Doing Business Amid Increasing Russian Sanctions

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With Russia in the headlines almost every other day over the last several years, the U.S. government has introduced and progressively increased economic sanctions targeting certain Russian individuals and companies. Big banks and insurance companies have always been sensitive to trade sanctions regimes and have well-developed compliance systems in place. However, the time has come for small and mid-size businesses to put aside the optimism bias and actively manage the risks associated with doing business involving Russian companies under U.S. law.

Unlike an embargo – which is a comprehensive ban blocking all transactions within a country – the Russian sanctions regime involves asset-blocking and restrictions on specific transactions. The sanctions started in March 2014 as a response to the Ukraine and Crimean crisis and have progressively developed. The relevant rules are embodied in U.S. Executive Orders 13660, 13661, 13662, 13665, 13685, 13694 and 13757, the Ukraine Freedom Support Act ("UFSA"), the Support for the Sovereignty, Integrity, Democracy and Economic Stability of Ukraine Act of 2014 ("SSIDEA"), Countering America's Adversaries Through Sanctions Act ("CAATSA"). CAATSA codified existing sanctions issued through Obama-era executive orders, strengthened and expanded sectoral sanctions and threatened imposition of secondary sanctions for various activities that lack any nexus with the U.S. Is there a particular reason CAATSA needs a description but the others don't – *it's the most comprehensive one.*

The Treasury Department's Office of Foreign Asset Control (OFAC) promulgates and implements the regulations in connection with the sanctions regime and maintains a comprehensive list of Specially Designated Nationals and Blocked person (the "SDN list"). OFAC adds individuals and companies to the SDN list frequently, and it is essential to monitor and follow current law before entering into a transaction involving Russian individuals and entities.

Which activities are prohibited?

1) Blocking sanctions prohibit dealing with specific individuals and entities which have been listed on the "SDN List." U.S. persons are prohibited from engaging in any transactions with SDNs and are required to freeze any property or interests belonging to SDNs.

2) Sectoral sanctions prohibit certain types of transactions in selected sectors of the Russian economy listed in OFAC's Sectoral Sanctions Identification List (the "SSI List"). The sectoral sanctions target entities in Russia's financial, energy, defense and oil exploration and production sectors. CAATSA authorized the creation of new sectoral sanctions against entities operating in the railway, metal and mining sectors.

3) An embargo against Crimea prohibits new investments in the Crimea region, the importation in the U.S. of any goods, services, or technology from the Crimean region, the exportation, re-exportation, sale or supply of any goods, services, or technology to the Crimea region, and any approval, financing, facilitation, or guarantee by a U.S. person.

Who should comply?

The regime includes primary and secondary sanctions. Primary sanctions prohibit certain activities with connection to the U.S. and target U.S. persons. This includes activities that involve U.S. companies, U.S. citizens and green card holders regardless of where they reside or touch upon U.S. territory. The secondary sanctions target conduct with no nexus to the United States and are aimed at discouraging non-U.S. entities from engaging in certain Russian-related transactions. If such non-U.S. entities engage in prohibited conduct, they may be designated on the SDN list or otherwise sanctioned.

In view of the dynamic nature of the sanctions regime, U.S. companies should carefully review their activities for exposure to sanctioned entities and sectors and enhance due diligence to monitor sanctions development. Partial sanctions – like the Russian ones – increase uncertainty because the rules frequently change. Between starting the negotiations and closing a transaction, your counterparty may find itself on a sanctioned entities list. Hence, it becomes essential for companies of all sizes to institute compliance programs that take into consideration the new reality.

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