

March 19, 2014

## Ukraine-Related Economic Sanctions

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### **U.S. and EU Adopt Economic Sanctions in Response to the Current Situation in Ukraine; Additional Measures Likely if Current Situation Persists or Escalates**

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In response to the current situation in Ukraine, President Obama recently issued two Executive Orders<sup>1</sup> authorizing so-called “targeted sanctions” against certain officials of the Government of the Russian Federation<sup>2</sup> and certain other designated persons and entities determined, among other things, (i) to be responsible for or complicit in, or to have engaged in, directly or indirectly, various activities, including those that undermine democratic processes or institutions in Ukraine or that threaten the peace, security, stability, sovereignty or territorial integrity of Ukraine or (ii) to have asserted governmental authority over any part or region of Ukraine without the authorization of the Government of Ukraine.<sup>3</sup>

On March 17, pursuant to these Executive Orders, 11 designations of individual persons were released by the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”). Those persons have been added to OFAC’s List of Specially Designated Nationals and Blocked Persons (the “SDN List”) under the tags “[Ukraine]” or “[Ukraine2]”. As a result, absent an exception, it is now unlawful for any U.S. person<sup>4</sup> (including any U.S. branch or agency of a foreign bank) to do business with any such designated person, and any property that is in the United States or within the possession or control of a U.S. person in which any designated person has an interest must be blocked, imposing an across-the-board prohibition against transfers or dealings of any kind with regard to such property. This generally means that U.S. persons are prohibited from providing funds, goods or services to or for the benefit of any designated person and from receiving any funds, goods or services from any designated person. Additional persons or entities may be designated under the authority of these Executive Orders in the future. The limitations on dealing with designated persons imposed by the Executive Orders apply even if a contract was entered into prior to the Executive Orders’ respective effective dates. In certain circumstances, OFAC may grant a license to carry out acts otherwise prohibited by the Executive Orders.

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U.S. persons must be aware of their obligation to block the property in which a designated person has an interest and to report to OFAC regarding the blocked property.<sup>5</sup> The civil and criminal penalties for violations of these Executive Orders can be substantial.<sup>6</sup>

These actions follow related action taken by the Financial Crimes Enforcement Network (“FinCEN”), a bureau of the U.S. Department of the Treasury responsible for combatting money laundering, and the U.S. State Department. On March 6, FinCEN updated its Ukraine-related advisory, originally issued on February 25,<sup>7</sup> which stresses that U.S. financial institutions must, among other things, take reasonable, risk-based steps regarding the suspicious movement of assets by the Former President of Ukraine, Viktor Yanukovich, and his administration. Furthermore, it has been reported that the U.S. State Department has issued certain visa bans (not yet made public) that include approximately one dozen Ukrainians and Russians. The bans operate to prohibit travel to the United States by the designated persons and, for any person already in the United States, to require them to leave the United States.

In addition to these Executive Branch measures, various committees and legislators of the U.S. Congress are considering legislation and resolutions addressing the situation in Ukraine, although the legislative process is fluid. On March 6—the same day as President Obama’s first Executive Order—the U.S. House of Representatives voted to approve legislation that would provide loan guarantees for Ukraine.<sup>8</sup> On that same day, the House Foreign Relations Committee approved a resolution that condemns Russia for its occupation of Ukraine’s Crimean peninsula and called on the Obama Administration to enact tough financial and trade sanctions against Russia.<sup>9</sup> The resolution was subsequently passed by the full House of Representatives on March 11. On March 12, the Senate Foreign Relations Committee passed a bill, “Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act of 2014,” which, among other things, addresses the matters described above that are contained in the House proposals.<sup>10</sup>

The United States is not alone in responding to the situation in Ukraine through economic sanctions. On March 17, the EU instituted an asset freeze and travel ban on 13 Russians and eight Crimeans. Five persons are on both the SDN List and EU list. In addition to freezing assets, the EU measures also ensure that funds and economic resources are not made available to the targets. Additional measures could follow soon when EU leaders hold their next summit in Brussels.

The EU’s March 17 sanctions address the Crimean situation,<sup>11</sup> “concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty, and independence of Ukraine.” They follow sanctions imposed on March 5<sup>12</sup> “concerning restrictive measures directed against certain persons, entities and bodies in view of the situation in Ukraine,” implementing the first set of sanctions against former Ukrainian President Yanukovich, his family members and certain government associates.<sup>13</sup>

In the UK, Her Majesty’s Treasury (“HMT”) is responsible for implementing the EU measures. HMT’s implementing notice for the March 17 sanctions provides a checklist of recommended actions to comply

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with the sanctions and a reminder that “failure to comply with financial sanctions legislation or to seek to circumvent its provisions is a criminal offence.”<sup>14</sup> The relevant UK statutory instrument setting out criminal penalties has also been issued.<sup>15</sup>

The effect of the sanctions as implemented in the UK will be the freezing of the assets of a designated person, and the prevention of funds or economic resources being made available for the benefit of such designated person. In certain circumstances, HMT may grant a license to carry out acts otherwise prohibited by these measures.

Breaches of the UK sanctions may be committed by conduct wholly or partly outside the UK by a UK national or a body incorporated in the UK, and an officer of such a corporation may also be prosecuted if the offence is committed with his consent or connivance, or is attributable to his neglect. Penalties include fines and up to two years in prison.

Financial institutions must be aware of their reporting obligations, including an obligation to inform HMT as soon as practicable if they have knowledge, or have reasonable cause to suspect, that a designated person has committed an offence under the licensing or other provisions of the UK regulations. If the report is about a customer, the institution must also state the nature and amount or quantity of any funds or economic resources held by it for the customer.

Other EU and non-EU jurisdictions, including Canada, have adopted or are considering similar measures. We encourage clients interested in further information concerning the Executive Orders, OFAC designations, FinCEN advisories and related measures in the EU, including the scope of their application and manner of compliance, to contact the Sullivan & Cromwell lawyers identified at the end of the memorandum.

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ENDNOTES

- <sup>1</sup> See Executive Order (“E.O.”) 13,660 (March 6, 2014); E.O. (March 17, 2014) (“March 17 E.O.”).
- <sup>2</sup> The term “Government of the Russian Federation” includes (a) the Government of the Russian Federation as well as any political subdivision, agency or instrumentality thereof, including the Central Bank of the Government of the Russian Federation; and (b) any person owned or controlled by, or acting for or on behalf of, the Government of the Russian Federation. March 17 E.O. § 6(d).
- <sup>3</sup> These Executives Orders also target any persons or entities that have materially assisted, sponsored, or provided financial, material or technological support for, or goods or services to or in support of the activities of such designated persons and entities as described in this memorandum, or any persons or entities who are owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any such designated persons and entities.
- <sup>4</sup> “U.S. person” means “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” See March 17 E.O. § 6(c). For these purposes, a U.S. person includes all types of entities, not just financial institutions.
- <sup>5</sup> See 31 C.F.R. § 501.603. The Report of Blocked Transaction Form and the Annual Report of Blocked Property Form (TD F 90-22.50) are available on OFAC’s website at <http://www.treasury.gov/resource-center/sanctions/Pages/forms-index.aspx>.
- <sup>6</sup> Criminal penalties for willful violations can include fines ranging up to \$1 million and imprisonment of up to 20 years, while civil penalties can range up to \$250,000 or twice the amount of the underlying transaction for each violation. See 50 U.S.C. § 1705.
- <sup>7</sup> FinCEN, “*Advisory: Updated Guidance to Financial Institutions on Recent Events related to the Departure of Victor Yanukovych and Other Ukrainian Officials*,” FIN-2014-A002 (March 6, 2014).
- <sup>8</sup> H.R. 4152.
- <sup>9</sup> H. Res. 499.
- <sup>10</sup> S. 2124.
- <sup>11</sup> EU Regulation No. 269/2014.
- <sup>12</sup> EU Regulation No. 208/2014.
- <sup>13</sup> The EU Regulation was implemented in the UK on March 6, 2014. Treasury Regulation Notice 06.03.2014, Ukraine (Reg 208/2014).
- <sup>14</sup> The EU Regulation was implemented in the UK on March 18, 2014. Treasury Regulation Notice 18.03.2014, Ukraine (Sovereignty and Territorial Integrity) (Reg 269/2014).
- <sup>15</sup> The Ukraine (European Union Financial Sanctions) (No. 2) Regulations 2014, available at: <http://www.legislation.gov.uk/ukxi/2014/693/contents/made>.

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