Client Alert

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Financial Services

International Trade Public Policy December 22, 2014

U.S. Sanctions Legislation Targets Russia While EU and U.S. Expand Crimea Sanctions

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On December 18, 2014, President Obama signed into law the Ukraine Freedom Support Act of 2014. The statute requires sanctions to be imposed against Russian arms broker/exporter Rosoboronexport and government-owned companies which the President determines produce, transfer or broker sales of defense articles to Syria, Ukraine, Georgia or Moldova. It provides authority for the President to impose sanctions against foreign persons who make investments in "special Russian crude oil projects," against foreign financial institutions that facilitate sanctioned activities, and against Gazprom if it is determined that Gazprom is withholding gas supplies to NATO countries, Ukraine, Georgia or Moldova. Upon signing the law, however, the President stated that he does not intend to implement any sanctions authorized by the statute at this time. Separately, the European Union (EU) announced the approval of additional sanctions related to business in Crimea and Sevastopol, and the U.S. government took similar but broader action with the President issuing a new Executive Order prohibiting transactions involving Crimea.

Ukraine Freedom Support Act

The enactment of the Ukraine Freedom Support Act of 2014 starts the timeline for the following new extraterritorial sanctions:

- **Sanctions on Rosoboronexport** (effective January 17, 2015) – The President is required to impose three or more sanctions from the list of options below. Rosoboronexport is the sole state broker and exporter/importer of Russian defense products. Despite the President's stated intent not to use the sanctions authorized under the act, it is not clear how he will be able to avoid the requirement of this mandatory provision.

- **Arms-Related Activities in Syria, Ukraine, Georgia and Moldova** (effective February 1, 2015) – The President is required to impose three or more sanctions from the list of options below against Russian and Russian-owned or controlled parties who are determined to produce, transfer or broker sales of defense articles to these countries without the support of their internationally recognized governments or who provide support for these activities. Although nominally mandatory, the determination with regard to parties is discretionary, giving the President flexibility to apply this provision.

- **Investment in Crude Oil Projects** (effective February 1, 2015) – The President is authorized to impose three or more sanctions from the list of options below on foreign persons that are determined to have knowingly made a significant investment in a "special Russian crude oil project," which includes Russian deepwater, arctic offshore, and shale formation projects "intended to extract crude oil." The U.S. Treasury and Commerce Departments have interpreted similar language to include gas projects that may produce oil.

- **Foreign Financial Institutions** (effective June 16, 2015) – Sanctions may be imposed on foreign financial institutions that knowingly (a) engage in significant transactions with parties sanctioned under this statute, or (b) facilitate significant financial transactions on behalf of Russian Specially Designated Nationals (SDNs) designated under Ukraine-related sanctions. The sanctions authorized for such activities are prohibitions or restrictions on opening or maintaining correspondent and payable-through accounts in the United States.

The President is authorized on a contingent basis to prohibit investment in debt or equity and impose one other sanction on Gazprom if he determines that Gazprom is withholding significant natural gas supplies from NATO countries, Ukraine, Georgia, Moldova or similarly situated countries. In addition, the Commerce Department's Bureau of Industry and Security is authorized to impose export controls and licensing requirements on the export and reexport of items for use in Russia's energy sector, including equipment used for tertiary oil recovery. The statute authorizes military support for Ukraine and appropriates funds for non-military assistance.

The menu of sanctions that the President may impose on the defense and energy sectors, as discussed above, include:

- Prohibition on Export-Import Bank financing
- Ban on U.S. Government procurement
- Arms export prohibition
- Prohibition on dual-use licensing
- Prohibition on transactions involving property subject to U.S. jurisdiction
- Prohibition on transfers of credit or payments between financial institutions
- Prohibition on investing or purchasing debt of longer than 90 days' maturity or equity of the sanctioned person
- Exclusion from the U.S. and revocation of visas for individuals
- Imposition of any of the listed sanctions on officials of a designated company

All of the sanctions are subject to national security waivers and other exceptions.

The President already had the authority under existing Ukraine-related executive orders to impose the types of sanctions addressed in the Ukraine Freedom Support Act, but the enactment of the sanctions in statutory form will now allow Congress to pressure the Administration to use this explicitly granted authority should the situation in Ukraine deteriorate.

A copy of the law is available here.

EU Sanctions on Crimea

The EU issued EU Council Regulation 1351/2014, dated December 18, 2014, which applies broad additional sanctions on investment, services and trade with Crimea and Sevastopol effective December 20, 2014. This builds on existing EU sanctions for Crimea and includes:

- Investment in real estate, any entities or joint ventures in Crimea/Sevastopol, financing of transactions, and any related investment services, are prohibited. Investment in the transport, telecommunications and energy or mining sectors in Crimea and Sevastopol was previously prohibited under Council Regulation 825/2014 (July 30, 2014).

- EU operators will not be permitted to offer tourism services in Crimea or Sevastopol. This includes EU-owned or controlled cruise ships, and those flying the flag of a member state, stopping at certain ports on the Crimean Peninsula unless there is an emergency.

- The sale, supply, transfer or export of certain goods and technology related to the transport, telecommunications and energy sectors or for prospecting, exploring and producing oil, gas and mineral resources will be prohibited to, or for use in, Crimea and Sevastopol. Providing technical assistance, brokering services or financing and financial assistance related to such goods or technology, or their provision, manufacture, maintenance and use are also prohibited.

- Technical assistance, brokering, construction or engineering services related to infrastructure in the above sectors are prohibited.

For the first two prohibitions, contracts concluded before December 20, 2014 or related ancillary contracts are exempted. For the latter two, the prohibitions are delayed until March 21, 2015 for obligations arising from a contract concluded before December 20, 2014 or related ancillary contracts. Authorizations may be available for health and safety or humanitarian purposes or to ensure the safety of existing infrastructure.

U.S. Executive Order on Crimea

Acting in parallel with the EU, the President on December 19, 2014 issued a new Executive Order imposing a broad investment and trade embargo on Crimea, including prohibitions on:

- New investment in Crimea by U.S. persons wherever located.
- Importation to the U.S. goods, services or technology from Crimea.
- Exportation, reexportation, sale or supply of goods, services or technology to Crimea.
- Approval, financing, facilitation or guarantee of transactions by foreign persons that would be prohibited by the order if performed by a U.S. person or a person within the U.S.

The Executive Order also provides for blocking the property of any person who is determined by the Treasury Department to be operating in Crimea, to be a leader of any entity operating in Crimea, to be owned or controlled by or acting on behalf of any persons blocked person under the Executive Order, or to have materially assisted, financed or otherwise supported any persons blocked under the Executive Order.

Concurrently with the issuance of the Executive Order, the Treasury Department issued General License No. 4 authorizing the exportation or reexportation of certain agricultural commodities, medicine, medical supplies and replacement parts to Crimea. The Commerce Department is expected to issue rules under the Export Administration Regulations (EAR) to implement the trade restrictions.

If you have any questions about the content of this alert, please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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