

NAVIGATING THE RUSSIA SANCTIONS: ANTICIPATE, DON'T REACT

March 24, 2014

I. Executive Summary:

The sanctions imposed on twenty leading Russian officials and businessmen with ties to Russian President Vladimir Putin and one financial institution, Bank Rossiya, by the United States on March 16 and 20, in response to this month's Russian annexation of the Crimean peninsula in the Ukraine, have ramifications for western investors into Russia, including those with direct investment, in partnerships, alliances or joint ventures with Russian entities within or without Russia and companies with operating subsidiaries or other assets in Russia or in Russian-controlled institutions. Moreover, those ramifications may become more significant if the reach and severity of the sanctions is increased to core segments of the Russian economy, such as the oil and natural gas industries, as President Obama has threatened to do and as seems likely. It is not the purpose of this advisory to debate the public international law issues raised by Russia's actions in Crimea, the legal bases of the U.S. sanctions regime or the sanctions' likely macroeconomic effect. However, there are measures that western investors in Russia and business owners and partners of Russian enterprises can and should take to protect their investments and assets, both immediately and in the longer term, and those measures will be surveyed here. In general, a successful approach to navigating the Russia sanctions will require careful evaluation of exposure and anticipation of and response to issues likely to arise, rather than reaction after the fact.

II. Who and What is Affected?

The March 16 and 20, 2014 sanctions were officially imposed by the U.S. Department of the Treasury Office of Foreign Assets Control pursuant to Executive Order (E.O.) 13661, signed by President Obama on March 16, 2014. E.O. 13661 directly affects sixteen Russian government officials, four members of President Putin's "inner circle," as well as Bank Rossiya, the 17th largest Russian bank, and considered the "private bank" of the said elite group (collectively, the "Designated Parties;" see Appendix A at the end of this Advisory for the names and positions of the Designated Parties). The immediate effect of E.O. 13661 is to freeze any assets of the Designated Parties that are subject to U.S. jurisdiction and generally to prohibit transactions by U.S. persons or within the United States involving the Designated Parties. All U.S. persons and persons subject to U.S. Government jurisdiction (a potentially extremely broad category) are subject to E.O. 13661 and are deemed to be on notice of its terms and provisions, with immediate effect.

In addition to the direct effect of E.O. 13661, collateral effects have and will come into play. Ratings agencies Standard & Poor's and Fitch warned of downgrading Russia's credit rating, which will make Russian borrowing on international markets more expensive and almost certainly affect Russian-based enterprise borrowing costs. Visa and Mastercard ceased operations with Bank Rossiya, and similar severing of financial and financing relationships will follow. The ruble declined sharply in FOREX trading. Uncertainty over the future may have a greater impact than the current sanctions.

III. Immediate Measures to Take:

Immediately:

- Review all existing investments, joint ventures, partnerships and non-wholly-owned subsidiaries in Russia or with Designated Parties participation (review Russian partner ownership and management for indirect as well as direct participation by Designated Parties; as a general rule, but not certainly, enterprises with less than 50% ownership and/or control by one or more Designated Parties should not be affected; however, beware of “effective” control exceeding formal control), review termination, force majeure, impossibility of performance and related provisions and their remedies and consider restructuring business enterprises with over 50% ownership and/or control by one or more Designated Parties;
- Review planned or pending transactions with the same considerations for participation by Designated Parties or their nominees in mind and consider restructuring transactions that would be affected by E.O. 13661;
- Review any pending or threatened litigations, arbitrations, mediations and other contentious proceedings involving Russian investments, joint ventures, partnerships and non-wholly owned subsidiaries with the same considerations in mind;
- Review all Ruble-denominated holdings and consider currency hedges and other exchange rate protective measures;
- Review all financial assets held in Russia or under Russian control to assess whether they are potentially affected by current sanctions or might be by other sanctions likely to be imposed;
- Review visa status of Russian nationals potentially affected; and
- Review any safety, security and visa issues potentially affecting non-Russian employees in Russian territory.

IV. Longer-Term Measures to Consider:

Longer-term:

- Restructure investments, joint ventures, partnerships and other business interests to avoid the imposition of sanctions where determined to be warranted;
- Review tax, antitrust/competition, environmental and other legal/regulatory effects of any such restructurings and allow for their impact;

- Where warranted, shift assets out of the reach of sanction imposition; and
- Consider the original strategic intent of the sanctions-affected business enterprise involved and the extent to which it is altered by the current and prospective sanctions and overall political climate; consider restructuring accordingly.

V. Conclusion

The Russia-Ukraine confrontation is rapidly evolving, and new and ever more severe sanctions are likely as of this writing. Any enterprise or individual with investment or business interests in Russia or in Russia-controlled enterprises or territories is well-advised to keep a close watch on developments, and to consider, on a case-by-case basis, the measures suggested here and others that may become advisable as circumstances develop.

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Kurtin PLLC is a New York City-based law firm focused on Corporate, Commercial and Regulatory Representation with experience in the Biotechnology & Life Sciences, Communications & Media, Energy, Financial Services, Information Technologies and Satellites & Space sectors. The firm has represented numerous enterprises investing in Russia and the CIS through direct investment, structuring joint ventures and strategic alliances, and acquisitions. General information about Kurtin PLLC is available at www.kurtinlaw.com. For further information, please contact info@kurtinlaw.com.

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(Appendix A on following page)

Appendix A: List of Designated Parties included in March 16 and 20, 2014 Sanctions

- Viktor Alekseevich Ozerov, Chairman, Security and Defense Committee, Federation Council
- Vladimir Michailovich Dzhabarov, First Deputy Chairman, International Affairs, Federation Council
- Evgeni Viktorovich Bushmin, Deputy Speaker, Federation Council
- Nikolai Ivanovich Ryzhov, Member, Federation Council
- Sergei Vladimirovich Zheleznyak, Deputy Speaker, State Duma
- Sergei Mikhailovich Mironov, Member, State Duma
- Aleksandr Borisovich Totoonov, Member, Federation Council
- Oleg Evgenevich Panteleev, First Deputy Chairman, Committee on Parliamentary Issues
- Sergey Yevgenyevich Naryshkin, Chairman, State Duma
- Victor Petrovich Ivanov, Director, Federal Drug Control Service
- Igor Dmitrievich Sergun, Chief, Main Directorate of the General Staff (GRU) and Deputy Chief
- Sergei Ivanov, Chief of Staff, Presidential Executive Office
- Alexei Gromov, First Deputy Chief of Staff, Presidential Executive Office
- Andrei Alexandrovich Fursenko, Presidential Aide
- Vladimir Ivanovich Yakunin, Chairman of the Board, Russian Railways
- Vladimir Igorevich Kozhin, Head of Administration, Russian Federation
- Gennady Timchenko, Founder, Gunvor (Oil and Gas Commodity Traders)
- Arkady Rotenberg and Boris Rotenberg, Construction Contractors
- Yuri Valentinovich Kovalchuk, Principal Shareholder, Bank Rossiya
- Bank Rossiya (Aktionemy Bank), St. Petersburg, Russia