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**SANCTIONS****Russia Sanctions Update: Flurry of U.S. Government Actions Leading Into Trump Administration**

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**S**ince the U.S. presidential election on Nov. 8, 2016, the U.S. government has executed a variety of actions regarding economic sanctions relating to Russia. As detailed below:

- Former President Barack Obama established additional bases to impose Russia-related sanctions.

- President Obama imposed sanctions under prior and new such measures against designated Russian individuals and organizations, including “blocking” sanctions that broadly forbid U.S. dealings relating to sanctioned persons.

- The U.S. Congress began considering a bill, having substantial bipartisan support, that would generally require the U.S. president to impose sanctions against Russian (and potentially non-Russian) persons who engage in certain financial, energy-related or other specified activities.

- Most recently, the new administration of President Donald Trump through a new general license publication altered certain sanctions measures authorized by President Obama.

Highly politicized crosscurrents within the U.S. government make the future of U.S. sanctions regarding Russia difficult to predict. There is broad support within the Congress for a more aggressive U.S. sanctions policy. And persons nominated by President Trump for senior positions in his administration have generally expressed some support for a vigorous sanctions policy.

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At the same time, as has been widely reported, President Trump himself has indicated a reluctance to expand sanctions regarding Russia and a hope that sanctions can be diminished. Prospective Trump administration officials have suggested that the administration will attempt to negotiate an agreement with Russia on the basis of which some or all U.S. sanctions regarding Russia will be lifted. So far the administration has authorized certain limited transactions involving a previously blocked Federal Security Service, or FSB, the principal security agency of the Russian government.

In these circumstances, the overall scope of U.S. sanctions regarding Russia seems likely to remain much as it is today for at least the next few months. And while there may be possibilities for liberalization, more far-reaching Russia-related sanctions are entirely possible.

Given these Russia-related sanctions developments and prospects, persons engaged in Russia-related commercial dealings should 1) monitor Russia-related sanctions developments closely; and 2) assiduously administer effective due diligence procedures and other related safeguards in connection with their dealings relating to Russia. Due diligence should encompass “know your customer” procedures and procedures to ensure visibility into the end uses of goods and services supplied to Russia.

**Background on Russia-Related Sanctions**

The U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) administers three types of economic sanctions relating to Russia: (1) broad blocking measures against designated individuals and entities and 50 percent-or-more owned affiliates; (2) sectoral sanctions targeting designated entities in Russia’s defense, energy and finance sectors and 50 percent-or-more owned affiliates; and (3) a broad embargo of

Crimea. In addition, the U.S. Commerce Department's Bureau of Industry and Security ("BIS") administers some economic sanctions in the form of export prohibitions.

- **Blocking Measures:** The U.S. government has designated as being blocked a large number of Russian and Ukrainian individuals and entities under three March 2014 Ukraine-related executive orders—Executive Orders 13,660, 13,661 and 13,662—and other sanctions measures, including certain malicious cyber activity-related executive orders and human rights-related legislation. By virtue of their being blocked, OFAC has added these individuals and entities to its Specially Designated Nationals and Blocked Persons List (the "SDN List"). Blocking measures generally forbid U.S. persons to engage, directly or indirectly, in transactions and dealings involving persons on the SDN List and entities that are, directly or indirectly, 50 percent-or-more owned by one or more blocked persons. U.S. persons include U.S. citizens and permanent resident aliens, entities organized under the laws of the U.S. or any jurisdiction within the U.S. (including non-U.S. branches) and persons in the U.S.

- **Sectoral Sanctions Measures:** Sectoral sanctions target entities in Russia's defense, energy and finance sectors. They generally prohibit U.S. persons to provide financing for or otherwise deal in certain debt or, with respect to the finance sector, equity issued on or after the sanctions effective date of persons designated for inclusion on OFAC's Sectoral Sanctions Identifications List (the "SSI List"). The sanctions also target entities that are, directly or indirectly, 50 percent-or-more owned by listed persons. Sectoral sanctions also forbid U.S. persons, in some circumstances, to provide goods, services or technology in support of certain types of Russian crude oil production projects involving certain persons designated for inclusion on the SSI List or their, directly or indirectly, 50 percent-or-more owned affiliates. These prohibitions also encompass any sanctions evasion attempts.

- **Crimea Embargo:** The Crimea embargo under Executive Order 13,685 generally prohibits most investment in Crimea and trade in goods, services and technology with or relating to Crimea. Related blocking measures may extend to persons operating in Crimea; leading entities operating in Crimea; owned or controlled by or acting on behalf of persons blocked in relation to Crimea; or materially supporting persons blocked in relation to Crimea.

- **BIS Sanctions:** As a related matter, BIS has promulgated regulations that restrict exports, reexports or transfers (in-country) of certain items that are of U.S. origin or contain U.S.-origin content to persons designated on the U.S. list of entities (the "Entity List") subject to license requirements for specified items under the U.S. Export Administration Regulations (the "EAR"). For example, these regulations generally ban exports, reexports or transfers (in-country) of certain natural gas and oil production-related items that are of U.S. origin or contain U.S.-origin content to persons designated on the Entity List if such items are known to be intended for direct or indirect use in exploration for or production of oil or gas in Russian deepwater or Arctic offshore locations or shale formations, or if the end use of such items cannot be determined. These restrictions apply to exports from overseas of items that are of U.S. origin or that contain certain levels of export-

controlled U.S.-origin content – whether or not the supplier is a U.S. person.

### **Sequence of Recent U.S. Sanctions-Related Actions Regarding Russia**

- On Dec. 20, 2016, OFAC updated the SDN List and the SSI List and published a general license related to an earlier designation of FAU Glavgosekspertiza Rossii to authorize certain activities involving FAU Glavgosekspertiza Rossii's operations in Russia, thus, generally limiting the effects of the designation to the entity's operations in Crimea. The stated rationale for the new sanctions is to address sanctions evasion, clarify application of sanctions to affiliates of sanctioned entities and broadly maintain effectiveness of existing sanctions.

- On Dec. 23, 2016, as part of the National Defense Authorization Act for Fiscal Year 2017, President Obama signed into law the Global Magnitsky Human Rights Accountability Act. Subject to limited exceptions, this legislation authorizes the president to impose blocking sanctions and introduce visa bans against non-U.S. persons in relation to specified gross human rights violations and acts of significant corruption.

- On Dec. 28, 2016, President Obama issued an executive order amending the U.S. sanctions measure relating to significant malicious cyber-enabled activities (referred to hereinafter, as amended, "Executive Order 13,694") to provide for blocking of certain persons involved in interfering with or undermining election processes or institutions. Executive Order 13,694 previously provided for blocking actions in relation to certain other significant malicious cyber-enabled activities that threaten U.S. national security, foreign policy, economic health or financial stability, including misappropriation of certain information for private financial gain. On Dec. 29, 2016, OFAC updated the SDN List pursuant to the amended sanctions measure. These actions were reportedly in response to U.S. election-related hacking activities and misappropriation of certain financial information and personal identifiers.

- On Dec. 29, 2016, the blocking actions related to malicious cyber-enabled activities were followed by expulsion of 35 Russian diplomats from the U.S. and certain other diplomatic restraints.

- On Dec. 27, 2016 and Jan. 4, 2017, BIS added Russian organizations to the Entity List. Exports and reexports to the designees are subject to license requirements for specified items under the EAR. These designations were identified as companion measures to OFAC's blocking actions, including identification and designation of subsidiaries of earlier designated entities in relation to sanctions evasion as well as Crimea and cyber-enabled activities-related designations. BIS also clarified its license review policy in relation to Russia.

- On Jan. 9, 2017, OFAC added persons to the SDN List under the Russia and Moldova Jackson-Vanik Repeal and Sergei Magnitsky Rule of Law Accountability Act of 2012 (the "Magnitsky Act"), authorizing imposition of sanctions in relation to the death of Sergei Magnitsky and specified gross human rights violations.

- On Jan. 11, 2017, a bipartisan group introduced a new sanctions bill in the U.S. Senate—the Countering Russian Hostilities Act of 2017. As detailed below, the bill would largely codify existent Russia-related sanctions, the Crimea embargo and Executive Order 13,694, addressing certain significant malicious cyber-enabled

activities. The bill would also mandate imposition of additional Russia-related sanctions, subject to limited exceptions. Further, it would codify the U.S. government's policy on non-recognition of Russian sovereignty over Crimea and independence of South Ossetia and Abkhazia. Finally, the bill would advance other Russia-related policy matters, including through creation of a monetary fund intended to support democracy and anti-corruption-related activities in Europe and Eurasia and a high-level task force within the Financial Crimes Enforcement Network to monitor certain illicit financial flows.

■ On Jan. 12, 2017, a separate bill was introduced in the U.S. House of Representatives also intended to codify U.S. government's policy prohibiting recognition of Russia's sovereignty over Crimea.

■ On Feb. 2, 2017, OFAC published a general license related to a late December 2016 designation of Federal Security Service, or FSB ("FSB"), under Executive Order 13,694 to authorize certain transactions associated with the importation, distribution and use of U.S. information technology products in Russia, including payments to FSB not exceeding \$5,000 per year, or law enforcement or administrative actions and investigations involving FSB.

### **New Sanctions**

■ *Sectoral Sanctions Measures:* On Dec. 20, 2016, OFAC identified a number of 50 percent-or-more owned subsidiaries of Russian Agricultural Bank, subject to certain debt and equity-dealing sanctions prohibitions since July 29, 2014, and OAO Novatek, subject to specified debt-dealing sanctions prohibitions since July 16, 2014, as being subject to such sectoral sanctions. U.S. persons have always been required to treat as being sanctioned all such 50 percent-or-more owned subsidiaries of these entities since OFAC sanctioned them in 2014. Their identification now is to reinforce and make certain application of sanctions that already applied by virtue of the "50 percent rule."

■ *Blocking Actions Relating to the Conflict in Ukraine:* Also on Dec. 20, OFAC added to the SDN List seven individuals reportedly in response to alleged activities related to the conflict in Ukraine. In particular, OFAC designated six individuals reportedly for acting on behalf of and materially supporting Bank Rossiya, ABR Management and Sobinbank, each holding an executive level position in one of these entities. One individual was determined to have materially supported senior Russian government officials for having extensive ties to the Russian Ministry of Defense and holding a contract to build a military base on the Ukrainian border in Russia.

■ *Crimea Embargo Blocking Actions:* Finally, the Dec. 20 actions included the addition to the SDN List of eight construction and transportation entities acting in and outside of Crimea and linked to the Kerch Bridge project or railroad or maritime transportation in Crimea. These included four entities linked to a previously designated Russian shipping and logistics group, Sovfracht-Sovmortrans Group. OFAC also designated two Russian-flagged vessels as linked to JSC Trans-Flot, identified among the four entities linked to Sovfracht-Sovmortrans Group.

Separately, OFAC issued General License 11, Authorizing Certain Transactions With FAU Glavgosekspertiza Rossii, that permits U.S. persons to engage in trans-

actions ordinarily incident and necessary to requesting, contracting for, paying for, receiving or utilizing a project design review or permit from FAU Glavgosekspertiza Rossii's offices in Russia. General License 11 highlights that it does not extend to the organization's Crimean operations or projects located in or otherwise associated with Crimea.

■ *Blocking Actions Relating to Reported Malicious Cyber-Enabled Activities:* The Dec. 28, 2016, amendments to Executive Order 13,694 identified five entities and four individuals in Russia for blocking and designation reportedly with respect to alleged misappropriation of information for purposes of interfering with or undermining election processes or institutions. On Dec. 29, 2016, OFAC added these nine persons to the SDN List. At the same time, under Executive Order 13,694's pre-amendment authority, OFAC also added two Russian individuals to the SDN List in connection with their alleged roles in misappropriation of certain financial information and personal identifiers. Although Executive Order 13,694 designations to date cover Russian or Russia-related persons, the order's authority is general, not Russia-specific, and can extend to any person engaged in specified malicious cyber-enabled activities, regardless of such person's country affiliation.

■ *Entity List Designations:* On Dec. 27, 2016, BIS added 23 entities to the Entity List subject to license requirements for specified items under the EAR. Fifteen of these entities were added as subsidiaries of JSC Almaz-Antey Air Defense Concern Main System Design Bureau and JSC Concern Radio-Electronic Technologies, added to the Entity List in 2014—all, as their parent companies, operating in Russia's arms and materiel sector. On the same day, BIS also added to the Entity List eight entities that OFAC designated on Dec. 20, 2016, reportedly in relation to their operations in Crimea. On Jan. 4, 2017, BIS further updated the Entity List to include five entities identified in the Annex to Executive Order 13,694 as of Dec. 28, 2016, for alleged malicious cyber-enabled activities-related blocking and designation.

■ *Magnitsky and Human Rights-Related Blocking Actions:* On Jan. 9, 2017, OFAC added five individuals to the SDN List under the Magnitsky Act.

### **New Sanctions Bill**

The Countering Russian Hostilities Act would, in specified circumstances, generally require the president to take one of two types of sanctions actions.

■ *Blocking Action:* In some circumstances, the legislation would instruct the president to block an individual or entity by virtue of the person's involvement in specified types of activities. Again, blocking is a far-reaching sanction that generally forbids U.S. persons, directly or indirectly, to engage in dealings relating to the blocked person.

■ *List-Based Sanction Action:* In other circumstances, the legislation would instruct the president to impose at least five sanctions from a list of twelve sanctions types described in the legislation. None of these sanctions is as far-reaching as a blocking action. List-based sanctions include, for example, bans on issuance of licenses for exports to the sanctioned person and prohibitions on acquisitions of a sanctioned entity's securities by U.S. persons.

It is unclear whether and how quickly the bill will move through the Congress, whether President Trump



would sign the bill if the Congress passes it, and, if not, whether the Congress would override a presidential veto of the bill. Given the bill's broad bipartisan support, however, it is entirely possible that the Congress will pass the bill within the next few months. Even if the bill becomes law, however, the president could avoid imposing extensive sanctions under the legislation through exercise of waiver authority in the bill and through exercise of discretion about how the bill's provisions apply in any given circumstances.

Specific key features of the bill include the following:

- **Existent Russia-Related Sanctions:** The bill would codify all existent Russia-related sanctions imposed under Executive Orders 13,660, 13,661, 13,662 and 13,685, with respect to the conflict in Ukraine and the status of Crimea. Such codification would generally establish that the president would not have the power to terminate current U.S. sanctions relating to Russia.

- **New Energy Sector-Related Sanctions:** The bill would direct the president, subject to limited exceptions, to impose five or more list-based sanctions on persons in connection with certain significant investments made on or after the enactment of the bill contributing to or otherwise supporting Russia's development and production of petroleum or natural gas resources, including assistance in construction, modernization or repair of petroleum refineries or natural gas infrastructure; construction of energy export pipelines, including their modernization and repair; and construction of civil nuclear power plants, including their modernization and repair.

- **Russian Sovereign Debt-Related Sanctions:** The bill would direct the president, subject to limited exceptions, to impose five or more list-based sanctions on persons who, on or after the enactment date, knowingly purchase, subscribe to or facilitate the issuance of Russian sovereign debt or debt of any entity owned or controlled by the Russian government issued on or after the enactment date, including bonds.

- **Privatization-Related Sanctions:** The bill would direct the president, subject to limited exceptions, to impose five or more list-based sanctions on persons in connection with specified investments contributing to Russia's privatization of state-owned assets.

- **Cybersecurity and Other Related Sanctions Measures:** The bill would direct the president, subject to limited exceptions, to impose blocking sanctions and introduce visa bans against persons with respect to significant Russian government-linked activities undermining cybersecurity that have a detrimental effect on private or public infrastructure or result in the compromise of democratic institutions of the U.S. or its allies. The bill would also direct the president, subject to limited exceptions, to impose five or more list-based sanctions on persons who knowingly engage on or after the enactment date in a significant transaction with a person that is part of or operates on behalf of the Russian defense or intelligence sectors. Finally, the bill would codify Executive Order 13,694 as in effect on the date before the enactment date.

- **Human Rights-Related Sanctions:** The bill would direct the president, subject to limited exceptions, to

impose blocking sanctions and introduce visa bans against non-U.S. persons in connection with serious human rights abuses in territories that the U.S. government considers to be "forcibly occupied or otherwise controlled" by Russia.

### **Trump Administration Sanctions Actions**

Amongst some of its first actions, the Trump administration published a general license authorizing certain transactions with FSB, including such transactions "necessary and ordinarily incident to":

- FSB's issuance or registration of licenses, permits, certifications or notifications for otherwise authorized imports, distribution or use of information technology products to or in Russia, including requests, receipts, use of or payments of fees not exceeding \$5,000 for such licenses and other authorizations;

- compliance with law enforcement or administrative actions or investigations involving FSB; and

- compliance with FSB-administered rules and regulations.

FSB was added to the SDN List on Dec. 29, 2016, under Executive Order 13,694 after President Obama amended that executive order to provide for blocking and designation of persons, including FSB, reportedly with respect to their alleged misappropriation of information for purposes of interfering with or undermining election processes or institutions. The Trump administration indicated that it is "not easing sanctions," but rather in "a regular course of action," it evaluated a need for a "carve-out" for certain industries or products and services and, as a result, published the general license.

### **Where to From Here**

Although Russia sanctions policy is highly fluid, the overall scope of U.S. sanctions regarding Russia seems likely to remain much as it is today for at least the next few months. The new administration will likely pursue sanctions liberalization, perhaps based on an understanding with the Russian government. But, depending on international developments, more far-reaching Russia-related sanctions are entirely possible.

In these circumstances, persons engaged in Russia-related commercial dealings should:

- monitor Russia-related sanctions developments closely; and

- assiduously administer effective due diligence procedures and other related safeguards in connection with their dealings relating to Russia.

Compliance procedures and safeguards should be tailored to address risks of violations of the types of sanctions described above: the Crimea embargo, "blocking" prohibitions, "sectoral" financial sanctions and restraints on assistance for specified types of energy-related projects. These would include:

- "know your customer" and related procedures to seek to ensure against impermissible dealings involving sanctioned individuals or entities; and

- procedures to ensure visibility into end uses of goods and services supplied to Russia.