

CLIENT ALERT

OFAC Issues New Ukraine Designations and Warns of Evasion Threats

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On July 30, 2015, the Department of the Treasury's Office of Foreign Assets Control (OFAC) announced three new actions relating to U.S. sanctions on Russia and the Crimea region of Ukraine (Crimea). Taken together, they are an indication that OFAC continues to pay close attention to activities aimed at circumventing U.S. sanctions on Russia and Crimea, and they further reinforce the importance to U.S. companies of remaining diligent in their review of transactions and ownership structures to identify potential signs of evasion or links to sanctioned parties.

Specifically, OFAC announced (1) new designations on the Sectoral Sanctions Identifications (SSI) List for entities 50 percent or more owned by SSI Listed parties Vnesheconombank (VEB) and Rosneft; (2) new designations on the List of Specially Designated Nationals and Blocked Persons (SDN List) for certain Russian and Ukrainian individuals and entities; and (3) a "Crimea Sanctions Advisory" highlighting certain activities by individuals or entities to evade U.S. sanctions on Crimea that OFAC has identified as presenting a particular threat to compliance efforts by U.S. companies and financial institutions.

New SSI Designations

Under its revised 50 Percent Rule ([see our previous Client Alert](#)), OFAC considers its SDN and SSI sanctions to apply "by operation of law" to all entities that are 50 percent or more owned by persons on either the SDN or SSI List respectively. Accordingly, U.S. persons seeking to avoid transacting with a sanctioned party appearing on the SDN List or SSI List must investigate the ownership structures of counterparties to determine whether they might be subject to sanctions via the "50 Percent Rule."

Acting under its 50 Percent Rule, OFAC announced sanctions against 35 new entities that are all 50 percent or more owned by VEB or Rosneft. OFAC made clear in its announcement that it considered each of these entities to have already been sanctioned by operation of law, but that the announcement was merely intended to help the public more effectively comply with existing sanctions.

The entities are now subject to the same restrictions as their parent companies. All entities owned by VEB are now subject to Directive 1 (as amended) under Executive Order 13662, which prohibits, among other things, all transactions or dealings by U.S. persons in new debt of longer than 30 days maturity or new equity of persons subject to the Directive. The Rosneft-owned entities are subject to Directives 2 and 4, which prohibit, *inter alia*, transactions or dealings by U.S. persons in new debt of longer than 90 days maturity and transactions in support of exploration or production for oil from deepwater, Arctic offshore, or shale projects in Russia.

New SDN Designations

OFAC also added 26 persons to its SDN list: 13 individuals and entities found to have supported the evasion of existing sanctions; two entities operating in the Russian arms sector; four former Ukrainian government officials or close associates (as well as an entity controlled by one of the designated individuals); five Crimean port operators; and, one Crimean ferry operator.

U.S. persons are prohibited from engaging in any transactions, direct or indirect, with these SDNs or with any entities 50 percent or more owned by them. U.S. persons are further required to block and report to OFAC any transaction involving any SDN Listed entity.

OFAC's "Crimea Sanctions Advisory"

Finally, OFAC issued an "Advisory" to warn the public about certain tactics it has identified being used to evade the embargo it has implemented on Crimea ([see our previous Client Alert](#)) pursuant to Executive Order 13685 of December 19, 2014 (EO 13685).

OFAC's "Crimea Sanctions Advisory" of July 30, 2015 (the "Advisory") details some of these practices. The Advisory, which bears the subject line "Obfuscation of Critical Information in Financial and Trade Transactions Involving the Crimea Region of Ukraine" is a special step by OFAC and indicates a high degree of attention directed toward enforcement activity relating to the Crimea sanctions.

The Advisory states that the evasive practices identified by OFAC include "the omission or obfuscation of references to Crimea and locations within Crimea in documentation underlying transactions involving U.S. persons or the United States." In the context of financial transactions, OFAC states that certain individuals and entities have been repeatedly omitting originator or beneficiary address information from Society for Worldwide Interbank Financial Telecommunications (SWIFT) messages involving Crimean individuals or entities. Some SWIFT messages may omit originator or beneficiary address information entirely, while others may contain only a street address but no reference to a town, city, region, or country, in order to avoid any reference to a Crimean location. The Advisory indicates that financial institutions should consider enhanced due diligence efforts where a suspicious Crimea-related pattern or practice is identified.

In the context of international trade transactions, OFAC has found that references to geographic locations in Crimea are also being obscured in agreements and documentation relating to the international trade of goods and services. For example, certain individuals and entities have begun to list Crimean counterparties on financial and trade documents as being located in Russia, even though the legitimacy of Russia's annexation of Crimea is not recognized by the United States. If a U.S. company has executed a distribution agreement authorizing a third party to distribute and sell U.S. products in Russia, the third party may either be unaware that the United States does not recognize Crimea as being a part of Russia or may intentionally exploit confusion in order to sell the U.S. company's products into Crimea in violation of U.S. sanctions.

The Advisory highlights the threat that these evasion and circumvention activities pose to existing sanctions compliance controls utilized by U.S. persons and entities. In order to mitigate the risk of processing or engaging in direct or indirect transactions in apparent violation of the U.S. sanctions on Crimea, OFAC recommends the following:

- **Screen for Places in Crimea:** Ensure that transaction monitoring systems include appropriate search terms corresponding to major geographic locations in Crimea and not simply references to "Crimea." For example, payment instructions or trade documents may reference major cities or ports located in Crimea, and interdiction filters may not flag such transactions for review if the filters do not include an appropriately expansive list of search terms.
- **Conduct Enhanced Due Diligence:** Request additional information from parties (including financial institutions, corporate entities, and individuals) that previously have violated or attempted to violate U.S. sanctions on Crimea. Such prior conduct could include, for example, routing transactions to or through U.S. financial institutions with inaccurate or incomplete address information for Crimean individuals or entities.
- **Convey U.S. Sanctions Obligations to Distributors and Third Parties:** Clearly communicate U.S. sanctions obligations to international partners (in both the financial and trade sectors) and discussing OFAC sanctions compliance expectations with correspondent banking and trade partners. Such communications should include, for example, a description of the prohibition on the direct and indirect exportation or reexportation of goods, technology, and services (including financial services) from the United States to Crimea.

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