

NAVIGATING THE RUSSIA SANCTIONS: UPDATE

July 29, 2014

I. Executive Summary:

On July 29, 2014, the U.S. Department of the Treasury Office of Foreign Assets Control (“OFAC”) sharply increased sanctions on Russia, Russian persons and Russian business enterprises pursuant to Executive Orders (E.O.) 13660, 13661 and 13662. The OFAC sanctions, originally put in place in March in response to the escalating Ukraine crisis and Russian annexation of Crimea to target leading Russian officials, businessmen, and one bank, Bank Rossiya, with ties to Russian President Vladimir Putin and his inner circle, were expanded in March and April, and now include Bank of Moscow, the Russian Agricultural Bank (a.k.a. Rosselkhozbank), VTB Bank OAO, and United Shipbuilding Corporation, a Russian state-owned company. Increasingly, whole sectors of the Russian economy are targeted by the sanctions regime, particularly finance, energy and defense technology. Additional sanctions administered by the U.S. Department of Commerce have added export control restrictions to several Russian entities, requiring a license to export controlled products to them, with a presumption of license denial.

Western investors in Russia and business owners and partners of Russian enterprises must take measures to protect their investments and assets, both immediately and in the longer term, and those measures will be surveyed here. In general, a successful approach to navigating the Russia sanctions will require careful evaluation of exposure and anticipation of and response to issues likely to arise, rather than reaction after the fact.

II. Who and What is Affected?

Today’s sanctions prohibit U.S. persons and persons subject to U.S. jurisdiction from transacting in, providing financing for, or otherwise dealing in new debt issues of greater than 90 days’ maturity or new equity issues for the three banks, their property, or their interests in property. However, as of now, no general asset freeze is imposed on the three banks. It is critical to note that the sanctions regime does not impact all sanctioned businesses and financial institutions equally. Companies named on OFAC’s Sectoral Sanctions Identification (“SSI”) list are subject to the new debt/equity rules, but are not otherwise blocked from doing business. By contrast, companies on the OFAC “Specially Designated Nationals” (“SDN”) list are subject to full asset freezes and prohibitions on doing business denominated in U.S. dollars. The more severe sanctions regime extends to any business entity directly or indirectly controlled by a person or company on the SDN list.

Today’s sanctions place the more severe SDN sanctions regime on any assets of United Shipbuilding Corporation subject to U.S. jurisdiction, and expands to nine the list of SDN Russian defense technology companies designated on July 16 (the prior sanctioned companies are: Almaz-Antey, a surface-to-air missile manufacturer; Bazalt, a munitions manufacturer; JSC Concern Sozvezdie, a communications and electronic control systems maker; JSC MIC NPO Mashinostroyenia, a rocketry company; Kalashnikov Concern, a

weapons manufacturer; KBP Instrument Design Bureau, an electronics warfare systems manufacturer; Radio-Electronic Technologies, an electronic weapons control system provider; and Uralvagonzavod, a military heavy equipment manufacturer.

All U.S. persons and persons subject to U.S. Government jurisdiction (a potentially extremely broad category) are subject to the OFAC regime and are deemed to be on notice of its terms and provisions, with immediate effect. Of particular importance to note is that all transactions denominated in U.S. dollars are controlled by the OFAC sanctions regime, even if neither party to the transaction is a U.S. person. By way of illustration, the June guilty plea by French bank BNP Paribas and agreement by it to resolve a criminal case by payment of a record \$8.9 billion fine involved transfers of billions of U.S. dollars by the bank through the U.S. financial system to the Sudan, Iran and other U.S.-sanctioned countries.

In addition to the direct effects of E.O. 13660, 13661 and 13662, collateral effects have already and will continue to come into play. Russian credit ratings are falling, which will make Russian borrowing on international markets more expensive and almost certainly affect Russian-based enterprise borrowing costs. The ruble has declined sharply since the sanctions went into effect, further increasing borrowing and foreign exchange costs. Uncertainty over the future may have a greater impact than the current sanctions.

III. Measures to Take:

Immediately:

- Review all existing investments, joint ventures, partnerships and non-wholly-owned subsidiaries in Russia or with Designated Parties participation (review Russian partner ownership and management for indirect as well as direct participation by SDNs; as a general rule, but not certainly, enterprises with less than 50% ownership and/or control by one or more SDNs should not be affected; however, beware of “effective” control exceeding formal control), review termination, force majeure, impossibility of performance and related provisions and their remedies and consider restructuring business enterprises with over 50% ownership and/or control by one or more SDNs;
- Review planned or pending transactions with the same considerations for participation by SDNs or their nominees in mind and consider restructuring transactions that would be affected by OFAC sanctions;
- Review planned or pending transactions with Russian entities that are denominated in U.S. dollars;
- Review any pending or threatened litigations, arbitrations, mediations and other contentious proceedings involving Russian investments, joint ventures, partnerships and non-wholly owned subsidiaries with the same considerations in mind;
- Review all Ruble-denominated holdings and consider currency hedges and other exchange rate protective measures;

- Review all financial assets held in Russia or under Russian control to assess whether they are potentially affected by current sanctions or might be by other sanctions likely to be imposed;
- Review visa status of Russian nationals potentially affected; and
- Review any safety, security and visa issues potentially affecting non-Russian employees in Russian territory.

Longer-term:

- Restructure investments, joint ventures, partnerships and other business interests to avoid the imposition of sanctions where determined to be warranted;
- Review tax, antitrust/competition, environmental and other legal/regulatory effects of any such restructurings and allow for their impact;
- Where warranted, shift assets out of the reach of sanction imposition; and
- Consider the original strategic intent of the sanctions-affected business enterprise involved and the extent to which it is altered by the current and prospective sanctions and overall political climate; consider restructuring accordingly.

Owen D. Kurtin

Kurtin PLLC is a New York City-based law firm focused on Corporate, Commercial and Regulatory Representation with experience in the Biotechnology & Life Sciences, Communications & Media, Energy, Financial Services, Information Technologies and Satellites & Space sectors. The firm has represented numerous enterprises investing in Russia and the CIS through direct investment, structuring joint ventures and strategic alliances, and acquisitions. General information about Kurtin PLLC is available at www.kurtinlaw.com. For further information, please contact info@kurtinlaw.com.

These materials have been prepared for general informational purposes only and should not be construed or relied upon as legal advice or a legal opinion on any specific facts and circumstances. The publication and dissemination of these materials and receipt, review or other use of them does not create or constitute an attorney-client relationship.