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Ukraine Sanctions: Now There Are Three – Executive Orders against Russia

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On March 20, 2014, President Obama signed his third executive order in under three weeks imposing sanctions against Russia concerning the situation involving Ukraine. Each executive order has a different focus, with a result being a set of economic sanctions that are focused almost as much on non-state actors (President Putin's friends) as they are at the Government of the Russian Federation ("GRF").

The first executive order (**"Ukraine 1"**) allows the U.S. to block the property of any "person" (in "sanctions regimes" it is important to remember that "person" is defined to mean individuals and entities) active in undermining the democratic processes in Ukraine or threatening its stability or territorial integrity. Neither this EO nor the other two is "self-executing." That is, the Secretary of the Treasury, in consultation with the Secretary of State, must name persons whose assets will be blocked. This occurred on March 17, when Treasury named four individuals. Each has been involved in fostering separation of the Crimea from the Ukraine.

The second executive order (**"Ukraine 2"**) has a broader focus. While the preamble justifying the EO mentions the Ukraine, sanctions may be imposed against broad classes of persons without apparent regard to actions affecting the Ukraine. These classes include individuals who serve in the GRF, persons in the arms sector (defined broadly), and persons owned or controlled by "senior" officials of the GRF or sanctioned persons, and, any person who materially assists one of these persons.

Ukraine 2 has been used to block the property of 26 individuals and one entity (Bank Rossiya) so far, naming them as "Specially Designated Nationals," or "SDNs." (The list of SDNs is maintained by the Office of Foreign Assets Control, U.S. Treasury, and is available online.)

Ukraine 3, the last of the current orders, greatly extends the number and type of persons subject to U.S. economic sanctions. By its terms, the Treasury Secretary may block the assets of any "person" operating in "such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury," including: (1) Financial services; (2) Energy, metals and mining; (3) Engineering; and, (4) Defense and related materiel.

All of the executive orders allow sanctions to be imposed against any person "materially assisting" a person on the SDN list and against any person "owned or controlled by" or acting on behalf of, any person whose property is blocked. This language puts responsibility on U.S. persons to know who owns or controls the entities with which they are conducting business. There is no definition of "control," in the executive orders, so OFAC will received a large number of questions on this point.

The scope of the "blocking orders" is worth a brief discussion. No U.S. person may conduct any business with a person on the SDN list. While not conducting business may appear clear on its face, the impact on current contracts, investments, and goods in supply pipelines (some not even known to be destined for the GRF or sanctioned persons) create difficult decisions for U.S. and European companies.

Moreover, companies seeking to comply frequently overlook the impact of a blocking order on goods being bought and sold entirely outside of the U.S., but paid for in dollars. In dollar transactions, both the seller (and its bank) and the buyer (and its bank), must be identified to every financial entity in the payment process. The result is that a blocked purchaser will be identified and the payment made by the purchaser frozen in the U.S. as the payment flows through U.S. banks (as almost all dollar payments do). A result may be that the purchaser receives the goods (as they may have been shipped before payment was received) but the seller's receipt of payment is long-delayed (years in some instances) due to the blocking order.

The broader Ukraine 2 & 3 executive orders define "GRF" to include not just any agency or instrumentality of the Russian government, including the Russian Central Bank, but also any "person owned for controlled by, or acting for or on behalf of," the GFR. This means that the Treasury Secretary may block the U.S. assets of GRF-owned or controlled companies without imposing a blocking order against the GRF.

All of the executive orders contain provisions that are more recent additions to economic sanctions programs and are important given the increased economic relations between the U.S. and Russia:

- **Travel Ban.** Persons named as SDNs pursuant to these executive orders are prohibited from entering the U.S.
- **Humanitarian Assistance Ban.** U.S. persons may not provide humanitarian assistance to persons blocked under these EOs.
- **No notice.** In order to maximize the amount of capital that may be blocked pursuant to the designation of a person as an SDN, the U.S. will not provide advance notice to anyone having property in the U.S. that may be subject to a blocking order.

A final note is one of caution. Other countries and entities are applying targeted, Ukraine related sanctions against individuals in Russia. The lists do not match. The UK list, for example, overlaps only slightly with the U.S. list of prohibited parties. Australia, by the time this article is published, may have come out with its list of prohibited persons. So, companies doing business in more than one country will need to keep their compliance eyes on multiple countries, as well as changing legal restrictions in the U.S., to ensure they meet all the requirements.

Please contact the author of this alert if you have any questions.