

CLIENT ALERT:
U.S. IMPOSES SANCTIONS RELATED TO UKRAINE

March 21, 2014

INTRODUCTION

In response to recent developments in the Ukraine, notably the annexation of Crimea by Russia, the United States has imposed sanctions against “persons” (which includes individuals as well as entities – both U.S. and foreign) who engage in certain activities as set forth in a series of Executive Orders recently issued by President Obama. To date, President Obama has issued three Executive Orders each one expanding the range of sanctions targets. While none of these Executive Orders (“E.O.”) is aimed directly at the maritime industry, each has the potential to affect shipping interests. We summarize each E.O. and its potential impact on shipping below.

EXECUTIVE ORDER 13660, DATED MARCH 6, 2014

This Executive Order blocks all property and interests in property located in the U.S., or which may come within the U.S., or which is under the possession and control of a U.S. person (including a foreign branch), of the following persons:

- (i) Any person who, directly or indirectly, engages in activities to “...undermine democratic processes and institutions in Ukraine; threaten its peace, security and stability, sovereignty, and territorial integrity; and contribute to the misappropriation of its assets....”
- (ii) Any person who asserts governmental authority over a region of the Ukraine, without authorization of the Government of the Ukraine
- (iii) Any person who leads an entity whose members have engaged in the actions described in (i) and (ii)
- (iv) Any person who materially assists, sponsors, or provides financial support, material or technological support for, or goods or services to or in support of any activity described in (i) and (ii) or to any person whose property has been blocked pursuant to this E.O.

Impact on Shipping: The danger for the shipping community is that the prohibited activities are not defined clearly, and providing ocean carriage could be construed as providing “goods or services” in support of the prohibited activities, depending on the nature of the goods carried and for whom they are carried. In that event, the shipowner’s assets in the U.S. (including U.S. dollar transactions unrelated to the sanctionable activity) could be frozen. It is our view that the types of activities encompassed by this E.O. will, at least in the initial instance, be narrowly construed but until further guidance from the U.S. authorities is provided, shipowners are advised to exercise caution depending on their contracting partners and cargoes.

Shipowners should also consider monitoring the Specially Designated Nationals (“SDN”) list maintained by the Office of Foreign Assets Control to ensure they are not “materially” providing “goods or services” to anyone placed on the SDN list pursuant to this E.O. The list of persons thus far designated by the U.S. in respect of prohibited activities in the Ukraine can be viewed at: <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, under “Changes to the SDN List.” U.S. persons are prohibited from dealing with persons/entities on the SDN list and foreign entities should monitor their contract partners carefully in respect of

the recent additions to the SDN list, to insure that they are not providing goods or services to a person or entity engaged in activities prohibited by the E.O.

EXECUTIVE ORDER 13661 DATED MARCH 17, 2014

After noting the policies of the Government of the Russia Federation, and the deployment of Russian Federation military forces to Crimea, this E.O. targets officials of the Government of the Russian Federation, those operating in the arms or military sector of the Russia Federation, those owned or controlled by senior government officials and those who have materially assisted or provided financial, material, or technological support for, or goods or service in support of, a senior official of the Russian Federation or any person whose property is blocked under the E.O. The property in the U.S. of any person falling within these categories will be blocked.

Impact on Shipping: Once again, the risk for shipowners is that they could be found to be supplying goods or services, in the nature of ocean transportation, to a person who falls under this E.O. and, depending on the cargo transported, a shipowner could be subject to having its own property in the U.S. blocked. A Fact Sheet, listing the individuals who have thus far been designated under this E.O. can be found at: <http://www.whitehouse.gov/the-press-office/2014/03/17/fact-sheet-ukraine-related-sanctions>. Clients are again advised to carefully scrutinize their contract partners to insure that they are not providing material goods or services to a designated person.

Executive Order dated March 20, 2014 – Blocking Property of Additional Persons Contributing to the Situation in the Ukraine

This E.O. is designed to have a more far-reaching effect than the two prior E.O.s relating to the situation in the Ukraine. Potentially targeting a wide range of Russian industries, this E.O. provides for the blocking of property in the U.S. of any persons "determined" by the Secretary of the Treasury, in consultation with the Secretary of State:

- (i) "to operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel";
- (ii) "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"; or
- (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".

Any person falling into these categories may have their property in the U.S. blocked.

Impact on Shipping: This E.O. is obviously drafted very broadly – similar to what we have seen with some of the Executive Orders involving trade sanctions on Iran. While it remains to be seen just how broadly the E.O. will be implemented by the Obama Administration, the broad scope of the E.O. certainly raises the possibility that virtually any company in any sector of the Russian economy could be designated and have its property in the U.S. blocked. Thus, under such a broad construction, there is the potential that any shipowner who provides ocean transportation to a company designated under the E.O. could itself be found to have materially supplied goods and services, thereby exposing the shipowner's assets in the U.S. to a freeze. Therefore, companies dealing with Russian entities should maintain a close watch on U.S. sanctions developments.

Several Russian companies have already been designated under the March 20 E.O. A Russian bank, Bank Rossiya, has already been named under this E.O., meaning that no U.S. person can transact business with that bank and that any foreign entity which does so must be concerned over whether that transaction will be deemed to be in support of the bank. Gennady Timchenko, who reportedly controls the Gunvor Group, a major crude oil trader, has

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been designated, as have Arkady and Boris Rotenberg, reportedly co-owners of SGM Group, which provides construction services. Note that no sectors of the Russian economy have been designated. However, the broad and somewhat vague language of the E.O. raises the possibility that the U.S. may identify any sector of the Russian economy as contributing to the instability in the Ukraine, and may then designate individual companies within that sector on the SDN list. Again, U.S. persons are prohibited from dealing with anyone on the SDN list, including these individuals, and foreign persons should carefully examine any transactions with these individuals to insure that this E.O. is not violated.

The potential broad scope of this E.O. requires both U.S. and foreign companies transacting business in Russia to carefully exercise due diligence to track newly designated Russian economic sectors or Russian companies. Dealing with such designated sectors, companies or individuals could place a company's assets in the U.S. at risk of being blocked.

SUMMARY

It is anticipated that tensions surrounding the Ukraine may generate additional U.S. sanctions, along with parallel sanctions being imposed by the E.U. We will continue to provide periodic updates on the U.S. sanctions landscape and stand ready to assist should you have concerns regarding any transaction you may be contemplating.

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