

ClientAlert

International Trade

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President Signs Russia Sanctions Law But Does Not Intend To Impose New Sanctions At This Time

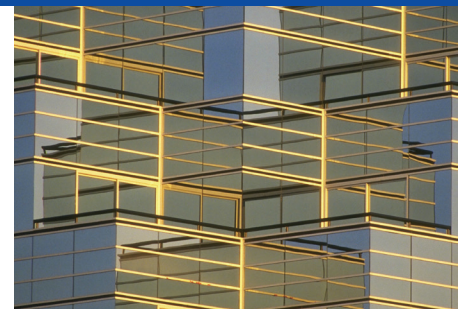
On December 18, 2014, President Obama signed into law the *Ukraine Freedom Support Act of 2014* (the "Act"), authorizing sanctions related to Russia's defense, energy, and financial sectors. The Act is the latest in US sanctions emanating from the Ukraine crisis, following the *Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014* and three Executive Orders imposing sanctions on Russian and Ukrainian individuals and entities. The President has indicated in an official statement that he does not intend to impose the sanctions in the new bill at this time, but will instead continue the Administration's current sanctions policy which has been coordinated closely with US allies. The President's statement illustrates the divergent views of the White House and Congress on Russia sanctions policy.

The Act authorizes the President to impose sanctions on Rosboronexport; Gazprom; Russian producers, transferors or brokers of defense articles; investors in certain Russian crude oil projects; and foreign financial institutions that engage in certain transactions, including those involving Russian persons identified on the List of Specially Designated Nationals and Blocked Persons (SDN List). The Act further authorizes the President to impose additional licensing requirements for, or other restrictions on, the export or reexport of items for use in Russia's energy sector. The Act also authorizes the President to waive any of the sanctions in the "national security interest" of the United States.

The sanctions measures authorized by the Act and set aside for the time being are, in effect, "secondary" sanctions that have a broad extraterritorial impact. This means they authorize the United States to impose sanctions measures that target non-US entities and individuals for conduct that has no nexus or contact with the United States.

Presidential Statement

Upon signing the legislation, President Obama issued a statement in which he made clear that the new legislation "does not signal a change in the Administration's sanctions policy," and that "[a]t this time, the Administration does not intend to impose sanctions under this law." The President warned that "the Act gives the Administration additional authorities that could be utilized, if circumstances warranted." In declining to impose sanctions at this time, the President underscored that the Administration's existing sanctions policy is "carefully calibrated in accordance with developments on the ground and coordinated with [US] allies and partners," and that he will continue "to work closely with allies and partners in Europe and internationally." The President additionally indicated that the Administration remains "prepared to roll back sanctions should Russia take the necessary steps."



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Defense and Energy Sector Sanctions

The Act directs the President to impose three out of a menu of nine possible sanctions measures on **Rosboronexport**, as described in more detail below.

The Act also authorizes the President to impose sanctions on the following persons:

- **Russian entities that knowingly manufacture or sell defense articles** transferred into Syria or the territory of a Specified Country without the consent of the “internationally recognized government of that country” on or after 45 days after December 18, 2014;
 - **Russian entities** are defined in the Act to include “any entity owned or controlled by the Government of the Russian Federation or owned or controlled by nationals of the Russian Federation.”
 - **Specified Countries** are defined to include “Ukraine, Georgia and Moldova and may include further countries as designated by the President, such as Poland, Lithuania, Latvia, and the Central Asia republics.”
 - **Knowledge** is defined as “actual knowledge or reason to know.”
- **Russian entities that broker, transfer or otherwise assist in the transfer of defense articles** into Syria or the territory of a Specified Country without the consent of the “internationally recognized government of that country” on or after 45 days after December 18, 2014;
- **Persons who knowingly assist, sponsor, or provide financial, material, or technological support for, or goods or services in support of**, a Russian entity described above or with respect to the activities described above, on or after December 18, 2014;
- **Gazprom**, if Gazprom is determined to be withholding significant natural gas supplies from NATO member countries or further withholds natural gas supplies from countries such as Ukraine, Georgia or Moldova; and
- **Investors in Special Russian Crude Oil Projects** who knowingly make a significant investment in a Special Russian Crude Oil Project on or after 45 days after December 18, 2014.
 - **Special Russian Crude Oil Projects** are defined as “any project intended to extract crude oil from Russian Arctic offshore locations, shale formations located in Russia, or the exclusive economic zone of Russia in waters more than 500 feet deep.”

The Act sets forth a menu of nine possible sanctions measures that the President can invoke at his discretion, including:

- Denial of US Export-Import Bank financing;
- Denial of US Government procurement contracting;
- Denial of export licensing of dual-use items;
- Denial of export licensing for defense articles or defense services;
- Blocking of property and interests in property of the sanctioned person that comes under US jurisdiction (excluding a prohibition on the importation of goods);
- Prohibition on transfers of credit or payments between, by, through, or to financial institutions to the extent that such transfers or payments are subject to US jurisdiction and involve any interest of the sanctioned person;
- Prohibition on US persons from transacting in, providing financing for, or otherwise dealing in equity or certain debt of a foreign person;
- Denial of a visa to a foreign individual; and
- Imposition of the sanctions applicable to individuals on principal executive officers of a foreign person.

The Act directs the President to impose three of the sanctions measures outlined above against Rosboronexport (subject to the President’s waiver authority). Russian producers, transferors, or brokers of defense articles, and investors in Special Russian Crude Oil Projects also could be subject to at least three of the above sanctions measures. If Gazprom was to become targeted, the Act provides that at least two of the above sanctions measures must be imposed, one of which must be restrictions on investment in equity or debt.

Finally, the President is authorized to impose additional licensing requirements on the export or reexport of items for use in the energy sector of the Russian Federation, including equipment used for tertiary oil recovery.

Financial Sector Sanctions

The Act authorizes the President to impose sanctions on a foreign financial institution that knowingly engages in a significant transaction involving:

- **The manufacture or sale of defense articles** transferred into Syria or the territory of a Specified Country without the consent of the “internationally recognized government of that country;”
- **The brokerage, transfer or other assistance in the transfer of defense articles** into Syria or the territory of a Specified Country without the consent of the “internationally recognized government of that country;”
- **The assistance, sponsorship, or provision of financial, material, or technological support for, or goods or services in support of**, the activities described above or with respect to a Russian entity involved in such activities;
- **Significant investments in a Special Russian Crude Oil Project**; or
- **Gazprom**, if Gazprom is determined to be withholding significant natural gas supplies from NATO member countries or further withholds natural gas supplies from countries such as Ukraine, Georgia or Moldova.

Further, beginning on or after 180 days after December 18, 2014, sanctions may be imposed on a foreign financial institution that knowingly facilitates a significant financial transaction on behalf of any **Russian person identified on the SDN List. Russian persons** are defined to include citizens or nationals of Russia or entities organized under the laws of Russia.

In each of these cases, the President may prohibit the opening of, or prohibit or impose strict conditions on the maintenance of, a correspondent account or a payable-through account in the United States by the targeted foreign financial institution.

Exemptions and Waivers

For purposes of the defense and energy sanctions described above, the Act includes limited exceptions for the procurement of certain defense articles or defense services under existing contracts. Certain other items are exempt from the defense and energy sanctions in the Act, such as certain information, technology, and spare or component parts essential to US products or production; and certain food, medicine, medical devices or agricultural commodities.

The Act also authorizes the President to waive any of the sanctions set forth in the Act in the “national security interest” of the United States.

Click [here](#) for a copy of the Act.

Click [here](#) for a copy of the Statement.

More information about the Russia sanctions, including the corresponding Executive Orders and sanctions measures, can be found [here](#). Companies doing business with or exporting to Russia and Ukraine should closely monitor any measures imposed by the United States to ensure compliance. Penalties for noncompliance can be severe.

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