

Client Alert

Global Transactions Practice Group

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Extension of Russia / Ukraine Related Sanctions *Sanctioned Entity - Glavgosekspertiza - Russian federal institution for official state examinations of project documentation*

Overview

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On 1 September 2016, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) supplemented sanctions against Russia imposed in connection with the conflict in Eastern Ukraine with names of a number of individuals and companies.

The recent OFAC action primarily targets the construction of the 19-km-long bridge across the Kerch Strait that would link Crimea to the Russian mainland. Relevant individuals and entities have been made subject to blocking sanctions, which prohibit US persons from transacting with, or dealing with property or interests in property (broadly construed)—essentially anything of value—belonging to blocked persons. It also prevents such persons from sourcing any goods, services, or technology of U.S. origin.

A key concern with this extension is that FAU Glavgosekspertiza Rossii (Glavgosekspertiza), a Russian federal institution authorized to conduct official state examinations of project documentation, has been included in the list of blocked entities which may create further obstacles for developing certain large-scale projects in Russia.

Entities Involved in the Construction of the Kerch Bridge

The extension targets 18 construction, transportation, and defense entities involved in the construction of the Kerch Bridge, for example, *SGM-Most*, the chief contractor for the construction of the Kerch Bridge, *Giprostroimost*, the designer of the Kerch Bridge, *Glavgosekspertiza*, discussed below, and other companies.

Those entities are included in the Specially Designated Nationals (SDNs) List, which is subject to blocking sanctions, in particular, those introduced by Executive Order 13685 of 19 December 2014 "Blocking

Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine".

Unless otherwise authorized or exempt, US persons are generally prohibited from dealing with any SDNs, and the property of SDNs is blocked. For that purpose, "US persons" include United States citizens, wherever located; permanent resident aliens, wherever located; all entities organized in the United States (including their foreign branches); and all individuals, entities and organizations actually located in the United States.

Glavgosekspertiza

The extension of blocking sanctions includes FAU Glavgosekspertiza Rossii (Glavgosekspertiza), a Russian federal institution authorized to conduct official state examinations of project documentation. In 2015, Glavgosekspertiza opened a branch in Sevastopol and conducted state examination of the project documentation for the Kerch Bridge.

Russian law requires official examination of project documentation for significant construction works in the territory of the Russian Federation. As a general rule, the official examination can be carried out by both state institutions (i.e., Glavgosekspertiza and its branches) and specialized private entities (provided the latter have obtained all required permits). It is within the discretion of the builder to decide whether to apply for state or private examination, unless otherwise expressly required by law.

However, the examination of project documentation by Glavgosekspertiza is mandatory, among others, for the following construction projects:

- projects financed by the state budget;
- federal roads;
- national defense and security objects;
- construction objects situated on the continental shelf of Russia;
- cultural heritage sites;
- high voltage electric power grid;
- large sea port infrastructure;
- aviation infrastructure;
- public railway infrastructure;
- space infrastructure; and
- certain hazardous industrial objects (classified under Russian law as objects of I and II class).

While the state expert review of project documentation is not likely to be required for private small and mid-size projects, the extension of US blocking sanctions to Glavgosekspertiza is likely to create obstacles for large-scale infrastructure, energy and manufacturing projects with US investors or contactors, as well as any public-private partnership arrangements between the Russian state and US persons.

Authorized Transactions

Notwithstanding any sanctions, OFAC may authorize certain transactions that would otherwise be prohibited under the sanctions program by issuing (i) a general license for certain types or categories of activities and transactions, and (ii) a specific license for a particular act or transaction on a case-by-case basis.

As an example of a general license, together with the extension of sanctions discussed above, OFAC issued General License No. 10 "Authorizing Certain Transactions Otherwise Prohibited by Executive Order 13685 Necessary to Divest or Transfer Holdings in Certain Blocked Entities". In this general license, OFAC authorized certain transactions for a limited period of time necessary to divest holdings in PJSC Mostotrest, a major Russian construction company engaged in the construction of bridges, roads, and other transport infrastructure facilities. In March 2016, Mostotrest was awarded a multi-billion ruble construction contract for the development of the Kerch Bridge. It became subject to the blocking sanctions due to this contract.

Applications for specific licenses may be submitted to OFAC's Licensing Division in accordance with the procedure established by OFAC. OFAC will review these applications on a case-by-case basis and will deny licenses contrary to U.S. sanctions policy.

Additional Clarifications

In the latest extension, OFAC has also expanded its sectoral sanctions lists by including in them a number of subsidiaries of Bank of Moscow and Gazprombank. These subsidiaries were in fact already under sectoral sanctions because they were 50% or more owned by parent entities which are subject to sectoral sanctions, and their specific inclusion into sanctions lists does not change their sanctioned status. Sectoral sanctions related to the financial sector prohibit dealing in longer-maturity debt and equity of the sectorally-sanctioned entities.

In addition, OFAC has identified subsidiaries of Gazprom which fall under the sectoral sanctions applicable to the oil sector, which prohibit the export of goods, services, or technology in support of exploration or production for Russian deepwater, arctic offshore, or shale oil projects. These subsidiaries were also already under sectoral sanctions because they were 50% or more owned by Gazprom which is subject to such sectoral sanctions, and their specific inclusion into sanctions lists does not change their sanctioned status.

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