

# Ukraine-Related Sanctions Analysis Practical Concerns for Crimean Sanctions

American Chamber of Commerce in Russia

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# Unwinding Crimean Operations

- **Executive Order 13685** issued by the U.S. President on December 19, 2014 established serious restrictions on doing business in Crimea that must be observed by all U.S. persons
- The transition period provided by the U.S. authorities for winding down business expired on February 1, 2015 (OFAC General License No. 5)
- What is not prohibited by the sanctions (OFAC General Licenses):
  - License No. 4 - agricultural products and specifically listed medical supplies (i.e., medicinal preparations and medical devices and replacement parts thereof on a “part-for-part” basis)
  - Licenses No. 6 and 7 – non-commercial transfers of funds to or from Crimea, including operation of an account in U.S. banks (individuals only) (e.g., a local U.S. consumer retail bank in Crimea)
  - License No. 8 – non-commercial transactions on receipt and transmission of (i) telecommunications and (ii) mail and express couriers
- Note: the above listed operations cannot be conducted with respect to or in cooperation with Specially Designated Nationals (SDN’s)

# Handling Crimea Operations Going Forward

- E.O. 13685 prohibits any acts aimed at evading or avoiding the sanctions
- Doing business in Crimea by subsidiaries of U.S. entities is not prohibited per se, but is subject to **substantial limitations** on:
  - supplies to Crimea of products of U.S. origin
  - provision of services by U.S. companies
  - operations of subsidiaries with restricted “elements” (for example, managers are U.S. nationals, or decisions should be approved by board of directors represented by U.S. nationals, etc.)
- Examples of non-restricted business activities (OFAC General Licenses No. 4, 6, 7 and 8):
  - unrestricted agricultural and medical supplies or services
  - replacement of U.S.-made goods with goods of other origin
    - **Notes:** “*De Minimis*” rule for U.S. content must be observed (25% and 10% for goods subject to EAR99)
    - the origin of goods from other countries should be reconsidered
- Note: Review every Crimea transaction on a case-by-case basis



## Future Perspectives

- Russia will unlikely change the status of Crimea as its territory
- The U.S. would unlikely withdraw Crimea sanctions in the near future (maybe long-term frozen situation)
- Additional sanctions covering the Crimea cannot be excluded
  - OFAC closely supervises business activity in Crimea and may impose additional/further sanctions targeting most active participants or separate economic sectors

# Practical Russian Law Risks

- Prohibitions and restrictions imposed by the U.S. sanctions may conflict with Russian laws
- A failure by a U.S. company or its local subsidiary to perform its contract obligations due to U.S. sanctions may result in:
  - **Administrative liability** for companies and responsible managers
    - for example, in cases of dominant position on the market, for violation of anti-competition laws resulting in a fine for legal entities of up to 15% of gross turnover), or work permit/visa revocation for expat managers
  - **Criminal liability** for responsible managers (for example, if non-performance of a contract damages life and health of individuals)
  - Commercial/civil law suits against non-performance of contractual obligations claiming compensation of **material damages and lost profit** or requesting **specific performance**
  - In cases of public tenders a tender winner may be **blacklisted for 2 years** for a failure to perform its obligations (i.e., a complete **ban to participate in public procurement** in Russia)



## Russia's Reaction – Suggestions

- Our recommendations:
  - Consider subjecting contracts with Russian counterparts to foreign law and international arbitration outside Russia
  - Consider representations and warranties and special sanction compliance clauses to become standard conditions for Russian contracts
  - Force Majeure defense may or may not work
- Russian counter-parties, particularly, state – controlled enterprises, likely would oppose, business may get under scrutiny
  - Analyze, to what extent your Russian business is supposed to observe the sanctions

# What's Next on the EU / US and Russia's Sides?

- More designations targeting entities and individuals?
- Designations of entire sectors?
- Designation of the Russian Government?
- More bans on exports/imports of goods?
- Potential for Russia's more substantive response in case of adoption of additional sanctions

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