

CLIENT UPDATE

THE UNITED STATES AND EUROPEAN UNION IMPOSE SANCTIONS ON RUSSIAN OFFICIALS

MOSCOW

Natalia A. Drebezgina
nadrebezgina@debevoise.com

Alan V. Kartashkin
avkartashkin@debevoise.com

Alyona N. Kucher
ankucher@debevoise.com

Dmitri V. Nikiforov
dvnikiforov@debevoise.com

WASHINGTON, D.C.

Satish M. Kini
smkini@debevoise.com

NEW YORK

Carl Micarelli
cmicarelli@debevoise.com

LONDON

Lord Goldsmith QC
phgoldsmith@debevoise.com

Matthew Howard Getz
mgetz@debevoise.com

Jessica Gladstone
jgladstone@debevoise.com

Jane Rahman
jrahman@debevoise.com

As foreshadowed in our March 7 Client Update,¹ and in response to ongoing events in Crimea, the United States and European Union adopted asset freezes on March 17, 2014, targeting individual Russian and Ukrainian officials. To date, only individuals and not entities have been designated.

US SANCTIONS

President Barack Obama yesterday signed a new executive order blocking the property of seven Russian government officials associated with Russia's recent actions in Crimea.² Simultaneously, the US Treasury Department's Office of Foreign Assets Control (OFAC) blocked the property of former Ukrainian president Viktor Yanukovich and three other individuals under the authority of the previous Ukraine sanctions order that President Obama had issued on March 6, 2014.³ The listed individuals also will be denied visas to travel to the United States. The new sanctions are effective immediately. All of the listed individuals are government officials.

"Blocking" of property means that the individual's or entity's assets must be frozen if they are in the United States or in the possession of a "US person"—a term that includes US nationals, permanent

¹ <http://www.debevoise.com/clientupdate20140307b/>

² Executive Order of March 17, 2014 (not yet officially published).

³ Executive Order No. 13,660 of March 6, 2014, 79 Fed. Reg. 13,493.

residents and companies (including their foreign branches), as well as anyone in the United States. For example, foreign branches of US banks are required to freeze assets located in foreign countries, including Russia. Non-US banks are required to freeze assets held at their US branches, but are not required to freeze assets worldwide merely because they have a US branch. Blocking also effectively prohibits US companies, individual US nationals and persons in the US from engaging in any kind of transaction with a blocked individual or entity. Additionally, under a longstanding interpretation by OFAC, the property of a company is blocked automatically if a blocked individual or entity owns 50% or more of the company's equity.⁴ Under Russian law, state officials are not permitted to own private business, but for sanctions-compliance purposes, it is always prudent to check who is the ultimate beneficial owner of a counterparty. OFAC has authority to issue licenses for the release of blocked property, but we expect that such authority will be exercised sparingly.

The new executive order separately authorizes the Treasury Department to block the property of any entity or individual who:

- Is a senior official of the Government of the Russian Federation,
- Operates in the arms or related materiel sector in the Russian Federation, or
- Is owned or controlled by, has acted or purported to act on behalf of, or materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of, (1) a senior official of the Government of the Russian Federation or (2) a person blocked under the executive order.

Other than the individuals listed in the annex to the new executive order, no one has yet been designated under these new authorizations. Although the scope of the designation authority under the new executive order is very broad, the White House has issued a statement saying that the current focus is on identifying and targeting individuals who use their resources or influence to support or act on behalf of senior Russian government officials.⁵ It also stated that the US has no current intention to block the entities that those individuals manage for the Russian government.

⁴ Office of Foreign Assets Control, *Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked*.

⁵ White House Press Office, *Fact Sheet: Ukraine-Related Sanctions*, March 17, 2014.

EU SANCTIONS

Also, on March 17, 2014, the European Union adopted its own sanctions freezing the assets of individual political figures from Crimea and Russia and individual members of the Russian military.⁶ These sanctions supplement the asset freeze previously issued on March 5, 2014 against certain members of Ukraine's former Yanukovich government. The new sanctions have direct effect in every Member State of the European Union and are immediately effective across all EU Member States.

As with the earlier Ukraine-related sanctions of March 5,⁷ the result of the asset freeze is that EU persons, which includes persons within the EU as well as EU nationals anywhere in the world, are prohibited from dealing in funds or economic resources that belong to or are controlled or held by the listed individuals. Moreover, EU persons are also prohibited from making funds or economic resources available to the listed individuals, whether directly or indirectly.

The new regulation defines the term "funds" in the same way as in the regulation of March 5: any kind of financial asset and benefit is deemed to fall within its scope. Similarly, the term "economic resources" is defined in the same way as in the March 5 regulation: assets of every kind, whether tangible or intangible, moveable or immovable (such as, for example, goods, property or rights), which are not funds themselves but which may be used to obtain funds, goods or services are frozen.

The wording of the March 17 regulation differs slightly from the March 5 regulation in that it refers to the sanctioned persons as "natural persons or natural or legal persons, entities or bodies associated with them as listed in Annex I." This new language does not appear to change the meaning of the regulation because Annex I only lists individuals and not any legal persons, entities or bodies.

Licenses are available in respect of the asset freeze, but they are available only on limited grounds including needing to pay for basic expenses, reasonable legal fees, routine costs in relation to the holding or maintenance of frozen funds or economic resources, and, in special cases, the need to pay extraordinary expenses.

⁶ Council Regulation (EU) No. 269/2014 of 17 March 2014, 2014 O.J. L78/6.

⁷ Council Regulation (EU) No. 208/2014 of 5 March 2014, 2014 O.J. L66/1.

It is likely that some Member States will pass implementing legislation as the UK did in respect of the previous EU sanctions,⁸ but as yet this has not occurred.

EU Member States have also agreed to implement a travel ban in respect of the 21 individuals such that Member States are required to take steps to prevent the listed persons from entering into or transiting through their territories.

WHAT SHOULD I BE DOING NOW?

As with the imposition of any new sanctions legislation or the expansion of existing sanctions legislation, the compliance function in any company that is required to comply with the sanctions laws should check whether customers, depositors, vendors or other counterparties are the target of sanctions. Companies that use automatic screening software to detect sanctioned parties should be sure that they are receiving timely updates of the databases that the software uses to check for sanctioned entities. Those in charge of any contemplated or pending transaction involving Russian or Ukrainian individuals or entities should recheck the counterparties against the sanctions lists each time the lists are updated.

WHAT THE FUTURE MAY HOLD

As the Ukraine crisis continues to evolve, so do the US and EU sanctions. We expect that both the US and EU will expand their designations in the coming weeks if a diplomatic solution to the crisis is not reached. The EU Council is due to meet again on Thursday and Friday of this week and may consider further sanctions at that time.

For its part, Russia has indicated that it may impose countermeasures against the US and EU sanctions. Russian officials have been quoted as saying that Russia would respond “symmetrically” to any sanctions imposed by the US and EU, but other voices within Russia have called for harsher retaliatory measures. We will continue to provide updates as the situation develops.

* * *

Please do not hesitate to contact us with any questions.

March 18, 2014

⁸ *The Ukraine (European Financial Sanctions) Regulations 2014*, 2014 No. 507 (6 March 2014).