’s SDN list:

1. *Evgeni Viktorovich Bushmin* (a.k.a. Evgeny Bushmin; a.k.a. Yevgeny Bushmin; d.o.b. 10.10.1958, Lopatino, Sergachiisky Region, Russia). Deputy Speaker of the Federation Council of the Russian Federation; Chairman of the Council of the Federation Budget and Financial Markets Committee (individual) [UKRAINE2].
2. *Vladimir Michailovich Dzhabarov* (d.o.b. 29.09.1952). First Deputy Chairman of the International Affairs Committee of the Federation Council of the Russian Federation (individual) [UKRAINE2].
3. *Andrei Alexandrovich Fursenko* (a.k.a. Andrei Fursenko; a.k.a. Andrey Fursenko; d.o.b. 17.07.1949, St. Petersburg, Russia). Aide to the President of the Russian Federation (individual) [UKRAINE2].
4. *Alexei Gromov* (d.o.b. 1960, Zagorsk (Sergiev, Posad), Moscow Region, Russia). First Deputy Chief of Staff of the Presidential Executive Office; First Deputy Head of Presidential Administration; First Deputy Presidential Chief of Staff (individual) [UKRAINE2].
5. *Sergei Ivanov* (a.k.a. Sergey Ivanov; d.o.b. 31.01.1953, St. Petersburg, Russia). Chief of Staff of the Presidential Executive Office (individual) [UKRAINE2].
6. *Victor Petrovich Ivanov* (a.k.a. Viktor Ivanov; d.o.b. 12.05.1950; alt. d.o.b. 1952, Novgorod, Russia) (individual) [UKRAINE2].

UPDATE: Developments in the Ukraine and Impact on Investments

7. *Vladimir Igorevich Kozhin* (d.o.b. 28.02.1959, Troitsk, Chelyabinsk Oblast, Russia) (individual) [UKRAINE2].
8. *Yuri Valentinovich Kovalchuk* (a.k.a. Yury Valentinovich Kovalchuck; d.o.b. 25.07.1951, Saint Petersburg, Russia) (individual) [UKRAINE2].
9. *Sergei Mikhailovich Mironov* (a.k.a. Sergei Mironov; d.o.b. 14.02.1953; Pushkin, Saint Petersburg, Russia). Member of the Council of the State Duma; Leader of A Just Russia Party; Member of the State Duma Committee on Housing Policy and Housing and Communal Services (individual) [UKRAINE2].
10. *Sergey Yevgenyevich Naryshkin* (a.k.a. Sergei Naryshkin; d.o.b. 27.10.1954, Saint Petersburg, Russia) (individual) [UKRAINE2].
11. *Viktor Alekseevich Ozeroc* (a.k.a. Viktor Alexeyevich Ozerov; d.o.b. 05.01.1958, Abakan, Khakassia, Russia). Chairman of the Security and Defence Federation Council of the Russian Federation (individual) [UKRAINE2].
12. *Oleg Evgenevich Panteleev* (a.k.a. Oleg Panteleev; d.o.b. 21.07.1952, Zhitnikovskoe, Kurgan Region, Russia). First Deputy Chairman of the Committee on Parliamentary Issues (individual) [UKRAINE2].
13. *Arkady Rotenberg* (d.o.b. 15.12.1951, St. Petersburg, Russia) (individual) [UKRAINE2].
14. *Boris Rotenberg* (d.o.b. 03.01.1957, St. Petersburg, Russia) (individual) [UKRAINE2].
15. *Nikolai Ivanovich Ryzhkov* (a.k.a. Nikolai Ryzhkov; d.o.b. 28.09.1929, Duleevka, Donetsk Region, Ukraine). Senator in the Russian Upper House of Parliament; Member of the Committee for Federal Issues, Regional Politics and the North of the Federation Council of the Russian Federation (individual) [UKRAINE2].
16. *Igor Dmitrievich Sergun*, d.o.b. 28.03.1957. Lieutenant General; Chief of the Main Directorate of the General Staff (GRU); Deputy Chief of the General Staff (individual) [UKRAINE2].
17. *Gennady Timchenko* (a.k.a. Gennadiy Nikolayevich Timchenko; a.k.a. Gennady Nikolayevich Timchenko; a.k.a. Guennadi Timtchenko; Geneva, Switzerland; d.o.b. 09.11.1952, Leninakan, Armenia; alt. Gyumri, Armenia; nationality Finland; alt. nationality Russia; alt. nationality Armenia) (individual) [UKRAINE2].
18. *Aleksandr Borisovich Totoonov* (a.k.a. Alexander Totoonov; a.k.a. Alexander B. Totoonov; d.o.b. 03.03.1957; Ordzhonikidze, North Ossetia, Russia; alt. Vladikavkaz, North Ossetia, Russia). Member of the Committee on Culture, Science, and Information, Federation Council of the Russian Federation (individual) [UKRAINE2].
19. Vladimir Yakunin, d.o.b. 30.06.1948, Vladimir Oblast, Russia (individual) [UKRAINE2].
20. *Sergei Vladimirovich Zheleznyak* (a.k.a. Sergei Zheleznyak; a.k.a. Sergey Zheleznyak; d.o.b. 30.07.1970, Saint Petersburg, Russia). Deputy Speaker of the State Duma of the Russian Federation (individual) [UKRAINE2].

UPDATE: Developments in the Ukraine and Impact on Investments

The following entity has been added to OFAC's SDN list:

1. BANK ROSSIYA (f.k.a. AKTSIONERNY BANK RUSSIAN FEDERATION), 2 Liter A Pl. Rastrelli, Saint Petersburg 191124, Russia; SWIFT/BIC ROSY RU 2P; Website www.abr.ru; Email Address bank@abr.ru [UKRAINE2].

BIT Protection

Investors in both the Ukraine (particularly Crimea) and Russia will rightly be concerned by these latest developments and should consider whether their investments are or can be adequately protected under a bilateral investment treaty ("BIT").

Ukraine and Russia have entered into 29 and 30 BITs respectively that have been ratified. Ukraine is also party to the 1965 Washington Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID), which establishes a legal and institutional framework for the resolution of investor-state disputes.

The BITs envisage international law levels of protection for foreign investors, including protection against expropriation or unfair, inequitable or discriminatory treatment. In addition, BITs provide for access to international arbitration for resolution of disputes concerning alleged treaty breaches that harm the investment. In practical terms, the BITs allow foreign investors to obtain compensation for detriment suffered due to state actions that violate BIT obligations, even if those actions are in conformity with domestic laws. Consequently, foreign investors who qualify under one of the relevant BITs could potentially, in the event of future loss, avail themselves of the investment protections and seek compensation for such loss.

Whether any future measures by Russia (and/or the Ukraine) will violate the provisions of any particular BIT will depend on the nature of the measures and the specific terms of the relevant BIT.

In any event, investors are well advised to consider whether their assets in the region are adequately protected.

Should you have any questions regarding the latest sanctions, and/or protection of investments, including possibilities for restructuring your business operations to secure BIT protection, please do not hesitate to contact the authors.

UPDATE: Developments in the Ukraine and Impact on Investments

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UPDATE: Developments in the Ukraine and Impact on Investments

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