

CLIENT ALERT: OFAC ISSUES ADDITIONAL SANCTIONS IN RESPONSE TO RUSSIAN AGGRESSION INTO UKRAINE

February 22, 2022

On February 21, 2022, President Biden issued an Executive Order entitled “Executive Order on Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine” in response to continued Russian aggression towards Ukraine. Specifically, the February 22, 2022, Executive Order targets Russia’s “purported recognition of the so-called Donetsk People’s Republic (DNR) or Luhansk People’s Republic (LNR) regions of Ukraine.” The full geographic scope of the DNR and LNR is not defined in the Executive Order, but we anticipate this issue will be further clarified by OFAC in the near future.

Overview of Executive Order

Section 1 of the Executive Order creates a variety of primary sanctions against United States persons and activities within the United States by prohibiting the following activities in sub-section (a):

- (i) new investment in the so-called DNR or LNR regions of Ukraine or such other regions of Ukraine as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State (collectively, the “Covered Regions”), by a United States person, wherever located;
- (ii) the importation into the United States, directly or indirectly, of any goods, services, or technology from the Covered Regions;
- (iii) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to the Covered Regions; and
- (iv) any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a United States person or within the United States.

Sub-section 1(b) further provides that the prohibitions set forth in sub-section 1(a) “apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or license or permit granted prior to the date of this order.”

Section 2 of the Executive Order is broader and sets forth a range of potential secondary sanctions. Specifically, sub-section 2(a) blocks all property within the United States of “any person determined by the Secretary of the Treasury, in consultation with the Secretary of State”:

- (i) to operate or have operated since the date of this order in the Covered Regions;
- (ii) to be or have been since the date of this order a leader, official, senior executive officer, or member of the board of directors of an entity operating in the Covered Regions;
- (iii) to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order; or
- (iv) to have materially assisted, sponsored, or provided 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 order.

Sub-section 2(b) further clarifies that the prohibitions set forth in sub-section 2(a) “apply except to the extent provided by statutes, or in regulations, orders, directives, or licenses that may be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the date of this order.”

Section 3 of the Executive Order clarifies the scope of the prohibitions set forth in Section 2 by explaining that such prohibitions include “(a) the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any person whose property and interests in property are blocked pursuant to this order; and (b) the receipt of any contribution or provision of funds, goods, or services from any such person.”

Lastly, Section 4 of the Executive Order prohibits “[a]ny transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in this order” as well as “[a]ny conspiracy formed to violate any of the prohibitions set forth in this order.”

Issuance of General Licenses

OFAC also issued six General Licenses in conjunction with the issuance of the Executive Order as follows:

- General License 17 authorizes a wind-down of operations and contracts involving the DNR and LNR by March 23, 2022;
- General License 18 authorizes the export to the Covered Regions of agricultural commodities, medicine and medical devices and transactions related to the COVID-19 pandemic;
- General License 19 authorizes the continuation of telecommunications and mail services;
- General License 20 authorizes international organizations to engage in activities related to the Covered Regions.

- General License 21 authorizes the continued flow of personal remittances and the operation of bank accounts;
- General License 22 authorizes internet services to remain operational.

Application to International Shipping Community

The February 21, 2022, Executive Order is brand new, and we are continuing to assess how the prohibitions set forth in the Order may impact the international shipping community. That said, it appears at first glance that the impact of this Executive Order on international shipping may be somewhat limited. The main secondary sanctions prohibitions that may impact international shipping are set forth in sub-sections 2(a)(i) and 2(a)(iv). As set forth above, sub-section 2(a)(1) authorizes the issuance of sanctions against any person determined “to operate or have operated since the date of this order in the Covered Regions.” This sub-section could be read to prohibit calls to any ports within the Covered Regions, including but not limited to the Port of Mariupol. However, clients should also consider General License 18 concerning transactions involving agricultural commodities when assessing the sanctions risks imposed under sub-section 2(a)(i).

Likewise, sub-section 2(a)(iv) makes it sanctionable “to have materially assisted, sponsored, or provided 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 order.” Although at this point there have been no SDN List designations pursuant to this Executive Order. However, to the extent various entities are placed on the SDN List in the future we would view the provision of ocean transportation on behalf of such entities as potentially sanctionable pursuant to sub-section 2(a)(iv), as such transportation could be deemed “material assistance.”

Conclusion

We continue to monitor developments in this area and are available to assist clients in understanding and examining how these developments may affect their business opportunities. Given the evolving nature of the current situation in Ukraine we anticipate the United States will issue additional sanctions against Russia in the near future.

If you have any questions about the contents of this alert or would like further information regarding U.S. sanctions, please feel free to contact the authors, Bill Pallas at pallas@freehill.com, or Mike Dehart at dehart@freehill.com.

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