

A Gibson Dunn National Security Presentation: Mid-Year 2014 Sanctions Update

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MCLE CERTIFICATION INFORMATION

- Most participants should anticipate receiving their certificate of attendance in 3 to 4 weeks following the webcast.
- Virginia Bar members should anticipate receiving their certificate of attendance in 6 weeks following the webcast.
- Questions regarding MCLE information should be directed to Jeanine McKeown (National Training Administrator) at 213-229-7140 or jmckeown@gibsondunn.com.



MID-YEAR 2014 SANCTIONS UPDATE

- UKRAINE-RELATED DEVELOPMENTS
 - UNITED STATES
 - EUROPEAN UNION
 - UNITED KINGDOM
- OTHER U.S. SANCTIONS
- OTHER E.U. AND U.K. SANCTIONS
- LOOKING FORWARD



UKRAINE-RELATED U.S. SANCTIONS

- Ukraine-Related Legislation
- Executive Orders And Designations

H.R. 4152: SUPPORT FOR THE SOVEREIGNTY, INTEGRITY, DEMOCRACY, AND ECONOMIC STABILITY OF UKRAINE ACT OF 2014

- Signed into law on April 3, 2014.
- In addition to providing for costs of loan guarantees and enhanced democracy and security measures in Ukraine, provides for two sanctions programs:
 - Section 8 sanctions: Targets persons responsible for violence or acts undermining the peace and security of Ukraine.
 - Section 9 sanctions: Targets individuals in the Russian Federation complicit in—or responsible for—significant corruption.

H.R. 4278: UKRAINE SUPPORT ACT

- Passed in the House and under consideration in the Senate.
- It would expand the sanctions against Ukrainian and Russian government figures for their role in the Ukrainian instability and add new reporting and Executive Order requirements on the Executive.
- The bill contains two sets of sanctions:
 - Section 202 imposes sanctions on persons who are responsible for—or complicit in—actions that threaten Ukraine.
 - Section 203 imposes sanctions foreign persons in the Russian Federation complicit in or responsible for significant corruption.
- Bill would impose blocking requirements, and would require the Secretary of State and the Secretary of the Treasury to report on designations.

H.R. 4435 AND S. 2410: HOUSE AND SENATE NATIONAL DEFENSE AUTHORIZATION ACTS

- Both bills target Russia's state intermediary for exports of Russian armaments, Rosoboronexport.
- The House bill prohibits the use of any funds authorized to the Department of Defense for FY 2015 to be used to enter into a contract, subcontract, loan, or other cooperative agreement with Rosoboronexport.
- The Senate bill makes a similar prohibition that no agreement may be entered into with Rosoboronexport generally (not just with funds for FY 2015), and also calls for the termination of existing contracts and agreements.
- Prohibitions can be waived under certain circumstances.



UKRAINE-RELATED U.S. SANCTIONS

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EXECUTIVE ORDER NO. 13,660 OF MARCH 6, 2014, BLOCKING PROPERTY OF CERTAIN PERSONS CONTRIBUTING TO THE SITUATION IN UKRAINE

Authorizes sanctions on persons that:

- threaten the peace, security, stability, sovereignty, or territorial integrity of Ukraine;
- misappropriate Ukrainian state assets or those of a significant entity in Ukraine;
- assert unauthorized governmental authority over any part or region of Ukraine;
- materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any of the activities threatening the democratic processes or peace and stability of Ukraine;
- are owned or controlled by any such person.

All transactions in these person's property or interests in property are prohibited and any such property or interests in property in the U.S. must be blocked.

Suspends entry into the United States of designated persons.

EXECUTIVE ORDER NO. 13,661 OF MARCH 16 2014, BLOCKING PROPERTY OF ADDITIONAL PERSONS CONTRIBUTING TO THE SITUATION IN UKRAINE

Authorizes sanctions on:

- officials of the Government of the Russian Federation;
- persons operating in the Russian arms, related materiel sector;
- persons owned or controlled by or having acted on behalf of a blocked person or “senior official” in the Government of the Russian Federation;
- persons that have materially assisted, sponsored or provided support to, or in support of, any senior Russian government official or blocked person.

All transactions in these person’s property or interests in property are prohibited and any such property or interests in property in the U.S. must be blocked.

Suspends entry into the United States of designated persons.

EXECUTIVE ORDER NO. 13,662 OF MARCH 20, 2014, BLOCKING PROPERTY OF ADDITIONAL PERSONS CONTRIBUTING TO THE SITUATION IN UKRAINE

Authorizes sanctions on persons:

- operating in sectors of the Russian Federation economy
 - such as financial services, energy, metals and mining, engineering, and defense and related materiel;
- providing financial, material or technological support to blocked persons;
- owned or controlled by blocked persons.

Suspends entry into the United States of designated persons.

UKRAINE-RELATED DESIGNATIONS

- 90 individuals and entities designated to SDN List pursuant to Executive Orders.
- Sectoral sanctions pursuant to Executive Order 13,662 were implemented on July 16, 2014.
 - Through two Directives, four entities were designated to newly-published Sectoral Sanctions Identification List –”SSI List.”
 - **Directive 1** – Financial Services Sector.
 - Prohibits U.S. persons from transacting in, providing financing for, or otherwise dealing in:
 - (i) new debt with longer than 90 days maturity; or
 - (ii) new equity for SSI-listed entities in the Russian financial services sector, these entities’ property, or their interests in property.
 - Prohibits any such transactions occurring in the United States.
 - Designated: Vnesheconombank (“VEB”) and Gazprombank.

UKRAINE-RELATED DESIGNATIONS (cont.)

– Directive 2 – Energy Sector

- Prohibits U.S. persons from transacting in, providing financing for, or otherwise dealing in new debt with longer than 90 days maturity for SSI-listed entities, these entities' property, or their interests in property.
- Prohibits any such transactions in the United States
- Designated: Novatek and Rosneft

E.U. REGULATIONS - RUSSIA AND UKRAINE

Two similar but distinct E.U. sanctions regimes in place for Ukraine/Russia, imposing travel bans and asset freezes

Misappropriation:

- currently 22 listed Ukrainian individuals, all senior officials within the former Ukrainian government
- commenced on March 6 with *Council Regulation 208/2014*, the list was added to on April 15

Sovereignty and Territorial Integrity:

- currently 95 listed individuals (Russians and Ukrainians), including 11 seized Crimean companies and 9 separatist organisations
- commenced on March 17 with *Council Regulation 269/2014*, the list was added to on March 21, April 29, May 13, July 11, July 25, and July 30



E.U. REGULATIONS - RUSSIA AND UKRAINE

Asset Freeze:

- *“All funds and economic resources belonging to, owned, held or controlled by any natural persons or natural or legal persons, entities or bodies associated with them as listed ... shall be frozen”*
- *“Freezing of funds” – broadly defined: “preventing any move, transfer, alteration, use of, access to, or dealing with funds in any way that would result in any change in their volume, amount, location, ownership, possession, character, destination, or other change that would enable the funds to be used, including portfolio management”*
- *“Funds” – broadly defined: “financial assets and benefits of any kind”*
- *“Economic resources” – broadly defined: “assets of every kind whether tangible or intangible, movable or immovable”*



E.U. REGULATIONS - RUSSIA AND UKRAINE

Two recent cases illustrate the breadth of the asset freeze

- **July 2014:** Austrian court froze Austrian land held by Liechtenstein company because Oleksii Azarov (listed under Ukraine sanctions) had an interest in that company, although he was not a registered shareholder
 - the court ignored the legal ownership of the land and of the non-E.U. company, and held that the land belonged to Mr Azarov, or to a company “associated with” Mr Azarov
- **April 2013:** Cypriot court overturned injunction granted to BVI company beneficially owned by Anatoly Trenarky (listed under Belarus sanctions).
 - injunction prevented registration of directors in Cypriot company, minority owned by the BVI Co. The court quashed the injunction as otherwise Mr Trenarky would be allowed to “deal with” his assets
 - the court ignored the legal ownership, focussing on the beneficial interest, and appointing directors counted as “dealing with funds”

E.U. REGULATIONS - RUSSIA AND UKRAINE

Currently pending challenges to listings:

- *Arbuzov v Council* (T-434/14)
- *Azarov v Council* (T-331/14 and T-332/14)
- *Klymenko v Council* (T-494/14)
- *Klyuyev v Council* (T-340/14 and T-341/14)
- *Kurchenko v Council* (T-339/14)
- *Portnov v Council* (T-290/14)
- *Pshonka v Council* (T-380/14 and T-381/14)
- *Stavytskyi v Council* (T-486/14)
- *Yanukovych v Council* (T-346/14, T-347/14 and T-348/14)

This constitutes challenges by fourteen of the twenty-two individuals listed under the Ukraine (Misappropriation) sanctions

E.U. REGULATIONS - RUSSIA AND UKRAINE

Latest developments:

- June 23, 2014: import ban on goods originating in Crimea or Sevastopol, unless certified by Ukrainian Government (existing contracts have until September 26)
- July 11: 11 individuals added to sanctions lists
- July 16-19: sanctions programs against Russia expanded:
 - EU has requested the European Investment Bank to suspend new financing operations of public sector projects in Russia
 - EU will re-assess suspending bilateral EU-Russia cooperation programs, on a case by case basis
 - EU restricted European investment in Crimea and expects international financial institutions to refrain from financing projects that explicitly or implicitly recognize the illegal annexation
- July 23: European Bank for Reconstruction and Development suspends approvals for any new investments in Russia
- July 25: 15 individuals and 18 entities added to sanctions lists

E.U. REGULATIONS – RUSSIA AND UKRAINE

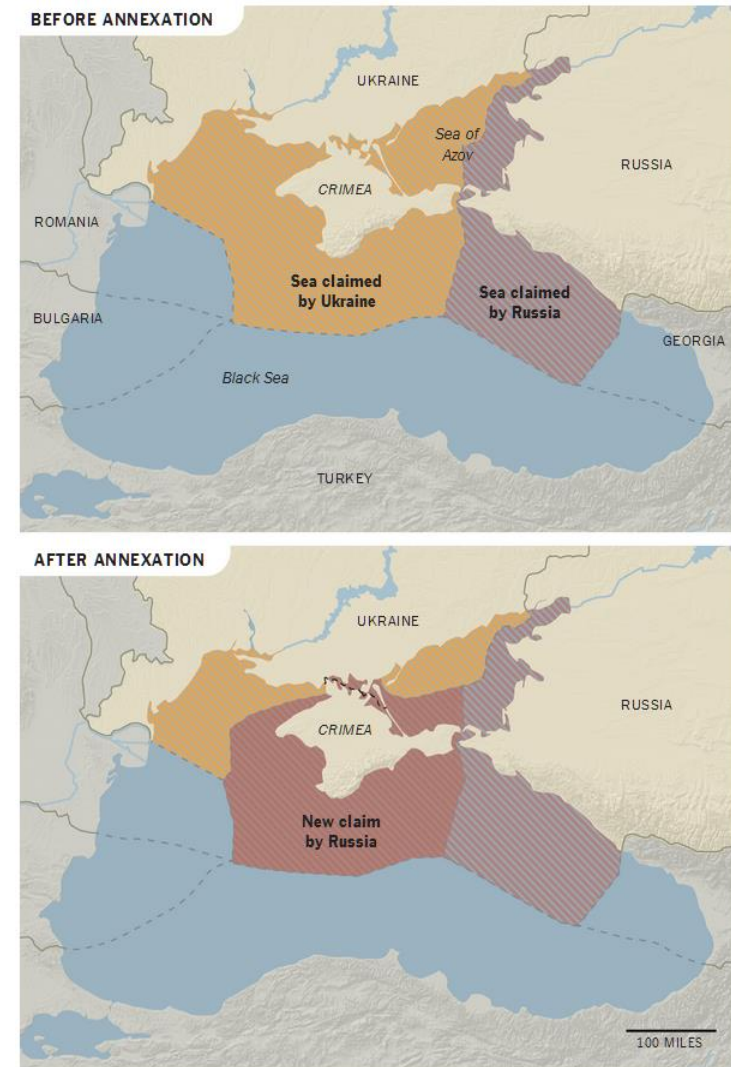
Latest sanctions:

- **Sectoral sanctions:**
- Scheduled for publication tomorrow to apply from Friday
 - Capital markets:
 - Prohibition on buying or selling *new* bonds, equity or other instruments with a maturity of over 90 days issued by state-owned banks and their subsidiaries and those acting on their behalf
 - Prohibition on providing services in relation to the issuance of such securities
 - Defence – to apply to new contracts:
 - Import and export ban on all items on the E.U. common military list to/from Russia
 - Export ban on all dual-use goods and technology for military use in Russia or to Russian military end-users
 - Oil and Gas – to apply to new contracts:
 - Prohibition on export licences for any equipment or technology destined for deep water or arctic oil exploration and production, or for shale oil projects

E.U. REGULATIONS – RUSSIA AND UKRAINE

Latest sanctions:

- Scheduled for publication today and to apply from today
- **Crimea:**
 - Prohibition on new investment in infrastructure projects in the transport, telecoms and energy sectors
 - Prohibition on new investment in relation to the exploitation of oil, gas and minerals
 - Prohibition on finance and insurance services in relation to the above
- **Asset freeze lists:**
 - 8 further individuals and 3 entities added to the lists



Source: Lamont-Doherty Earth Observatory of Columbia University

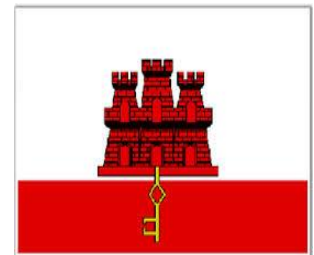
E.U. RUSSIA SANCTIONS – OFFSHORE IMPLEMENTATION

Anguilla, Cayman, BVI, Turks & Caicos

- Through a series of Orders the U.K. has extended the E.U.'s Ukraine/Russia asset freeze and travel ban sanctions to these offshore financial centres
- However, the U.K. has not yet extended the ban on the importation of Crimean goods to these jurisdictions

Gibraltar

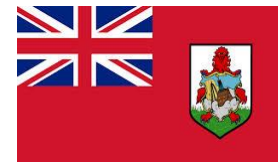
- E.U. sanctions regulations have direct effect in Gibraltar, but Gibraltar has not created local criminal offences for sanctions breaches
- The U.K. has extended its regulations to cover British nationals from Gibraltar
- There is currently a gap in implementation for Gibraltar companies and partnerships



E.U. RUSSIA SANCTIONS – OFFSHORE IMPLEMENTATION

Bermuda

- it's list of designated persons is currently confined to the original 18 designated by the E.U. on 6 March 2014
- not yet a prohibition on goods of Crimean origin



Isle of Man

- its list of “designated persons” is currently confined to the 39 people designated by the E.U. as of 17 March 2014
- not yet a prohibition on goods of Crimean origin



Guernsey

- its list of “designated persons” is the full E.U. list
- has implemented the prohibition on goods of Crimean origin



Jersey

- its list of “designated persons” is the full E.U. list
- not yet a prohibition on goods of Crimean origin



E.U. RUSSIAN SANCTIONS – SWISS RESPONSE

Response:

- announced on April 2, 2014 that it would not adopt the EU's sanctions
- adopted its own measure preventing Swiss financial intermediaries from entering into new business relationships with listed individuals and entities
- the Swiss kept pace with the E.U. until May 19, but are currently missing the latest 46 individuals and 18 entities added to the E.U'.s lists
- also adopted the E.U'.s travel ban against those listed

Result:

- assets already in Switzerland of those sanctioned by the E.U. would not be frozen
- Switzerland can not be used as a means of circumventing the E.U. sanctions





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OTHER U.S. SANCTIONS

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SOUTH SUDAN: EXECUTIVE ORDER 13,664

- “Blocking Property of Certain Persons with Respect to South Sudan.”
- Signed on April 3, 2014.
- The E.O. declared a national emergency to deal with the “threat to the national security and foreign policy of the United States” resulting from violence and instability in South Sudan.
- The E.O. requires the blocking of property of those persons that are responsible for, lead, or materially assist with:
 - Human rights abuses;
 - Violent acts against women and children;
 - Interference with humanitarian aid or peacekeeping missions;
 - The recruitment or use of child soldiers; and
 - Actions that threaten stability or peacekeeping

CENTRAL AFRICAN REPUBLIC: EXECUTIVE ORDER 13,667

- “Blocking Property of Certain Persons Contributing to the Conflict in the Central African Republic.”
- Signed on May 12, 2014.
- The E.O. declared a national emergency based on the breakdown of law and order, inter-sectarian tension, widespread violence and atrocities, and the pervasive, often forced, recruitment and use of child soldiers in the Central African Republic.
- The E.O. blocks the property of persons who, *inter alia*, engage in, lead, sponsor, or assist:
 - Activities that threaten peace, stability, the political transition process, or democratic processes and institutions;
 - Targeted violence against civilians; the use or recruitment of child soldiers; and
 - Persons or groups that threaten the country’s security through illicit trade of natural resources.

IRAQ: EXECUTIVE ORDER 13,668

- “Ending Immunities Granted to the Development Fund for Iraq and Certain Other Iraqi Property and Interests in Property Pursuant to Executive Order 13,303.”
- Signed on May 27, 2014.
- Notes the significant alteration of the situation that precipitated E.O. 13,303, including “the Government of Iraq’s progress in resolving and managing the risk associated with outstanding debts and claims arising from actions of the previous regime.”
- Terminates immunities from the judicial process for assets of the Development Fund for Iraq, Iraqi petroleum and petroleum products, and the Central Bank of Iraq.

DEMOCRATIC REPUBLIC OF CONGO: EXECUTIVE ORDER 13,671

- “Taking Additional Steps to Address the National Emergency With Respect to the Conflict in the Democratic Republic of the Congo.”
- Signed on July 8, 2014.
- Takes note of the continuation of activities that threaten the peace, security, and stability of the Democratic Republic of the Congo.
- The Executive Order requires the blocking of all property and interests in property of those persons designated to be:
 - Political or military leader of a foreign armed group or Congolese group that impedes the disarmament, demobilization, voluntary repatriation, resettlement, or reintegration of combatants.
 - Be responsible for or complicit in, *inter alia*, actions that threaten the peace, security, or stability of the country.



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SIGNIFICANT REGULATIONS

- **07/10/2014:** Publication of Final Rule in the Federal Register Amending the Zimbabwe Sanctions Regulations
- **07/07/2014:** Final Rule adding the Central African Republic Sanctions Regulations to 31 C.F.R. chapter V
- **07/02/2014:** Final rule adding the South Sudan Sanctions Regulations to 31 C.F.R. chapter V
- **07/01/2014:** Publication of Final Rule in the Federal Register, amending and reissuing in their entirety the Burmese Sanctions Regulations
- **05/02/2014:** Publication of Final Rule in the Federal Register, amending and reissuing in their entirety the Syrian Sanctions Regulations



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GENERAL LICENSES

- Weapons of Mass Destruction Proliferators Sanctions and Iranian Transactions and Sanctions-General License No. 9
 - IRISL-owned Motor Vessel SININ held for 6 months by pirates
 - Arrested in China
 - Transactions related to the arrest, detention, and judicial sale
- Iranian Transactions and Sanctions Regulations-General License G
 - Certain academic exchanges
 - Export and import of certain educational services
- Iranian Transactions and Sanctions Regulations General License D-1
 - Authorizes certain fee-based services incident to the exchange of personal communications over the Internet from the United States to Iran



OTHER U.S. SANCTIONS

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- **OFAC Guidance**
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OFAC GUIDANCE

Burma Sanctions – Updated FAQs (April 1, 2014)

- Clarified guidance relating to the easing of restrictions in 2012 and 2013, through General Licenses (“GL”) 16-19, and continuation of certain import restrictions pursuant to E.O. 13,651.
- Primary prohibitions remaining:
 - exporting financial services in connection with the provision of security services by, or making new investments in connection with an agreement with, the Burmese Ministry of Defense, state or non-state armed groups (including the military), or entities owned 50 percent or more by any of the foregoing;
 - new investment with banks noted in GL19. Property of these banks blocked prior to issuance of GL 19 remain blocked.
 - importation into the United States of any jadeite or rubies mined or extracted from Burma and any articles of jewelry containing jadeite or rubies mined or extracted from Burma;
 - dealing with SDNs or entities owned or controlled by SDNs.

OFAC GUIDANCE

Burma Sanctions – Updated FAQs (April 1, 2014) (cont.)

- Other clarifications:
 - funds transfers between U.S. financial institutions and certain blocked Burmese banks must be routed through a third country;
 - provides further information on the scope of GL 17 authorizing new investment in Burma, and the attendant reporting requirements.

OFAC GUIDANCE

South Sudan – FAQ related to E.O. 13,664 (June 2, 2014)

- Clarified that an entity in South Sudan that is commanded or controlled by an individual designated under E.O. 13,664 is not considered blocked by operation of law.
 - payments, including “taxes” or “access payments,” to non-designated individuals or entities under the command or control of an individual designated under E.O. 13,664 do not, in and of themselves, constitute prohibited activity.
- However, U.S. persons should employ due diligence, to ensure that an SDN is not, for example, profiting from such transactions.



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- **Reports**
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TRADE SANCTIONS REFORM & EXPORT ENHANCEMENT ACT

- 2Q 2013
 - 396 license applications
 - 443 licensing determinations
 - 69 RWA; 53 license amendments
 - 260 licenses: 243 Iran; 17 Sudan
- 3Q 2013
 - 348 license applications
 - 399 license determinations
 - 26 RWA; 72 license amendments
 - 250 licenses: 221 Iran; 29 Sudan
- 4Q 2013
 - 298 license applications
 - 324 license determinations
 - 26 RWA; 46 license amendments
 - 114 licenses: 92 Iran; 22 Sudan



OTHER U.S. SANCTIONS

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SIGNIFICANT DESIGNATIONS

Approximately 60 designation-related actions taken to date in 2014, including removals and updates.

- 16 country-related, involving: The Balkans, Iran, Republic of Congo, South Sudan, Syria, Ukraine and Zimbabwe.
- Other programs: Counter Narcotics; Counter Terrorism; Kingpin Act; Magnitsky; Non-proliferation; Transnational Criminal Organizations
- Foreign Sanctions Evaders list updated.

SIGNIFICANT DESIGNATIONS

Key Designations

- Ukraine/Russia designations (as discussed above) (March-July 2014).
- Kingpin Act designations (2014)
 - Over 100 individuals or entities sanctioned in 2014 to date.
 - Many sanctions target the Sinaloa drug cartel in Mexico and Colombia, expanding on previous sanctions of cartel leadership to now include associates, family members and businesses that act on behalf of cartel members.
 - Sanctions also target the spouse, associate, and a front company of a Los Zetas cartel leader in Mexico; members and front companies of a drug trafficking and money laundering ring in Colombia; individuals and entities linked to the Sanchez Garza family's money laundering on behalf of narcotics traffickers in Mexico; and individuals and companies acting on behalf of a Medellin-based drug money laundering network.

SIGNIFICANT DESIGNATIONS

Key Designations (cont.)

- ITRSHRA: Morteza Tamaddon, former Governor-General of Tehran Province and current head of the Tehran Provincial Public Security Council(May 23, 2014).
 - Tamaddon censored and limited freedom of expression among the Iranian people while serving as Governor-General in the wake of the disputed Iranian election in 2009.
- Magnitsky: 12 additional individuals linked to death of Russian Sergei Magnitsky (May 20, 2014).
 - Including four prison official, two members of the Russian Federation judicial system, four co-conspirators in the underlying tax fraud Magnitsky uncovered, and two individuals associated with extrajudicial killings.

SIGNIFICANT DESIGNATIONS

Key Designations (cont.)

- Syria: Tempbank and Chairman of Tempbank's Management Committee, Russian National Mikhail Gagloev, (May 8, 2014).
 - Tempbank provided cash and facilitated financial services to the Syrian government, including arranging the delivery of millions of dollars of cash to a Moscow airport for pickup by cash couriers working for the Central Bank of Syria.
 - Tempbank also facilitated deals and services for SYTROL, which is sanctioned by the United States and European Union.
 - Gagolev was designated for his role acting on or behalf of Tempbank, including traveling to Damascus on behalf of the bank to negotiate deals with the Syrian government.



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ENFORCEMENT

- 2014 to date
 - 17 Enforcement Actions and Settlements.
 - \$1.2 billion in penalties.
- 2013
 - 27 Actions
 - \$137 million in penalties.

ENFORCEMENT

Major Actions

BNP Paribas SA (Jun. 30, 2014)

- \$963 million to OFAC as part of an overall \$8.9 billion settlement with various federal and state agencies.
 - Largest OFAC Settlement ever.
 - First bank to plead guilty to criminal sanctions charges.
- Conduct involved over 3,800 payment transactions processed from 2005 to 2012 in apparent violation of Sudan, Iran, Cuba and Burma sanctions regulations.
- Statutory maximum and base civil monetary penalties: \$19.2 billion.
- Aggravating Factors
 - No self-disclosure.
 - Violations constituted an egregious case.

ENFORCEMENT

Major Actions

BNP Paribas SA (cont.)

- Mitigating Factors
 - Cooperation.
 - No recent sanctions history.
 - Remedial response.
- *NY State Enforcement*
 - New York receives over \$4 billion including \$2.2 billion to the Manhattan DAO to satisfy state charges of conspiracy and falsifying business records.

ENFORCEMENT

Major Actions

Fokker Services B.V. (June 5, 2014)

- \$50,922,208 global settlement involving OFAC, BIS, and the USAO (D.C.)
 - Satisfied in part by payment of a joint OFAC/BIS civil penalty of \$10,500,000, and payment of forfeiture of \$10,500,000 to the USAO.
- 1,112 alleged violations of the ITSR, and 41 alleged violations of the Sudanese Sanctions Regulations.
 - Conduct involved the export or reexport of aircraft spare parts that FSBV either procured or had repaired in the United States.
- Base penalty: \$145,492,023.
- Aggravating Factors
 - Willfully or recklessly engaged in the prohibited conduct.
 - Volume and value of the transactions.
 - Sophisticated and experienced aerospace services provider

ENFORCEMENT

Major Actions

Fokker Services B.V. (cont.)

- Aggravating Factors (cont.)
 - No formal OFAC compliance program in place during most of the five-year period when the alleged violations occurred.
 - Insufficient remedial response upon discovery of violations.
 - Violations constituted egregious case.
- Mitigating Factors
 - Voluntarily self-disclosed.
 - No recent sanctions history.
 - Cooperation.
 - Subsequent remedial action.

ENFORCEMENT

Major Actions

CWT B.V. (Apr. 18, 2014)

- \$5,990,490 to settle potential civil liability for apparent violations of the Cuban Assets Control Regulations.
 - CWT, a travel services provider incorporated in the Netherlands, became majority-owned by U.S. persons in 2006.
 - provided services related to travel to/from Cuba, for 44,430 persons.
- Base penalty: \$11 million.
- Aggravating Factors
 - Commercially sophisticated international corporation and travel services provider.
 - Failed to exercise a minimal degree of caution or care regarding its obligations to comply with U.S. sanctions for more than four years.
 - Had no or an inadequate compliance program.

ENFORCEMENT

Major Actions

CWT B.V. (cont.)

- Aggravating Factors (cont.)
 - High volume of transactions.
- Mitigating Factors
 - Voluntarily self-disclosed.
 - Cooperation.
 - Vast majority of the apparent violations occurred prior to agency notice.
 - First violation.
 - Significant remedial action.

ENFORCEMENT

Major Actions

Clearstream Banking, S.A. (Jan. 23, 2014)

- \$151,902,000 to settle potential civil liability for violations of the ITSR.
 - Clearstream, acting as intermediary, had reason to know that, despite changing record ownership of 26 securities, with a nominal value of \$2.813 billion, beneficial ownership in the securities remained held by the Central Bank of Iran (“CBI”) in ultimate custody at a central securities depository in the United States.
- Highlights the particular sanctions risks faced by intermediaries, custodians, and other firms operating in the international securities markets.
- Base penalty: \$5.6 billion.
- Aggravating Factors
 - Senior employees had reason to know CBI retained beneficial ownership; failure to perform sufficient due diligence.

ENFORCEMENT ACTIONS

Major Actions

Clearstream Banking, S.A. (cont.)

- Aggravating Factors (cont.)
 - Did not voluntarily disclose.
 - Violations were reckless and egregious.
- Mitigating Factors
 - Significant remedial action.
 - Cooperation.
 - No recent sanctions history.
 - OFAC considered the “totality of the circumstances to ensure that the enforcement response was proportionate to the nature of the apparent violations.”

ENFORCEMENT

Other Notable Actions

- **Epsilon Electronics** assessed penalty of \$4 million for violations of Iran sanctions for indirect shipments of goods worth \$3.4 million to Iran, some violations occurring after receiving cautionary letter. (July 25, 2014)
 - OFAC issued a proposed penalty, allowed Epsilon to respond, but found no reduction warranted, in part because Epsilon attempted to mislead OFAC.
- **Tofasco of America, Inc.** paid \$21k (base \$25k) for alleged violation of WMD sanctions. (July 17, 2014)
 - Small penalty despite no voluntary self-disclosure and finding that Tofasco stripped Iran references after first bank refused to advise LOC. Noted Tofasco's small size and lack of int'l trade sophistication.
- **Red Bull North America, Inc.** penalized \$90k under CACR for making a documentary in Cuba without a license. (June 27, 2014)

ENFORCEMENT ACTIONS

Other Notable Actions

- **Decolar, Inc.** paid \$2.8 million (base \$4.5 million) for violations of CACR when foreign subsidiaries assisted with Cuba-related travel services, without a license. (May 6, 2014)
 - Decolar is a Delaware Corp. but HQ-ed in Argentina, and Cuba travel a small part of overall business.
 - Unreasonable reliance on third-party opinion re: sanctions obligations.
- **Ubiquiti Networks, Inc.** penalized \$500k (base (\$560k) under the ITSR for exporting goods to UAE and Greece distributors, knowing the goods were bound for reexport to Iran. (Mar. 6, 2014)
- **Joint-Stock Commercial Bank “Bank of Moscow”** assessed penalty of \$9.5 million for 69 violations of WMD sanctions. (Jan. 27, 2014)
 - BOM obfuscated SWIFT instructions on transactions involving sanctioned Iranian entity in Russia. Processed to or through the U.S.



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EUROPEAN UNION AND UNITED KINGDOM

- Regulations
- Main Case Law
- Major Enforcement Actions and Assessments

E.U. AND U.K. REGULATIONS

- Guinea

- E.U. lifted embargoes on arms and equipment which might be used for internal repression
- Travel restrictions and asset freezes remain in place until October 2014

- Iran

- Sanctions regime extended until April 13, 2015
- January 20, 2014: temporary suspension of certain restrictive measures for 6 months, extended by 4 months in July (until November 24, 2014)
 - Sanctions relief followed a Joint Action Plan between Iran and E3/EU+3
 - Restrictions on petrochemicals, transport of crude oil, and related services; ban on trade in gold and precious metals; and ban on the supply of certain vessels
 - Temporary increase of thresholds for and exceptions to restrictions on transfers and freezes of funds.

- Afghanistan, Belarus, Central African Republic, Iraq, Ivory Coast, Libya, North Korea

- Small-scale deletions and insertions to the asset freeze lists for these jurisdictions

E.U. AND U.K. REGULATIONS

- **South Sudan**
 - July 10, 2014: E.U. adopts new asset freeze sanctions against individuals
- **Syria**
 - February 10, 2014: new exception to asset freezes for payments for Organisation for the Prohibition of Chemical Weapons' verification mission and destruction of Syrian chemical weapons
 - President Assad's re-election in June 2014 and continuing political deadlock: new asset freezes and travel bans targeting 12 Cabinet ministers, held responsible for serious human rights violations
 - Additional asset freezes and travel bans in July targeting three individuals and nine entities "*involvement in the violent repression of the civilian population or their support to the regime*"
- **Zimbabwe**
 - February 19, 2014: suspension of remaining sanctions
 - Arms embargo and travel ban and asset freeze targeting Head of State and Zimbabwe Defence Industries remain in place

U.K. SANCTIONS AND DEFERRED PROSECUTION AGREEMENTS

- DPAs introduced in England and Wales by the *Crime and Courts Act 2013*
- Now available as a prosecutorial tool, including for conduct committed before the introduction of DPAs.
- Seemingly by oversight DPAs are not, however, available for all sanctions offences:
 - Are available for offences relating to the export of goods that “*would be contrary to any prohibition or restriction for the time being in force*”
 - Not available for offences relating to the importation of sanctioned goods – e.g. goods from Crimea, or Iranian crude oil
 - Not available for breaches of financial sanctions
- *Crime and Courts Act* allows for additional offences to be added in time by the Secretary of State, so there is scope for this to change in the future.



EUROPEAN UNION AND UNITED KINGDOM

- Regulations
- Main Case Law
- Major Enforcement Actions and Assessments

E.U. – Main Case Law

- **Al Qaida: T-306/10 Yusef v Commission**: General Court annulled asset freeze for breach of rights of defense (designated on sole basis of U.N. Sanctions Committee press release), in line with CJEU’s *Kadi I* and *Kadi II*
 - E.U. institutions must provide target with evidence used (including summary of reasons of U.N. Sanctions Committee) and give opportunity to be heard
 - Obligation to state reasons includes identifying the individual, specific and concrete reasons why target must be subject to restrictive measures
- **Ukraine: challenges to sanctions** by 14 Ukrainians designated as being “*responsible for the misappropriation of Ukrainian state funds*”
- **Egypt: T-256/11 Ezz and others v Council**: in first ruling on E.U.’s Egypt sanctions, General Court rejected appeals. The sanctions did not disproportionately restrict targets’ fundamental rights (respect of property, freedom to conduct business) or rights of defense as targets may have benefited “*possibly without their knowledge, [...] from the proceeds of the ‘misappropriation of Egyptian State funds’*”

E.U. – Main Case Law

- **Syria: T-293/12 Syria International Islamic Bank v Council**: General Court annulled Syrian listing for first time, due to insufficient evidence that SIIB assisted with transactions with designated individuals or entities
 - Sanction by U.S. OFAC irrelevant for a designation by E.U. Council
 - Damages claims rejected
- **Iran: North Drilling Company** relisted in 2014 for new reasons (indirectly owned by major Iranian para-statal) after annulment by General Court in 2013
- **Iran: T-66/12 Sedghi and Azizi v Council**: General Court annulled designations of two bankers of Melli Bank due to insufficient evidence they served as a ‘link’ with targeted Bank Melli Iran
 - Individuals may be targeted if they “*provid[e] support for [...] or [act] on behalf of or at the direction of an entity involved in nuclear proliferation*”
 - Individual with managerial power may “*as a general rule*” be regarded as providing support for nuclear proliferation themselves

E.U. – Main Case Law

- **Iran: T-67/12 Sina Bank v Council**: General Court annulled re-listing of Sina Bank as target should have had prior hearing to discuss new evidence used by Council
- **Iran: T-182/13 Moallem Insurance Co v Council**: General Court annulled designation as “*main insurer of IRISL*”, due to insufficient evidence prior to actions being brought before Court
- **Iran: T-578/12 National Iranian Oil v Council**: General Court rejected application NIOC, which was correctly designated as “*entity owned and managed by the State [...] which provides financial resources to the Iranian government, whose Chairman is a minister and CEO a deputy minister*”

U.K. – MAIN CASE LAW

Bank Mellat v HM Treasury

- In June 2013 the U.K. Supreme Court quashed the sanctions listing of Bank Mellat (*Bank Mellat v Her Majesty's Treasury (No. 2)* [2013] UKSC 39)
- In February 2014 Bank Mellat commenced proceedings against HM Treasury seeking damages of £2.3bn (\$3.9bn) for lost business incurred as a result of being sanctioned between 2009 and 2013
- Will be closely watched as the first of many possible claims by companies and individuals who have had their sanctions listing overturned





EUROPEAN UNION AND UNITED KINGDOM

- Regulations
- Main Case Law
- Major Enforcement Actions and Assessments

E.U. ENFORCEMENT – UNITED KINGDOM

- **April 2014:** *Gary Hyde v R* [2014] EWCA Crim 713.
 - dismissal of an appeal against 7-year custodial sentence and 7-year director disqualification order handed down in 2012 in relation to the shipment of weapons from China to Nigeria in breach of export control bans.
 - no appeal against a confiscation order for £782,142.
- **April 2014:** Serious Fraud Office announced money laundering/sanctions investigation into \$23m in Ukrainian-sourced funds
- **May 2014:** press reported that National Crime Agency was investigating *Reed Business Information* for possible breaches of Iran sanctions
 - Reed Business Information continued to contract with at least three sanctioned Iranian banks (Bank Melli, Bank Sepah, and Export Development Bank of Iran), after their designations
 - the investigation is on-going



E.U. ENFORCEMENT - SPAIN

One of the more active Member States in terms of enforcement of trade sanctions – especially in relation to Iran:

- **February 2014:** agreement between ONA Electroerosión S.A. and prosecutors
 - in relation to export of seven shipments of turbine equipment for energy plants to Iran in breach of sanctions
 - settlement included payment of a fine, as yet undisclosed, but previously estimated at €6,000,000
- **April 2014:** Operation Terracotta
 - 3 Spanish nationals and 1 Iranian arrested, numerous business premises raided by the Guardia Civil
 - in relation to attempted export of dual-use machinery to Iran, possibly for use in missiles manufacture
 - investigation is ongoing
- No updates to previously announced investigations into Fluval Spain S.L. and Lazaro Ituarte Internacional S.A. for shipment of valves to Iran through UAE intermediaries following raids conducted last year



E.U. ENFORCEMENT – GERMANY AND AUSTRIA

Germany:

- **February 2014:** prosecutors arrested 1 German-Iranian
 - for exporting equipment to sanctioned Iranian company between 2011 and 2013.
 - including the attempt to mask exports through non-EU corporations
- **June 2014:** start of trial for export breaching sanctions
 - two individuals charged with supplying 61 engines suitable for use in military drones between 2008 and 2009
 - first arrested in February 2013, and trial continues



Austria:

- **July 2014:** Austrian court froze land in Vienna and elsewhere in Austria
 - land belonging to Liechtenstein company *LADA Holding Anstalt*
 - on the basis that LADA Holding was beneficially owned by O. Azarov, a designated individual under the Ukraine sanctions



SWITZERLAND

BNP Paribas sanctioned by FINMA

- July 1, 2014: 2-year ban from engaging with any person/entity designated by E.U. or U.S. as target for sanctions
- BNP Suisse assisted breach of U.S. Sudan sanctions by “*seriously violat[ing] its duty to identify, limit and monitor the risks involved in making transactions with business partners in countries under US sanctions*”
 - handling transactions of Sudanese customers, using third-party banks to mask activities
 - providing significant credits destined for Sudanese oil trading
- No evidence of any violations of Swiss sanctions,
 - but under Swiss law banks must at all times “*assure proper business conduct and risk management*”
 - BNP had “*exposed itself to unduly high legal and reputational risks and violated requirements for adequate organisation*”
- Investigations continue into board members, management and employees involved





MID-YEAR 2014 SANCTIONS UPDATE

- UKRAINE-RELATED DEVELOPMENTS
 - UNITED STATES
 - EUROPEAN UNION
 - UNITED KINGDOM
- OTHER U.S. SANCTIONS
- OTHER E.U. AND U.K. SANCTIONS
- **LOOKING FORWARD**

LOOKING FORWARD—UKRAINE-RELATED SANCTIONS

- The tension between the US/EU and Russia continues to escalate, and U.S. and European companies should expect additional sanctions.
 - OFAC has made it clear that it has considered increasing sanctions pressure, and may impose additional sectoral sanctions in the near future.
 - Could see expansion of types of sanctions, or additional designations.
 - The European Union may further expand its sanctions to cover other imports and exports to and from Russia, or prevent other state-owned companies from accessing the capital markets, or to further designate individuals and companies

LOOKING FORWARD—UKRAINE-RELATED SANCTIONS

- U.S. and European companies should continue conducting extensive due diligence to ensure that they are not inadvertently dealing with the property of designated persons.
 - This can be difficult to do, as many of the designated persons have extensive—and often opaque—international holdings.
- High risk of enforcement actions.
 - OFAC has not yet commenced public enforcement proceedings against U.S. persons for violating the recent sanctions on Russia, but may be looking to show that these sanctions have teeth.
 - U.S. companies should avoid engaging in any activities that could run afoul of OFAC regulations and that garner significant public attention, as this may result in increased OFAC scrutiny.

LOOKING FORWARD—IRAN-RELATED SANCTIONS

- Joint Plan of Action
 - Agreement between Iran and P5+1 to relax sanctions on Iran in exchange for concessions on its nuclear program.
 - Sanctions relaxation while parties try to negotiate a comprehensive agreement.
 - Negotiation period was extended until November 24, 2014.
- The vast majority of U.S. and EU sanctions still apply to Iran.
 - The sanctions relief is narrow, limited, and reversible.
 - It only applies to sectors specified in the Joint Plan of Action.
 - All other sanctions remain in force.
 - Only difference following the extension is that the U.S. will allow Iran access to \$2.8 billion dollars of its restricted assets, the four-month prorated amount of the original Joint Plan of Action commitment.

LOOKING FORWARD—IRAN-RELATED SANCTIONS

- Regulators will aggressively enforce remaining sanctions.
- Businesses—both U.S. and foreign—should exercise abundant caution in conducting transactions in Iran or with Iranian persons.
- Congress may attempt to ratchet up sanctions on Iran—expect discord between the Administration and Congress in the coming months.
- Any comprehensive agreement with Iran will likely pertain *only* to nuclear-related sanctions. Other sanctions will likely remain in place. Businesses should be exceedingly cautious about returning to the Iranian market, as they could easily run afoul of non-nuclear-related sanctions.

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