

New Sanctions against Russia: significant but targeted

On 16 July 2014 the US Treasury Department's Office of Foreign Assets Control ("**OFAC**") expanded the Ukraine-related sanctions against Russia and others alleged to be involved in the situation in Ukraine. In addition, on 18 July 2014 the EU published a new Council Regulation which widens the legal basis for the EU to impose new restrictive measures.

This update provides a high level overview of the latest developments.

US SANCTIONS

The new US sanctions have two separate components:

- (i) Firstly, OFAC added **Gazprombank**, **Vnesheconombank ("VEB")**, **Novatek** and **Rosneft** to a newly created "Sectoral Sanctions Identifications" list ("**SSI List**"). The SSI sanctions also target any companies owned 50% or more by the four listed companies. This is the first occasion on which OFAC has directly targeted Russia's most prominent companies and represents a significant escalation of the US sanctions against Russia. While the restrictions imposed with respect to the companies named on the SSI List are more limited than those imposed with respect to Specially Designated Nationals ("**SDNs**") under the existing US sanctions, they will nevertheless have significant implications for **Gazprombank**, **VEB**, **Novatek** and **Rosneft** and their ability to raise US dollar financing.

- (ii) Secondly, OFAC designated a number of Russian and Ukrainian companies, two separatist-related organisations, one separatist leader and four Russian government officials as SDNs.

SSI List Designation

The US sanctions targeting **Gazprombank** and **VEB** apply only to *"transacting in, providing financing for, or otherwise dealing in new debt of longer than 90 days maturity or new equity of these persons, their property, or their interests in property"* after 16 July 2014. According to OFAC's published list of 'Frequently Asked Questions', the term 'debt' includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper and 'equity' includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership. The US sanctions targeting **Novatek**

and Rosneft are the same, except they exclude equity transactions.

The SSI List generally requires compliance by "**US Persons**", being, as a minimum: (a) US citizens and permanent residents of the United States, wherever located; (b) persons within the United States; or (c) entities organised under US law, including foreign branches. However, given that US dollar transactions typically involve, at some point in the transaction, a US dollar clearing payment through the US, it is likely that these new restrictions will effectively block all new US dollar debt financing with a term of more than 90 days, irrespective of whether that financing is made available by US Persons or by non-US Persons.

The restrictions imposed with respect to the companies named on the SSI List are more limited than those imposed with respect to SDNs. In particular:

(i) No blocking

The SSI List does not impose blocking requirements and so US financial institutions may continue to maintain correspondent banking accounts and process US dollar clearing transactions for **Gazprombank**, **VEB**, **Novatek** and **Rosneft**, so long as the transactions do not involve new debt with a term of more than 90 days (or, in the case of Gazprombank and VEB, new equity). Accordingly, the SSI List should not impact US dollar clearing under financing arrangements entered into on or before 16 July 2014.

(ii) Existing arrangements excluded

Debt and equity issued on or before 16 July 2014 should not be affected by the restrictions imposed in connection with the SSI List. In addition, those restrictions should not prevent future drawdowns under financing arrangements

(including revolving credit facilities) entered into on or before 16 July 2014. However, drawdowns under so called 'accordion' facilities (ie credit facilities which can be 'up-sized' at a later date), as well as newly agreed extensions or rollovers of existing arrangements, will in most cases be prohibited if they relate to a term of more than 90 days and are agreed or implemented after 16 July 2014. As a practical matter, it is likely that all payments involving the companies named on the SSI List will face closer scrutiny and enhanced due diligence from processing and clearing banks.

(iii) Lending not prohibited

The new restrictions do not prohibit **Gazprombank** or **VEB** from lending in US dollars (or any other currency). However, the restrictions will impact their ability to raise their own US dollar funding for the purpose of financing such lending activity.

(iv) Derivatives excluded

OFAC has issued a general license which states that the restrictions imposed with respect to the SSI List generally do not apply to derivative instruments. Accordingly, dealings in derivatives with the companies named on the SSI List should generally not be prohibited, nor should dealings in derivatives which reference prohibited new debt or new equity. However, caution should be exercised when dealing in derivatives which could themselves be construed as, or which could be construed as facilitating the issuance of, new debt or (if applicable) new equity and also when considering new repos.

SDN Designations

In addition, OFAC designated further entities and individuals as SDNs, including (among others) 8 Russian arms firms and various Russian government officials (see the full list at: <http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140716.aspx>). These designations carry with them the same restrictions imposed with respect to the previous Ukraine-related US sanctions, namely, a blocking requirement and a prohibition on the involvement of US Persons and the US financial system in dealings with the SDNs or companies owned 50% or more owned by them.

The new SDNs included two political organisations, the Donetsk and Luhansk People's Republics. We believe that OFAC intends for the sanctions against these SDNs to apply only to dealings with, for, or on behalf of the political organisations that operate under these names, or agents acting on their behalf, rather than companies located in the region that these two organisations purport to control and govern.

For more on this topic see also:

[Impact of new US Sanctions against Russia](#)

[Update on the situation in Ukraine](#)

EU SANCTIONS

The latest EU Regulation published on 18 July 2014 provides, inter alia, for the imposition of asset freezes on legal persons, entities or bodies (including from Russia) which materially or financially support actions against Ukraine's territorial integrity, sovereignty and independence. The EU is expected to list the entities to be targeted within the forthcoming days. In addition, the EU may impose sanctions against legal persons, entities or bodies in Crimea or Sevastopol whose ownership has been transferred contrary to Ukrainian law, or legal persons, entities or bodies which have benefited from such a transfer. The scope of future sanctions to be imposed by the EU remains uncertain in light of recent events.

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