Sanctions Relating to Russia Imposed by the U.S., EU, Australia and Japan - A Snapshot of Where We Are Now

International Trade and Antitrust, Competition and Trade Regulation Alert

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Introduction

Since early March 2014, a number of countries have imposed various types of sanctions against Russia and certain persons in Ukraine in connection with events in Ukraine. We have issued a series of updates covering, in particular, U.S. and EU sanctions, links to which are provided at the end of this Legal Insight.

After the recent rapid pace of legislative and regulatory developments from numerous sources, there seems now to be a brief pause for reflection by the international community before any further significant changes to the mosaic of sanctions imposed in the last six months. This seems the ideal opportunity to take stock with a high-level overview of the current situation in the U.S., EU, Australia and Japan. More detail may be found via the links to previous alerts. A brief note below also addresses Russia’s response.

U.S.

The U.S. sanctions have been implemented through the Office of Foreign Assets Control, U.S. Department of the Treasury ("OFAC"), which has issued a series of directives and established a new list of persons subject to OFAC restrictions, in addition to its existing Specially Designated Nationals and Blocked Persons ("SDN") list, identified as the Sectoral Sanctions Identifications List ("SSIL"); the Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), which has issued amendments to the Export Administration Regulations ("EAR") to impose new export licensing requirements and policies in connection with certain items exported to and end users in Russia; and, the Directorate of Defense Trade Controls, U.S. Department of State ("DDTC"), which has imposed new export licensing policies relating to Russia under the International Traffic in Arms Regulations ("ITAR"). In addition, while not a sanctions measure, the U.S. has announced that, effective October 3, 2014, Russia will be graduated from the U.S. Generalized System of Preferences ("GSP"), such that certain items imported into the U.S. from Russia no longer will benefit from duty-free status.

OFAC Sanctions

- Certain Russian and Ukrainian persons have been added to the OFAC SDN list and, as such, the property or interests in property of the listed persons that are in the U.S. or in the possession or control of a U.S. person (defined as an individual who is a citizen or resident of the U.S. or an entity organised or located in the U.S. and their non-U.S. branches) are blocked and no transactions by U.S. persons or from the U.S. with such SDNs are permitted (please note that entities 50% or more owned, directly or indirectly, by persons listed on the OFAC SDN list are also considered to be blocked).
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or indirectly, by a single SDN or in the aggregate by multiple SDNs also are considered SDNs, even if such entities are not specifically listed);

• Certain Russian financial services, defense and related materiel, and energy sector entities have been placed on the newly established SSIL. U.S. persons are barred from involvement in activities relating to the issuance of new equity or new long-term debt (from July 16 to September 12, 2014, with a term of 90 days or longer, and, as of September 12, 2014, with a term of 30 days or longer) for the financial sector entities (listed on the SSIL under OFAC Directive 1), new long-term debt (90 days or longer) for the energy sector entities (listed on the SSIL under OFAC Directive 2), and new debt of longer than 30 days for the defense and related materiel sector entities (listed on the SSIL under OFAC Directive 3). Please note that long-term payment terms in connection with the supply of goods or services can be considered a long-term debt and a failure by a listed person to pay in less than the period prescribed as long-term debt can give rise to an OFAC reporting requirement (please also note that entities 50% or more owned, directly or indirectly, by a single SSIL-listed entity or in the aggregate by multiple SSIL-listed entities also are considered to be SSIL-listed entities, even if such entities are not specifically listed); and

• U.S. persons may not engage in any activities relating to exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil in Russia and that involve any person in the energy sector designated on the SSIL in connection with the bar (under Directive 4).

BIS Restrictions

• Certain Russian persons have been placed on the Entity List under the EAR, which means any item described in the listing (usually any item subject to the EAR) requires a license to be exported or otherwise transferred to such persons. In the case of certain persons listed from the Russian energy sector, the licensing requirement applies to items that “will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia;”

• Items classified under Export Control Classification Numbers (“ECCNs”) designated under the new EAR Russian Industry Sector Sanctions (see Section 746.5 of the EAR) or covered by a Schedule B Number listed on the Russian Industry Sector Sanctions List (in Supplement 2 to Part 746 of the EAR) require a license under the EAR if the exporter or reexporter knows or is informed the item will be used directly or indirectly in designated Russian energy sector applications (including for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia that have the potential to produce oil or gas) or is unable to determine whether the item will be used in such projects in Russia. Please note there have been some modifications to the ECCN descriptions and the addition of a new ECCN for purposes of the Russian Industry Sector Sanctions List and, accordingly, the ECCN for any items sought to be supplied should be reevaluated under the post Sanctions ECCN descriptions. Also note that BIS has implemented a licensing policy of presumptive denial for all items subject to the EAR requiring a license for export to Russia in connection with Russian oil projects, including items not within the above-described ECCNs or Schedule B Numbers. Since gas projects were not included in the policy of presumptive denial, it is assumed that license applications for gas projects will be reviewed on a case-by-case basis;
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- BIS also announced a policy under the EAR that it will deny licenses to export or reexport any high technology item subject to the EAR to Russia or occupied Crimea that could contribute to Russia’s military capabilities; and
- The licensing requirement under the EAR for certain Commerce Control List items when exported or transferred with knowledge the item is intended for a military end use or end-user in China has been extended to such exports to Russia.

**DDTC Restrictions**

- DDTC has implemented a tightened policy to deny pending export license applications for any high technology items that could contribute to Russia’s military capabilities. DDTC is revoking any existing export licenses that meet these conditions and all other pending applications and existing licenses are receiving a case-by-case evaluation to determine their contribution to Russia’s military capabilities.

**EU**

**Restrictive measures: asset freezes and visa bans**

Starting on 6 March 2014, EU legislation has incrementally imposed “targeted” sanctions comprising a requirement to freeze assets of, and a prohibition on making funds or economic resources available to (usually, in the case of individuals, associated with EU travel restrictions), a growing list of individuals and entities. The grounds for imposing these sanctions have steadily evolved and now include:

- Persons responsible for the misappropriation of Ukrainian state funds and for the violation of human rights;
- Persons and entities responsible for actions against Ukraine’s territorial integrity;
- Persons associated with actions and policies undermining stability or security in Ukraine;
- Persons associated with obstructing the work of international organisations in Ukraine;
- Persons and entities linked to persons referred in the preceding two bullets;
- Entities in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law;
- Entities which have benefited from a transfer as referred in the preceding bullet;
- Individuals responsible for, actively supporting or implementing, actions or policies which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine, or stability or security in Ukraine or which obstruct the work of international organisations in Ukraine;
- Individuals and entities associated with individuals mentioned in the preceding bullet;
- Individuals and entities supporting, materially or financially, actions which undermine or threaten the territorial integrity, sovereignty and independence of Ukraine;
- Entities in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law;
- Individuals and entities which have benefited from a transfer set out in the preceding bullet;
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- Entities who actively provide material or financial support to, or are benefiting from, Russian decision-makers responsible for the annexation of Crimea and Sevastopol or the destabilisation of Eastern-Ukraine; and
- Individuals and entities conducting transactions with the separatist groups in the Donbass region of Ukraine.

At the time of writing, 141 persons and 23 entities in total are subject to the EU restrictions described in this section. The list includes:

- ex-President Yanukovych;
- Dmitry Nikolayevich Kozak (deputy Prime Minister of Russia);
- Ludmila Ivanovna Shvetsova (a deputy chairman of the Duma);
- Valery Vasilevich Gerasimov (chief of staff of Russia’s armed forces);
- PJSC Chemomomeftegaz;
- Feodosia; and
- Sergei Chemezov, an ex-KGB associate of President Putin, who now runs Rostec conglomerate, the leading Russian state-controlled defence and industrial manufacturing corporation.

Economic sanctions

With effect from 1 August, the EU introduced legislation affecting sectors of the Russian economy (in some cases, combined with specifically identified entities) to complement the targeted sanctions summarised above. The legislation imposed prohibitions on the following activities:

- Dealing with bonds, equity or similar financial instruments with a maturity exceeding 90 days and issued after 1 August by certain listed Russian banks (Sberbank, VTB Bank, Gazprombank, VEB and Rosselkhozbank) that are owned over 50% by the state; entities that are outside the EU and owned over 50% by such banks or entities acting on behalf or at the direction of such banks;
- The sale, supply, transfer or export of certain equipment used in the oil industry to any person in Russia or for use in Russia without authorisation;
- The import or export any future arms and related materiel of all types from Russia.
- The sale, supply, transfer or export of dual-use goods and technology to anybody in Russia or for use in Russia, if those items are or may be intended for military use or for a military end-user; and
- The provision of technical assistance, brokering services, financing and financial assistance regarding arms and dual-use goods.

Most recently, on 12 September, the following new sanctions took effect:

- A prohibition on raising funds in the EU through financial instruments of longer than 30 days’ maturity applies to the above-mentioned listed banks together with newly listed entities, including three oil companies (Gazprom Neft, Rosneft and Transneft) and three companies operating in military production (Oboronprom, a helicopter maker; United Aircraft Corporation, producing MiG and Sukhoi; and Uralvagonzavod, a tank maker);
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- A prohibition on new contracts for associated services services (drilling, well testing, logging and completion services and supply of specialised floating vessels) necessary for deep water and Arctic oil exploration and production; and

- A prohibition of sales of dual-use technologies to nine Russian companies which are providing services to the Russian military, including: JSC Sirius (optoelectronics for civil and military purposes), OJSC Stankoinstrument (mechanical engineering for civil and military purposes), OAO JSC Chemcomposite (materials for civil and military purposes), and OAO Wysokototschnye Kompleks (anti-aircraft and anti-tank systems).

The measures were due to be reviewed by the end of September in the light of the developments in the conflict in Ukraine. It has been reported that, on 30 September, representatives of the EU Member States agreed that, while there had been encouraging developments in some aspects of the peace deal, relevant parts of the same protocol needed to be properly implemented, and that, accordingly, the sanctions summarised above remain in force for the moment.

At the time of writing, 20 entities in total are subject to the EU restrictions described in this section.

Transactions involving Crimea and Sevastopol

From 25 June 2014, the EU prohibited the import of goods to the EU originating from Crimea and Sevastopol without certification by the Government of Ukraine and the provision of financial and insurance services related to the import of such goods. Exceptions were made to minimise the effect on businesses.

From 31 July, the following were additionally prohibited in relation to Crimea or Sevastopol:

- Granting a financial loan or credit relating to infrastructure projects in the transport, telecommunications or energy sectors or to the exploitation of oil, gas or mineral resources;
- Acquiring or extending a participation in entities engaged in the above sectors;
- Creating a joint venture in such sectors;
- Providing technical assistance or brokering services related to the above investment activities;
- Supplying certain key equipment and technology relating to infrastructure projects in the transport, telecommunications or energy sectors or to the exploitation of oil, gas or mineral reserves; and
- Providing technical or financial assistance or brokering services related to such key equipment and technology.

Australia

On 19 March 2014, the Australian government announced that it would impose sanctions in relation to the Russian threat to Ukraine’s sovereignty. Sanctions first came into effect, on 17 June 2014, through amendments to the Autonomous Sanctions Regulations 2011 (Regulations) which placed targeted financial sanctions and travel bans on designated persons and entities included on the Autonomous Sanctions (Designated Persons and Entities and Declared Persons – Ukraine) Amendment List 2014 (the Ukraine Amendment List).
Targeted financial sanctions

Under the Regulations, unless a person has a sanctions permit, a person is prohibited from:

- using or dealing with an asset owned or controlled by a designated person or entity on the Ukraine Amendment List; and
- making an asset directly or indirectly available to, or for the benefit of, a designated person or entity on the Ukraine Amendment List.

“Asset” includes an asset of any kind or property of any kind, whether tangible or intangible, movable or immovable, however acquired.

For the Minister for Foreign Affairs to grant a sanction permit, she must be satisfied that:

- it would be in the national interest to grant the permit; and
- the application for the permit is for either a “basic expense dealing,” a “contractual dealing” or a “legally required dealing.” These terms are defined in regulation 20 of the Regulations.

Travel bans

Any “declared person” for Ukraine is prevented from travelling to, entering or remaining in Australia unless the minister waives the prohibition. Declared persons for Ukraine are included on the Ukraine Amendment List.

On 1 September 2014, the Prime Minister announced that Australia would impose further sanctions restricting arms exports, access of Russian state-owned banks to Australian capital markets and Australian trade and investment in Crimea. In addition, it was stated that the export of goods and services for use in Russia’s oil exploration or production would be prohibited. These measures are yet to be implemented.

Japan

On 29 April 2014, Japan decided to temporarily suspend issuing visas to enter Japan to 23 individuals who are considered to have contributed to the violation of Ukraine’s sovereignty and territorial integrity. So far, Japan has refrained from disclosing the names, titles or nationalities of these 23 people. Other than this, Japan has not implemented any monetary sanctions like those that the EU and the U.S. have already implemented.

On 28 July, Japan decided that the following additional sanctions will be implemented, as soon as the required internal procedures are completed:

- The freezing of assets in Japan of the individuals and organisations considered to have been directly involved in the annexation of Crimea and the destabilisation of the Eastern part of Ukraine; and
- The introduction of restrictive measures with regard to imports from Crimea and Sevastopol based on Japan’s position that the annexation of Crimea by Russia will never be recognised.

On 5 August, Japan implemented the above measures against the individuals, designated in the Ministry of Foreign Affairs Notice, as persons considered directly involved in the annexation of the Autonomous Republic of Crimea and the city of Sevastopol or in the destabilisation of the Eastern part of Ukraine. Their implementation comprises:
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- Restriction on payments: Authorisation will be required for payments, etc. to the individuals and entities designated in the Ministry of Foreign Affairs Notice; and
- Restriction on capital transactions: Authorisation will be required for capital transactions (i.e. contracts of deposit, trust, and money loans) with the individuals and entities designated in the Ministry of Foreign Affairs Notice.

In addition, a third measure was implemented on all goods originating from the Autonomous Republic of Crimea or the city of Sevastopol. This was a restriction on importation. An approval system will be applied to imports of all goods originating from the Autonomous Republic of Crimea or the city of Sevastopol of Ukraine.

On 24 September, under the Foreign Exchange and Foreign Trade Act, Japan implemented the additional following sanctions on Russia:
- Export restrictions on weapons, etc.: The examination procedure will be tightened regarding the export to the Russian Federation of weapons, the provision of military technologies and the export of general purpose products contemplated for military use, as well as the provision of services related to such export;
- Restriction on capital transactions: Authorisation will be required for the issuance or offering of securities in Japan by entities designated in the Ministry of Foreign Affairs Notice; and
- Restriction on the provision of services: Approval will be required for the provision of services or assistance related to the issuance or offering of securities in Japan by entities designated in the Ministry of Foreign Affairs Notice.

The following entities are designated in the Foreign Affairs Notice for the purpose of the preceding bullets:
- Sberbank;
- VTB Bank;
- Bank for Development and Foreign Economic Affairs (Vnesheconombank);
- Gazprombank;
- Russian Agricultural Bank; and
- Entities having 50% or more of their total amount of outstanding shares or total amount of capital owned by any of the entities listed above.

Russian response

On 6 August, Vladimir Putin (President of Russia) signed a decree calling for a ban or limit on imports of certain materials originating in the countries that imposed economic sanctions against Russia. On 7 August, Dimitri Medvedev (Prime Minister of Russia) banned, for one year, all imports of fruit, vegetables, meat, fish, milk and dairy products from the United States, the Member States of the European Union, Australia, Canada and Norway. The prohibited products were listed in Resolution of the Russian Government N. 560, 6 August. The Government can propose any changes to the sanction decree if the situation changes.

It has been reported that the Government has considered a ban on certain flights, including those of U.S. and EU airlines flying to the East Asia region over Russian territory without landing in Russia, and a general ban on flights of Ukrainian airlines over Russian territory to Armenia, Turkey, Azerbaijan and Georgia. An import ban on used
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cars, consumer products and clothes was also discussed, however no formal regulation has been adopted in that regard.

The most recent initiative of the Russian Parliament is a proposed law granting state-fund compensation to persons and entities whose foreign assets have been seized under international sanctions, and accordingly allowing the Russian Federation to seize Russian assets of the countries that have imposed sanctions on such persons and entities. Despite having been highly criticised, on 8 October 2014 the bill passed its first reading in the State Duma is expected to be adopted in the very near future.

Previous alerts

- Developments in the Ukraine and Impact on Investments (10 March 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (18 March 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (21 March 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (22 April 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (29 April 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (13 May 2014)
- UPDATE: Developments in the Ukraine and Impact on Investments (25 June 2014)
- United States and European Union Ratchet Up Russia Sanctions (22 July 2014)
- Update on EU Sanctions against Russia (28 July 2014)
- Update on EU Sanctions against Russia (30 July 2014)
- Russia imposes sanctions against the United States, the European Union, Australia, Canada and Norway (7 August 2014)
- Update on U.S. Sanctions Relating to Russia (25 September 2014)
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