

# Morgan Lewis

## UPDATE ON US AND EU RUSSIA SANCTIONS – ENERGY SECTOR FOCUS



*as of late September 2015*

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# Basic Framework – for the Energy Sector

- **United States**

- Treasury Dep't (Office of Foreign Assets Control – OFAC) “*sectoral*” *sanction directives*, as amended to date – most recently 30 July 2015 (based on Executive Order 13662 from March 2014) – apply to “US persons”
- Commerce Dep't (Bureau of Industry and Security – BIS) export restrictions – 15 CFR §746.5, “*Russian Industry Sector Sanctions*”, as amended to date – most recently 7 August and 2 September 2015
  - apply to activities of any “US person” or within the US
  - and also to goods, technology etc. with sufficient US content wherever located (i.e., *in rem* jurisdiction)
- Ukraine Freedom Support Act – UFSA (Dec. 2014 – established “secondary” commercial sanctions – *would apply mostly to foreign, not US, companies*)
- Crimea-focused Executive Order (EO) 13685 of 19 December 2014
  - bars all new direct or indirect US investments / transactions into Crimea – including for energy sector / offshore areas
  - and see the 29 Jan. 2015 BIS rules implementing the 19 Dec. 2014 EO
  - and also the new 30 July 2015 OFAC Crimea Sanctions Advisory warning re certain means of circumventing the EO

# Basic Framework – for the Energy Sector

## *(cont'd)*

- **European Union**

- EU Council Regulation No. 833/2014 of 31 July 2014 – as amended by Reg. No. 960/2014 of 8 Sept. 2014, and by Reg. No. 1290/2014 of 4 Dec. 2014
  - applies to EU nationals and companies
  - or anything happening in whole or part within EU territory
  - or involving an EU-registered aircraft / vessel
- Commission Guidance Note (16 Dec. 2014) on application of certain provisions
- and, re Crimea
  - EU Council Regulation No. 692/2014 of 23 June 2014 – as amended by Reg. No. 825/2014 of 30 July 2014, and Reg. No. 1351/2014 of 19 Dec. 2014 (hits investments in oil & gas and other mineral resources E&P, among other sectors)
  - and see EU Information Note to EU Business Operating and/or Investing in Crimea/Sevastopol (Joint Working Doc. SWD/2014) of 17 July 2014, as amended 11 August 2014 and most recently 10 June 2015

# What's Newest?

- US OFAC sanctions – 30 July supplemental Sectoral Sanctions Identification (SSI) List of targeted companies
  - overall thrust:
    - newly named subsidiaries/affiliates of the already designated Russian companies
    - *all of these were technically covered already under the 50%+ ownership rule – so now are named / singled out just for emphasis / clarity, to help stop circumvention, etc.*
  - Under Directive 1 (no 30+ days debt financing or equity investment in named Russian state-owned financial institutions)
    - many subs / affiliates of VEB now named – including the high-profile RDIF (Russian Direct Investment Fund), VEB Capital, VEB Leasing, VEB Asia Ltd. (China), etc.
    - notable that only VEB affiliates – and no affiliates of the other five already sanctioned banks (VTB, Bank of Moscow, Sberbank, Gazprombank, Russian Agricultural Bank) are named – *but again, they are covered anyway*

# What's Newest? *(cont'd)*

- Under Directive 2 (no 90+ days debt financing of named Russian state-owned oil companies)
  - many key subs / affiliates of Rosneft now named – including
    - upstream subs Yuganskneftegaz, Vankorneft, Samotlorneftegaz, Orenburgneft, and Neft-Aktiv
    - downstream / refinery subs like Achinsk, Angarsk, Kuibyshev and Komsomolsk Refineries
    - Rosneft Holding (where the former TNK-BP assets are consolidated)
    - finance affiliates Rosneft Finance S.A. (Luxembourg) and Russian Regional Development Bank (RRDB)
    - and trading affiliates Rosneft Trade Ltd. (Cyprus) and Rosneft Trading S.A. (Switzerland)
  - here again, notable that only Rosneft affiliates – and no affiliates of the other three sanctioned oil and gas companies (Gazpromneft, Novatek and Transneft) are named
- No subsidiaries of Rostec yet named under Directive 3 (though some rumors that the Sukhoi Concern might soon be singled out... – and see below)
- Under Directive 4 (no goods/services assistance for Arctic offshore, deepwater, shale oil projects of certain Russian state-owned oil and gas companies)
  - the same key subs / affiliates of Rosneft are named (*note the implication that various non-upstream subs are being used to place barred project goods/services orders / circumvent the sanctions*)
  - and here again, notable that only Rosneft affiliates – and no affiliates of the other four sanctioned oil and gas companies (Gazprom, Gazpromneft, Lukoil and Surgutneftegaz) are named

# What's Newest? *(cont'd)*

- US OFAC sanctions – 30 July supplemental target SDN listing
  - Some prominent earlier-named SDN individuals' family members and (former) business partners and their companies, including
    - Roman Rotenberg (son of Arkady) and Finnish company reported sold by Arkady to Roman in 2014
    - two friends/partners of existing SDN Gennady Timchenko and their Finnish / other European companies reportedly sold by Mr. Timchenko to them in 2014
    - but still not the large Swiss-based oil trader Gunvor and its current chief shareholder Torbjörn Törnqvist to whom Mr. Timchenko sold out on eve of being named in 2014
  - This category of new SDN designations is said to have be made on account of their assisting certain existing SDNs (including Messrs. Rotenberg and Timchenko) to evade the sanctions
  - And Izhevsky Mekhanichesky Zavod (Izhmekh) and Izhmash (arms makers linked to Rostec and Kalashnikov) and a few Kalashnikov executives are named
  - Five Crimean commercial port companies (in Evpatoria, Feodosia, Kerch, Sevastopol and Yalta) and a Crimean ferry company are also named

# What's Newest? *(cont'd)*

- US BIS sanctions – 7 August designation of South Kirinsky gas / condensate field offshore Sakhalin, being developed by Gazprom, to the BIS Entity List
  - This is the first time a particular field (as opposed to a company – e.g., Rosneft, Gazprom, Gazpromneft, Lukoil, Surgutneftegaz) and/or a location-type of project (deepwater, Arctic offshore, shale) has been named
  - Requires license (with presumption of denial) for export, reexport, in-country transfer of all goods “subject to EAR” – i.e., virtually anything having over 25% US content – directly or indirectly for any use on this field
  - South Kirinsky was likely singled out in this unusual way because of
    - as technical matter, because of its large condensate reserves – which BIS equates with oil
    - and its being only partially at deepwater (>500 feet) depth and not being Arctic – so not otherwise automatically / fully “caught”
    - and recent publicity re its being one of Gazprom’s high-priority fields for near-term development (for gas to feed planned new LNG production train at Sakhalin 2 project)
    - and maybe per Shell’s recent announcement of intent to cooperate with Gazprom here
  - Open question: will BIS soon target any other Russian non-deepwater/Arctic offshore fields?



# What's Newest? *(cont'd)*

- US BIS sanctions – 2 September designation of several more companies and people to its BIS Entity List
  - essentially same as those newly designated by OFAC as SDNs or SSIs on 30 July (see above)
  - 14 Russian, Crimean and European companies (including those linked with Mr. Timchenko and with the Kalashnikov Concern, and the Crimean port and ferry concerns) – now have license requirement with presumption of denial, for export, re-export, in-country transfer of all items subject to EAR
  - 15 Rosneft subsidiaries (same as those newly designated by OFAC, minus Rosneft Finance S.A. and RRDB – now have license requirement re oil / gas E&P projects in Russian deepwater, Arctic offshore or shale, with presumption of denial where potential to produce oil *(which, per BIS, includes condensate)*)
- And see BIS 22 May 2015 Guidance on Due Diligence to prevent Unauthorized Transshipment / Reexport of Controlled Items to Russia
  - expresses BIS concern “about efforts by front companies and other intermediaries who are not the true final end users...”
  - special focus on third-country freight forwarders and other dubious parties listed as an export item’s final destination

# What's Newest? *(cont'd)*

- US Crimea sanctions – 30 July OFAC Advisory Release re circumvention / evasion by omitting critical information in financial and trade transactions (further to EO 13685 of 19 December 2014 etc.)
  - OFAC warns re
    - patterns / practice of repeatedly omitting or masking references to “Crimea” or its major cities in originator or beneficiary address information, from SWIFT messages
    - which hinders correspondent banks’ efforts to identify and interdict transactions involving Crimean individuals and companies
    - *note the substantial fines suffered in recent years by various European banks for similar-type violation of OFAC sanctions against countries other than Russia*
  - And also warns re
    - similar practices in context of international trade transactions
    - including in third-country distributorship arrangements covering Russia, where “the third-country distributor may be unaware that the United States does not recognize Crimea as part of Russia or may intentionally exploit any confusion over this fact in order to sell the US company’s products to Crimean individuals or entities”

# What's Newest? *(cont'd)*

- And advises the following types of mitigation measures for these risks:
  - assuring that transaction monitoring systems include appropriate search terms corresponding to major geographic locations in Crimea and not simply references to “Crimea” alone
  - requesting additional information from parties that previously have violated or attempted to violate US sanctions on Crimea
  - clearly communicating US sanctions obligations to international partners and discussing OFAC sanctions compliance expectations with correspondent banking and trade partners
- Note also OFAC General License No. 9 of 22 May 2015 – authorizing export / reexport of certain services and software incident to common internet-based communications (and see related OFAC FAQ 454)
- And on other fronts:
  - new September 2 nuclear non-proliferation sanctions on five Russian defense manufacturers (among various other-national entities), issued by State Dep’t
  - possible new sanctions being considered against Russian (and Chinese) individuals / companies in connection with alleged cyber-attacks

# What's Newest? *(cont'd)*

- EU sanctions: extensions / substance
  - Extensions of sanctions terms
    - the general sanctions (under Reg. No. 833 as amended) have been extended (on 22 June 2015) to 31 January 2016 – *note that no Greek veto*
    - the Crimea sanctions have been extended (on 19 June 2015) to 23 June 2016
    - the “blacklist” (SDN-type) sanctions (under Reg. No. 269/2014 as amended) have been extended (on 14 Sept. 2015) to 15 March 2016
      - (note that the US OFAC, BIS and other relevant sanctions mostly have no fixed/limited terms; they are effective until rescinded)*
  - Latest amended version (10 June 2015) of EU Information Note to EU Business Operating and/or Investing in Crimea/Sevastopol – gives updated summary of restrictions now in effect for EU-connected commercial activity there
  - Note published joint article of 17 June 2015 by the ICC, the LCIA and the SCC on “The potential impact of the EU sanctions against Russian on international arbitration administered by EU-based institutions”
    - seeks to reassure Russian parties
    - notes availability of exemption for payment of legal fees and related expenses

# US Sectoral Sanctions – OFAC

## Finance / Capital Markets

- The OFAC SSI sanctions (as last amended in July 2015) prohibit without license:
  - new debt financing with maturity >30 days, or new equity financing, for these designated entities or their subs (50%-or-more owned), and transactions with or dealing in such debt or equity (Directive 1)
    - *Bank of Moscow*
    - *Gazprombank*
    - *Russian Agricultural Bank*
    - *Sberbank (note limited license given)*
    - *VEB*
    - *VTB Bank*
  - and note the above-summarized 30 July 2015 amended SSI List – singling out several specific VEB subs/affiliates (including Russian Direct Investment Fund – RDIF, VEB Capital, and VEB Leasing)

*(except depositary receipts based on pre-existing shares – per FAQ 391)*

# US Sectoral Sanctions – OFAC (*cont'd*)

## Finance / Capital Markets (*cont'd*)

- new debt financing with maturity ≥90 days for these designated entities or their subs (50%-or-more owned), and transactions dealing in such debt (Directive 2)
  - *Gazpromneft*      • *Novatek*                      • *Rosneft*                      • *Transneft*
  - and note the above-summarized 30 July 2015 amended SSI List – singling out several specific Rosneft upstream, downstream, finance and trading subs
- new debt financing, maturity ≥30 days, for *Russian Technologies (Rostec)* or its subs (50%-or-more owned), and transactions / dealing in such debt (Directive 3)
- See related OFAC FAQs (from May 2015)
  - FAQ 395 as amended, re permissible / prohibited US persons' activities with regard to L/Cs involving designated companies under Directives 1, 2 and 3
  - FAQ 419 as amended, re permissible / prohibited payment terms for US persons' sale of goods / provision of services to, and progress payments for long-term projects with, designated companies under Directives 1, 2 and 3
  - FAQ 371 re correspondent banking – OK only if underlying transaction is ... thus might be seen stricter than under EU rules

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy

- Directive 4 prohibits (since Sept. 2014) without a license
  - the provision, export or re-export, directly or indirectly, of goods, services (except financial services) or technology
  - “in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil” in Russia
  - to these designated entities and or their subs (50%-or-more owned)
    - *Gazprom*
    - *Lukoil*
    - *Surgutneftegas*
    - *Gazpromneft*
    - *Rosneft*
  - and keep in mind the above-summarized 30 July 2015 amended SSI List – singling out the same several Rosneft subs
  - and also the new 7 August BIS special designation of South Kirinsky field ... which may well be applied by OFAC too in practice
- Note OFAC (and BIS) FAQ clarification that “deepwater” = over 500 feet
- And Nov. 2014 OFAC (and BIS) FAQ clarification that “shale project” doesn’t include E&P *through* shale to locate or extract oil in reservoirs
- And Dec. 2014 OFAC clarifications re “Arctic offshore” (north of Arctic Circle) and re production (vs. midstream / downstream activities)

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- The further reference to “*in Russia or in other maritime area claimed by [Russia] and extending from its territory*” ... likely means
  - any other offshore areas (whether inland or territorial sea, EEZ or Shelf) that aren't Arctic
  - per a BIS FAQ answer, and analogous explanations under other-country sanctions rules (and consistent with EU Reg. clarifications)
  - and the Caspian Sea zone claimed by Russia (EU might not cover this)
  - as well as the Black Sea shelf area extending from Crimea (despite non-recognition by US as being part of Russia) – and see above on this
- Note the FAQ 414 clarification that this sanction doesn't apply if a project has potential to produce only gas
  - but does apply if potential for both
  - often not clear; factual / evidentiary showing may be key here
  - *and note that BIS (and likely OFAC too) considers condensate = oil*



# US Sectoral Sanctions – OFAC (*cont'd*)

## **Energy** (*cont'd*)

- The Directive 4 export ban thus covers essentially all US-origin goods, US-origin services, tech. assistance and technology in respect of such projects, to the five main listed companies and their subs (and the added named Rosneft subs)
- *There have been further FAQ clarifications and license applications / actions since then (but much stricter approach than in EU to date)*
- General application – to “US persons” ... which = US citizens (and green card holders), US companies (and foreign branches – but not foreign subs), and any persons/entities located in US

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- All four directives (re finance / capital markets, and energy) also expressly prohibit
  - any transaction that evades or avoids, has that purpose, or causes a violation of, or attempts to violate any of the directive prohibitions
  - any conspiracy formed to violate any of same
  - and again, note in this respect the new 30 July 2015 SSI List supplement – singling out several Rosneft subs essentially just for emphasis
- Note the “support services” compliance focus / risk
- Possible penalties
  - Civil penalties: up to \$250,000 *per violation*, or up to twice the value of the transaction that was the basis for the violation
  - Criminal penalties: up to \$1 million *per violation*
  - And individuals can be imprisoned (for up to 20 years) for criminal violations

# US Sectoral Sanctions – BIS

## Export Restrictions

- See below re the basic-limited August 2014 initial BIS Russia sanctions / license requirements – applying to any Russian end-users/uses
- Further, the same five OFAC-designated Russian energy companies have been on BIS' Entity List since Sept. 2014
  - *Gazprom*
  - *Lukoil*
  - *Surgutneftegas*
  - *Gazpromneft*
  - *Rosneft*
- Plus now 15 specifically named Rosneft subs since 2 Sept. 2015 (see slide 9)
- Also may (but doesn't automatically) apply to some owned or controlled subs – see BIS Entity List FAQs 20-22 (depends on nature of sub / its activities, control, and other factors)
- This designation imposes (re these companies, and possibly subs)
  - a new license requirement for the export, re-export, or transfer of "*all items subject to the EAR*" (Export Admin. Regs.)
  - when the exporter knows the items will be used directly or indirectly in exploration for or production of *oil or gas* in Russian deepwater, Arctic offshore, or shale formations
  - *or* is unable to determine whether the item will be used in such projects
  - and *presumption of denial* when for use in such projects "that have the potential to produce oil" (here again, grey area where could produce both gas and oil)
  - *and importantly, as noted above, BIS considers that condensate = oil*

# US Sectoral Sanctions – BIS (*cont'd*)

## Export Restrictions (*cont'd*)

- Include, but are not limited to
  - *drilling rigs*
  - *parts for horizontal drilling*
  - *drilling and completion equipment*
  - *subsea processing equipment*
  - *Arctic-capable marine equipment*
  - *wireline & down-hole motors/equipment*
  - *drill pipe and casing*
  - *software for hydraulic fracturing*
  - *high pressure pumps*
  - *seismic acquisition equipment*
  - *remotely operated vehicle*
  - *compressors, expanders, valves, risers*
- And, per 7 August 2015 amendment, BIS added Gazprom's South Kirinsky gas-condensate field (Sea of Okhotsk, part of the Sakhalin-3 areas project, off Sakhalin Island) to the Entity List
  - regardless whether in deepwater portion or not (this field has both)
  - see slide 8 above for further detail

# US Sectoral Sanctions – BIS (*cont'd*)

## Export Restrictions (*cont'd*)

- What is “*subject to the EAR*”?
  - All items in / moving in transit through the US
  - all US origin items, wherever located
  - and
    - *foreign-made goods that incorporate controlled US-origin goods*
    - *foreign-made software that is comingled with controlled US-origin software*
    - *foreign-made goods that are “bundled” with controlled US-origin software*
    - *foreign-made technology that is comingled with controlled US-origin technology*
  - ... in quantities exceeding the de minimus levels (25% for Russia, other than encryption technology) – *but special intricate rules re what goods “count” here*
  - certain foreign-made direct products of US-origin technology or software
  - certain commodities, produced by any plant or major component thereof outside the US, that is direct product of US-origin technology or software
- *Note: includes in-country transfers between entities (e.g., within Russia)*

# US Sectoral Sanctions – BIS (*cont'd*)

## Export Restrictions (*cont'd*)

- The Commerce BIS August 2014 versus September 2014 sanctions:
  - August – only specifically designated ECCN items, to *all* Russian entities
  - September – plus *all* items subject to the EAR, for the 5 initially named energy sector companies (and possibly subs) ... and now too for the added-named Rosneft subs, and for the South Kirinsky field too
  - *if... or if...* (same oil/gas target projects litany – and denial presumption for oil projects, and condensate = oil applies in both cases)
- *Note: BIS FAQ clarifications and license applications / actions (including re offshore drilling) – quite strict to date, like OFAC*
- Possible penalties
  - Essentially same as above for OFAC sanctions violations
  - Plus denial of US export privileges

# US Direct Sanctions – SDNs

## Specially Designated Nationals List

- A few oil & gas industry executives have been on the OFAC's SDN list since 2014 – most notably
  - Mr. Sechin of Rosneft
  - Mr. Timchenko (Volga Resources, Novatek, Yamal LNG)
  - the Rotenberg brothers (Boris and Arkady)
  - and many other Russian / Crimean business and political figures
- Such individual-person listing
  - bars US persons' dealings with them or their controlled companies
  - generally measured by  $\geq 50\%$  shareholding – *and note OFAC's official gradually tightening interpretive nuances here... including re two SDNs individuals collectively owning  $\geq 50\%$  of a company*) blocked assets etc.
  - but otherwise doesn't bar dealing with companies of which they just are officers / directors, etc.
    - ... except has been interpreted to bar having an SDN-individual executive signing a contract (or just attend negotiations?) on behalf of a non-SDN company
    - shouldn't infect subs of non-SDN companies just on account of SDN officer of parent

# US Direct Sanctions – SDNs (*cont'd*)

## **Specially Designated Nationals List** (*cont'd*)

- And see slide 7 above re the 30 July 2015 wide-ranging newest additions (persons and companies)
- And note Chernomorneftegaz (nationalized by Crimean gov't) as SDN
- And a number of Russian defense industry companies – and some Russian government officials
- These are the US “direct” sanctions (as opposed to the SSI “sectoral” sanctions summarized above)
- All dealings with SDNs and their subsidiaries are generally prohibited (and must block their assets)
- But note: the restrictions re US persons vis-à-vis SDNs vary per specific provisions of each particular country sanctions regime
- Possible penalties – essentially same as above for other OFAC (and BIS) sanctions violations



# US – Ukraine Freedom Support Act

## Overview

- The UFSA was signed into law by President Obama on 18 Dec. 2014, after unanimous vote (which is quite unusual) by both houses of Congress
- Various provocative provisions, on both the commercial and political fronts – but is milder than earlier-proposed version, in both tone and content
- The commercial-sanctions parts (sections 4 and 5) lean toward some of the Iranian sanctions' reach) – *i.e.*, primarily are
  - aimed at *foreign* companies / *foreign* financial institutions (*Russian ones too?*)
  - thus, they are so-called “secondary sanctions” (available for use to stop foreign companies' doing what US companies can't do)
  - *discretionary* (“may” rather than “shall”) for President to invoke or not – and President Obama has stated that he doesn't intend to invoke for now
  - waivable (and terminable) by the President upon certification
- Aimed at “significant investment” into a “special Russian crude oil project” (deepwater, Arctic offshore, shale)
- And further possible special sanctions against Gazprom – for withholding gas supplies from Ukraine, Georgia, Moldova, or any NATO country

# US – Ukraine Freedom Support Act (*cont'd*)

## Overview (*cont'd*)

- Also, possible sanctions against foreign finance institutions, for “significant transactions” involving an above “special Russian crude oil project” or Gazprom activities, or for facilitating financial transaction on behalf of an SDN)
- A menu of possible penalties is spelled out
- Also: mandatory sanctions to be imposed on Rosoboronexport (Russia’s giant arms exporter), and on other Russian entities that participate in arms sales / transfers into Ukraine and certain other countries
- In fact the UFGA-based commercial sanctions have not been invoked to date (through early-Sept. 2015) – but could be if the Eastern Ukraine situation deteriorates further – à la past Iran sanctions experience
- The further political parts (authorization for military aid to Ukraine, support for democracy and civil society in Russia, etc.) – are a different matter ... (sections 6-11)
- The EU has not coordinated on UFGA-like measures to date (and seems unlikely to)

# EU Sectoral Sanctions

## Overview

- The EU sanctions regime (most recently amended by Reg. No. 1290 of 4 Dec. 2014) focuses on financial, energy, and dual-use / military sectors
  - is fairly well coordinated with the US regime
  - though not quite in all respects – for example
    - no sanctions on anything re gas-focused projects (given Europe's dependence on Russian gas supplies)... and maybe not interpreted to cover condensate?
    - guidance note exempting correspondent banking (payment / settlement services) from the loan/credit bans – *thus may be seen as more lenient than analogous US rule / interpretation*
- Much easier to grasp the basic EU rules than the US ones – essentially all in one document's four corners
- *But the devil (?) is in the diversity:*
  - each member state competent authority interprets, authorizes (where called for) or denies, enforces, and sets / imposes its own penalties
  - unlike the US ... where this is all uniform, federal-level stuff
  - though some coordination / consistency is called for in the Reg.
  - *and see the 16 Dec. 2014 EU Guidance Note FAQs ... some useful clarifications*

# EU Sectoral Sanctions (*cont'd*)

## Energy

- Per the initial 31 July 2014 energy-sector sanctions / authorization regime (article 3):
  - prior authorization is required for sale, supply, transfer or export, directly or indirectly, of the items *listed in Annex II*
    - to *any person or entity* in Russia or elsewhere
    - if for use in Russia
    - “Russia” now clarified to include its EEZ and Shelf
    - and note that, by the 4 Dec. 2014 amendment, some of the Annex II item descriptions have been refined / narrowed
  - authorization is to be considered / granted by competent authority “*of the member state where the exporter is established*”, per some general EU rules

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- but authorization shall not be granted for supply etc. of Annex II items
- if reasonable grounds to determine that is for Russian oil (including condensate?) E&P projects:
  - in waters deeper than 150 meters (circa 492 feet)
  - in offshore areas north of the Arctic Circle
  - in shale formations by way of hydraulic fracturing (but not including E&P activities through shale formations to locate/extract oil from non-shale reservoirs)
- except for
  - execution of obligation arising from contract concluded before 1 August 2014 – or, per new 4 Dec. liberalization, from “ancillary contracts necessary for the execution of such contracts”, or
  - items necessary in case of certain events threatening health, safety or environment

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

*Restricted activities include* (per Reg. art. 3a, as amended 4 Dec. 2014):

- Provision, directly or indirectly, of specified types of “associated services necessary for” deepwater, Arctic offshore, shale oil E&P projects (same new-formulation litany as art. 3) in Russia including in its EEZ and Shelf:
  - these specified types of services:
    - *drilling*
    - *well testing*
    - *logging*
    - *completion services*
    - *supply of specialised floating vessels*
  - the same exceptions apply for
    - execution of an obligation arising from a prior (pre-12 Sept. 2014) contract / agreement or follow-on ancillary contracts, or
    - services necessary in case of certain events threatening health, safety or environment
  - apparently no scope for authorization here – rather, a pure prohibition for/to all (if neither of the above two carve-outs applies)

# EU Sectoral Sanctions *(cont'd)*

## **Energy** *(cont'd)*

- Also, provision of the following services related to any Annex II items needs authorization from national competent authority (per article 4.3 – existing since the initial 31 July 2014 version of the Reg., and as refined by the 4 Dec. 2014 amendment):
  - technical assistance (or brokering services) re Annex II items and re provision, manufacture, maintenance and use of those items directly or indirectly
    - to anyone in Russia (including its EEZ and Shelf)
    - or to anyone in any other country if such assistance concerns items for use in Russia (including EEZ / Shelf)

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- financing or financial assistance re Annex II items – including grants, loans and export credit insurance
  - for any sale, supply, transfer or export of those items
  - or for any provision of related technical assistance
  - also (as above for technical assistance) directly or indirectly to anyone in Russia (including its EEZ / Shelf) or to anyone in another country for use in Russia (including its EEZ / Shelf)
- Per art. 4.4, authorizations may be granted on same basis as set out in art. 3 (and possible emergency-based provision of such services without authorization, with prompt reporting of same – per arts. 4.3 and 3.5)
- And separate Crimea sanctions (Reg. No. 692/2014 as amended)
  - bars sale, supply, transfer, export of goods and technology (per an Annex II) to any Crimean company or for use there
  - for oil & gas / other mineral resources and E&P, transport, telecoms, power sectors
  - and further general ban on financing, corporate acquisitions, JVs, investment in real state, construction / engineering services, investment services, tourism services



# EU Sectoral Sanctions (*cont'd*)

## Finance – for Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.2) purchase or sale of, provision of investment services for or assistance in issuance of, or other dealings with, certain debt or equity securities (and money-market instruments) issued by
  - *Rosneft, Transneft, Gazpromneft* (the three currently designated entities engaged in “sale or transportation of crude oil or petroleum products” – per Annex VI – are currently listed), their non-EU subs (>50% owned), or persons or entities acting on their behalf or at their direction
  - applies to debt securities with maturity >30 days
  - and note the relevant “transferable securities” definition – “... which are negotiable on the capital market” (issue re equity investment in LLC-type cos.)
  - and see 16 Dec. 2014 Guidance Note clarifications on derivatives, depositary receipts, and repos (items 21-26)
- And same basic prohibition re 3 designated Russian entities connected with military-sector goods/services – including *United Aircraft Corp.* (per Annex V), with exception for space / nuclear sector entities

# EU Sectoral Sanctions (*cont'd*)

## Finance – for Russian Banks

- Prohibits (per Reg. art. 5.1) purchase or sale of, provision of investment services for or assistance in the issuance of, or other dealings with, “*transferable securities*” or money-market instruments
  - issued by 5 designated Russian banks listed in Annex III
    - or their non-EU subs (>50% owned)
      - so, essentially same as in US OFAC sanctions (+ *Bank of Moscow*, a VTB sub)
    - or persons or entities acting on their behalf or at their direction
  - Applies to debt securities issued
    - from 2 August to 12 Sept. 2014, with maturity >90 days
    - after 12 Sept. 2014, with maturity ≥30 days
  - And, again, 16 Dec. 2014 EU Guidance Note clarifics. (re GDRs etc. – items 21-26)

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.3) directly or indirectly making or being “part of any arrangement to make” new loans / credits with maturity >30 days after 12 Sept. 2014 to any entity covered under the previous two slides – namely
  - the three Russian energy-sector companies (per Annex VI)
  - the five Russian banks (per Annex III)
  - the three Russian military-sector companies (per Annex V)
  - or their non-EU subs, or persons acting on their behalf or at their direction
- Certain carve-outs provided (per Reg. art. 5.3, amended as of 4 Dec. 2014)
  - *trade finance exemption*: for “loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the [EU] and any third State” (intended for use by an above-specified entity)
  - *but* not for purpose of funding any of the above-specified entities (see art. 12)
  - note practical wisdom re the interplay here

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Sector Companies (*cont'd*)

- And note article 5.4 (introduced by a 4 Dec. 2014 clarification) that carves out from the general prohibition *new drawdowns / disbursements under pre-12 September loan/credit contracts*
  - if
    - “all the terms and conditions” of such were agreed pre-12 Sept. 2014 and haven’t been modified since then; and
    - before 12 Sept. 2014 “a contractual maturity date has been fixed for the repayment in full of all funds made available...”
  - possible issues re
    - whether “all” terms and conditions really mean *all*
    - treatment of typical carry-type loans – re the “repayment in full” aspect
- *And, again, see clarifics. in the EU 16 Dec. 2014 Guidance Note (items 3-20)*
- *And note – many license applications / actions to date (experience varying by member state)*

# EU Sectoral Sanctions *(cont'd)*

## Important Overarching Provisions

- The Reg. also bans knowing and intentional participation in activities having object or effect of circumventing the above prohibitions (art. 12)
- Jurisdictional reach – the Regulation applies:
  - within EU territory (or on board aircraft / vessels under member state jurisdiction)
  - to any person, wherever located, who is an EU member state national
  - to any entity, wherever acting, that is incorporated in an EU member state
  - to any entity “in respect of any business done in whole or in part within the Union”
- *Note the distinctions between US / EU regs. Reach*
- The “*no claims ... shall be satisfied*” provision (Reg. article 11)
  - but without prejudice to “judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation”
  - interesting for lawyers

# EU Direct Sanctions (SDN-like)

- The EU's SDN-like "blacklist" Reg. No. 269/2014 of 17 March 2014
- And more names have been added in a few update regs. since then (in second half 2014 and 2015)
- All dealings with the blocked assets of listed persons (or their subs or certain other affiliates) etc. is generally prohibited

## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

## Our Locations

|          |           |               |                |                |
|----------|-----------|---------------|----------------|----------------|
| Almaty   | Dallas    | Los Angeles   | Philadelphia   | Singapore      |
| Astana   | Dubai     | Miami         | Pittsburgh     | Tokyo          |
| Beijing  | Frankfurt | Moscow        | Princeton      | Washington, DC |
| Boston   | Hartford  | New York      | San Francisco  | Wilmington     |
| Brussels | Houston   | Orange County | Santa Monica   |                |
| Chicago  | London    | Paris         | Silicon Valley |                |



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