

March 25, 2014

PRESIDENT OBAMA SIGNS THIRD EXECUTIVE ORDER BLOCKING PROPERTY OF ADDITIONAL PERSONS CONTRIBUTING TO THE SITUATION IN UKRAINE AND TARGETING CERTAIN RUSSIAN ECONOMIC SECTORS

To Our Clients and Friends:

On March 20, 2014, President Obama, responding to the ongoing crisis in Ukraine, signed an Executive Order "Blocking Property of Additional Persons Contributing to the Situation in Ukraine." ("Third Ukraine E.O." or "E.O.").^[1] The text of the E.O. is available [here](#). The Third Ukraine E.O. further expands on Executive Order 13660,^[2] signed on March 6, 2014, and Executive Order 13661,^[3] signed on March 16, 2014, which target former Ukrainian officials and current Russian Federation officials who threaten the peace, sovereignty, and territorial integrity of Ukraine, as well as persons who operate in the arms or related sectors in the Russian Federation. President Obama issued these three Executive Orders in response to the recent political upheaval in Ukraine, including Russia's movement of troops into the Crimea, the March 16, 2014 Crimean referendum on seceding from Ukraine, and Russia's subsequent annexation of the peninsula. The Third Ukraine E.O. significantly expands the scope of the prior two Executive Orders by providing the authority to block the property of persons who operate in certain sectors of Russia's economy, including financial services, energy, metals and mining, engineering, and defense and related materiel.^[4]

In addition, the Office of Foreign Assets Control ("OFAC") at the U.S. Department of the Treasury designated twenty Russian individuals and one Russian bank (Bank Rossiya), all of whom were found to threaten the peace, sovereignty, and territorial integrity of Ukraine.^[5] These individuals and Bank Rossiya were all designated pursuant to Executive Order 13661, however, not the Third Ukraine E.O.,^[6] meaning they were designated as officials of the Government of the Russian Federation or as operating in the arms or related sector in the Russian Federation, or for providing support to the foregoing. Sixteen of these individuals are Russian Government officials, including the head of Russia's military intelligence service (the GRU), President Vladimir Putin's Chief of Staff, and four members of Putin's inner circle, including the personal banker for senior officials of the Russian Federation, Yuri Kovalchuk.^[7] Bank Rossiya is regarded as the personal bank for many senior Russian Government officials, and maintains multiple correspondent relationships with banks in the United States.^[8] It is now unlawful for any U.S. person or company to do business with the designated parties, and any property in which the designated parties have an interest must be blocked.

As the crisis continues to unfold, OFAC may continue to designate former Ukrainian and current Russian officials, as well as persons in various sectors of the Russian economy. In addition, OFAC may begin undertaking enforcement actions against U.S. companies who violate the prohibitions set

forth in the three Executive Orders. U.S. companies should pay close attention to further announcements by OFAC and ensure that they comply with the requirements of the Executive Orders.

The European Union (EU) has also issued an additional list of twelve individuals identified as having taken actions that undermine or threaten the territorial integrity, sovereignty and independence of Ukraine.[9] As with the previous list of sanctioned persons released on March 17, 2014,[10] these newly sanctioned individuals are now subject to a travel ban and freeze of their EU assets. Six of these twelve individuals were previously designated by the U.S. as subject to sanctions pursuant to Executive Order 13661, while the other six have not yet been sanctioned by the U.S. Reports in the media indicate that the EU will be taking a closer look at issuing broader so-called "Phase 3" sanctions that would involve restrictions on energy, trade, and financial relations with Russia, if Russian threats or movements in the eastern part of Ukraine increase.[11] U.S. persons with operations in Europe or who are otherwise subject to EU legal authority should screen for these newly sanctioned individuals and those previously sanctioned by the EU to ensure that they are complying with the EU sanctions that apply to these persons, in addition to screening for individuals designated pursuant to the U.S. Executive Orders.

Key Provisions of the Executive Order

The Third Ukraine E.O. significantly expands the President's authority to target Russian persons, regardless of whether they are determined to threaten the peace, sovereignty, and territorial integrity of Ukraine.

The E.O. blocks all property and interests in property in the United States, or in the possession or control of any U.S. person or company, of any person determined by the Secretary of the Treasury to operate in such sectors of the Russian Federation economy as may be determined, such as financial services, energy, metals and mining, engineering, and defense and related materiel.[12] The scope of the Third Ukraine E.O. is expansive; while it lists certain sectors of the Russian economy where persons could be targeted, the language is sufficiently broad to permit the sanctioning of Russian persons in *any* sector of the Russian economy.

The E.O. also blocks the property of any person who materially assists, sponsors, or provides financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this Executive Order.[13] In addition, the E.O. blocks the property of any person determined to be owned or controlled by, or to have acted or purported to act for or on behalf of, any person whose property and interests in property are blocked pursuant to this Executive Order.[14]

The E.O. suspends entry into the United States of persons designated pursuant to this Executive Order.[15]

Recommendations

The Third Ukraine E.O., the additional designations under Executive Order 13661, and the EU listings continue U.S. and EU attempts to increase pressure on Russia and resolve the political crisis in Ukraine. As we noted in our two recent client alerts on this matter, whether the crisis deepens or relaxes will likely determine whether the United States and the European Union impose additional economic sanctions on Russia.[16] Looking ahead, U.S. companies should be aware of at least four potential developments.

First, U.S. companies should ensure that they are in compliance with these new Executive Orders and have blocked the property of any designated persons. U.S. companies should also closely monitor any additional designations, Executive Orders, legislation, or regulations. Given the breadth of the Third Ukraine E.O., U.S. companies should focus compliance efforts on those sectors identified in the Order, but also on the Russian economy more broadly.

Second, U.S. companies should determine the scope of their relationship with Bank Rossiya's affiliates.[17] Under the Executive Order, any person determined to be owned or controlled by a blocked person may be sanctioned. In addition, however, OFAC guidance[18] states that if a blocked person owns more than 50% of an entity, that entity is considered owned by the blocked person and its property must also be blocked, whether or not the entity itself has been separately sanctioned under the Executive Order.

Under this "50% Rule," U.S. companies cannot do business with those financial institutions in which Bank Rossiya has a 50% or greater interest, whether or not the financial institution has been designated. Bank Rossiya holds large stakes in OAO Sogaz Insurance Group, one of Russia's largest insurance companies, and in National Media Group. In addition, Bank Rossiya controls Solinbank, and Investitsionny Soyuz, while Arkady and Boris Rotenberg together own a majority of InvestCapitalBank (also spelled InvestKapitalBank) and SMP Bank. Gibson, Dunn & Crutcher attorneys are currently reviewing the data concerning other entities that might be controlled. While OFAC has informally suggested that conducting transactions with some of these entities may be permitted, U.S. companies should proceed with caution and reach out to our attorneys if they have concerns about whether they are transacting with a blocked entity.

Third, Russia has already sanctioned U.S. officials.[19] While these sanctions are limited, if the United States continues designating Russian persons, Russian economic retaliation against U.S. businesses may occur.

Fourth, while Vladimir Putin recently announced that he would refrain from imposing further sanctions on the United States and the European Union,[20] U.S. businesses should not assume that Russia will not economically retaliate in the future. A significant likelihood still exists that Russia will target U.S. and European companies as the crisis continues.

[1] Exec. Order No. 13,662 of March 20, 2014, Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 79 Fed. Reg. 16,167 (Mar. 24, 2014), *available at* http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo3.pdf.

[2] Exec. Order No. 13,660 of March 6, 2014, Blocking Property of Certain Persons Contributing to the Situation in Ukraine, 79 Fed. Reg. 13,491 (Mar. 10, 2014), *available at* <https://federalregister.gov/a/2014-05323>. For a more in-depth discussion of that Executive Order, see Client Alert, Gibson, Dunn & Crutcher, LLP, *President Obama Signs Executive Order Targeting Persons Threatening Peace, Sovereignty, and Territorial Integrity of Ukraine; European Union Sanctions Former Ukrainian Leaders* (Mar. 10, 2014), <http://www.gibsondunn.com/publications/Documents/President-Obama-Signs-Executive-Order-Targeting-Persons-Threatening-Peace-Territorial-Integrity-of-Ukraine.pdf>.

[3] Exec. Order No. 13,661 of March 16, 2014, Blocking Property of Additional Persons Contributing to the Situation in Ukraine, 79 Fed. Reg. 15,535 (Mar. 16, 2014), *available at* http://www.treasury.gov/resource-center/sanctions/Programs/Documents/ukraine_eo2.pdf. For a more in-depth discussion of that Executive Order, see Client Alert, Gibson, Dunn & Crutcher, LLP, *President Obama Signs Executive Order Blocking Property of Additional Persons Contributing to the Situation in Ukraine and Designates Russian and Former Ukrainian Officials* (Mar. 18, 2014), <http://www.gibsondunn.com/publications/pages/President-Obama-Signs-Executive-Order-Blocking-Property-of-Additional-Persons-Contributing-to-Situation-in-Ukraine.aspx>.

[4] Exec. Order No. 13,662 of March 20, 2014, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

[5] Office of Foreign Assets Control, Ukraine-related Designations (Mar. 20, 2014), *available at* http://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140320_33.aspx.

[6] *Id.*

[7] Press Release, U.S. Department of the Treasury, Treasury Sanctions Russian Officials, Members Of The Russian Leadership's Inner Circle, And An Entity For Involvement In The Situation In Ukraine (Mar. 20, 2014), <http://www.treasury.gov/press-center/press-releases/Pages/jl23331.aspx>.

[8] *Id.*

[9] Council Implementing Regulation (EU) No 284/2014 of 21 March 2014 implementing Regulation (EU) No 269/2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, 2014 O.J. (L 86), 27, 28, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:086:0027:0029:EN:PDF>.

[10] Council Regulation (EU) No 269/2014 of 17 March 2014 concerning restrictive measures in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine, 2014 O.J. (L 78) 6, 11, *available at* <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2014:078:0006:0015:EN:PDF>.

[11] Luke Baker and Adrian Croft, *Europe set to add names to Russia sanctions list, weigh energy issues*, Reuters, Mar. 20, 2014, <http://www.reuters.com/article/2014/03/20/us-ukraine-crisis-eu-sanctions-idUSBREA2J0PU20140320>; Naftali Bendavid and Matina Stevis, *EU Holds Off on Sweeping Sanctions Against Russia—Update*, Wall St. J., Mar. 20, 2014, <http://online.wsj.com/article/BT-CO-20140320-709098.html>.

[12] Exec. Order No. 13,662 of March 20, 2014, Blocking Property of Additional Persons Contributing to the Situation in Ukraine.

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *See* Client Alert, Gibson, Dunn & Crutcher, LLP, *President Obama Signs Executive Order Targeting Persons Threatening Peace, Sovereignty, and Territorial Integrity of Ukraine; European Union Sanctions Former Ukrainian Leaders, and Client Alert, Gibson, Dunn & Crutcher, LLP, President Obama Signs Executive Order Blocking Property of Additional Persons Contributing to the Situation in Ukraine and Designates Russian and Former Ukrainian Officials.*

[17] *See* Alexander Kolyandr, *Russia Banks Face Problems with Visa, Mastercard on U.S. Sanctions*, Wall St. J., Mar. 21, 2014, <http://online.wsj.com/news/articles/SB10001424052702303802104579453083595974534>.

[18] "Guidance On Entities Owned By Persons Whose Property And Interests In Property Are Blocked" *available here*.

[19] Wesley Lowery and Ed O'Keefe, *Reacting to Sanctions, Russians Ban Reid, Boehner and Four Other Lawmakers*, Wash. Post (Mar. 20, 2014), <http://www.washingtonpost.com/blogs/post-politics/wp/2014/03/20/reacting-to-sanctions-russians-ban-reid-boehner-and-7-other-lawmakers/>.

[20] Steven Lee Myers, Alan Cowell, and Andrew Higgins, *Putin Cool to Idea of Further Retaliation Over Sanctions*, N.Y. Times (Mar. 21, 2014), *available at* <http://www.nytimes.com/2014/03/22/world/europe/ukraine.html?hp>.



Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the above developments. Please contact the Gibson Dunn lawyer with whom you usually work or any of the following lawyers:

United States:

Judith A. Lee - Washington, D.C. (+1 202-887-3591, jalee@gibsondunn.com)
Marcellus A. McRae - Los Angeles (+1 213-229-7675, mmcrae@gibsondunn.com)
Daniel P. Chung (+1 202-887-3729, dchung@gibsondunn.com)
Andrea Farr - Washington, D.C. (+1 202-955-8680, afarr@gibsondunn.com)
Eric Lorber - Washington, D.C. (+1 202-887-3758, elorber@gibsondunn.com)
Lindsay M. Paulin - Washington, D.C. (+1 202-887-3701, lpaulin@gibsondunn.com)
Michael Willes - Los Angeles (+1 213-229-7094, mwilles@gibsondunn.com)
David A. Wolber - New York (+1 212-351-2384, dwolber@gibsondunn.com)
Annie Yan - Washington, D.C. (+1 202-887-3547, ayan@gibsondunn.com)

Europe:

Peter Alexiadis - Brussels (+32 2 554 72 00, palexiadis@gibsondunn.com)
Attila Borsos - Brussels (+32 2 554 72 10, aborsos@gibsondunn.com)
Patrick Doris - London (+44 (0)207 071 4276, pdoris@gibsondunn.com)
Penny Madden - London (+44 (0)20 7071 4226, pmadden@gibsondunn.com)
Mark Handley - London (+44 (0)207 071 4277, mhandley@gibsondunn.com)

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