

A roadmap to the US OFAC sectoral sanctions and the 50% ownership rule

By Windel Anne Lacson

Sectoral Sanctions

In March 2014, former US President Barack Obama signed 3 Executive Orders¹ arising from the instability in Ukraine as regards to Russia's annexation of Crimea.

The US Treasury's Office of Foreign Assets Control (OFAC) mentions the following as the targets of the Executive Orders:²

- persons responsible for or complicit in certain activities with respect to Ukraine;
 - officials of the Government of the Russian Federation;
 - persons operating in the arms or related materiel sector of the Russian Federation;
 - individuals and entities operating in the Crimea region of Ukraine.
- Sequence of Issuances of Ukraine/Russia Related Executive Orders:
- 6 Mar 2014: Executive Order 13660 Blocking Property of Certain Persons Contributing to the Situation in Ukraine
 - 16 Mar 2014: Executive Order 13661 Blocking Property of Additional Persons Contributing to the Situation in Ukraine
 - 20 Mar 2014: Executive Order 13662 Blocking Property of Additional Persons Contributing to the Situation in Ukraine

Executive Order 13662 became the basis for Directives set out by OFAC:

OFAC Directives	Targets	Prohibited Activities
Directive 1 (As Amended) Under Executive Order 13662 ³	Financial services sector of the Russian Federation economy	All transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity or new equity of persons determined to be subject to this Directive, their property, or their interests in property
Directive 2 (As Amended) Under Executive Order 13662 ⁴	Energy sector of the Russian Federation economy	All transactions in, provision of financing for, and other dealings in new debt of longer than 90 days maturity of persons determined to be subject to this Directive, their property, or their interests in property
Directive 3 Under Executive Order 13662 ⁵	Involvement in defense and related materiel sector	All transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity of persons determined to be subject to this Directive, their property, or their interests in property
Directive 4 Under Executive Order 13662 ⁶	Energy sector of the Russian Federation economy	Provision, exportation, or reexportation, directly or indirectly, of goods, services (except for 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 the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to this Directive, its property, or its interests in property

On March 20, 2014, the OFAC published a list of Ukraine-related Designations that contained the names of 20 individuals and a bank.⁷ This was followed by further listings until end of 2016.⁸ A comprehensive Sectoral Sanctions Identifications List (SSI List) was eventually released by OFAC where users can match names of designated individual or entity as per any given Directive above.⁹

A critical point that has to be noted is the 50% ownership rule that OFAC applies to the SSI List. Below is a discussion of the 50% ownership and how it relates to designated entities and individuals.

50% Ownership Rule

Released by the US Office of Assets Control (OFAC) on August 13, 2014, the revised guidance on entities owned by individuals or entities designated under Executive orders and regulations administered by OFAC¹⁰ updates the 2008 version specifically on the issue of combined ownership by more than one blocked person.

Key points:

1. At least 50% direct or indirect ownership by one or more blocked persons towards a property and interests in property of entities would be enough for the entity to be considered automatically blocked regardless whether the entity is designated or not.
2. Combined ownership of blocked persons equal to 50% or more considers an entity to be automatically blocked. For instance, Blocked Person A owns 30% of Entity X, and Blocked Person B owns 20% of Entity X. Entity X is considered automatically blocked.
3. The new directive focuses on ownership instead of control.
4. Indirect ownership as interpreted by OFAC observes the 50% rule aggregate ownership. OFAC cites the following scenarios:

Blocked Person	Entity A	Entity B	Entity C	What is Blocked?
Blocked Person X	50% owned by Blocked Person X	50% owned by Entity A	nil	Entity A and Entity B
Blocked Person X	50% owned by Blocked Person X	50% owned by Blocked Person X	25% owned by Entity A and 25% owned by Entity B	Entity A, Entity B, and Entity C
Blocked Person X	50% owned by Blocked Person X	25% owned by Blocked Person X, 40% owned by Entity A	nil	Entity A and Entity B
Blocked Person X	50% owned by Blocked Person X	10% owned by Blocked Person X	25% owned by Entity A and 25% owned by Entity B	Entity A
Blocked Person X	25% owned by Blocked Person X	25% owned by Blocked Person X	50% owned by Entity A and 50% owned by Entity B	No entities are blocked

Source: OFAC FAQs: General Questions¹¹

Know the sanctions, know your counterparties

As exemplified in the Ukraine/Russia-related sanctions, sanctions programme are dynamic. Executive Orders are progressively signed, so as the Directives that are developed to implement them. These progressions signal the need to keep abreast of developments among actors in the compliance industry. Furthermore, keen examination of the detailed prescriptions of the Directives tied the Ukraine/Russia related Executive Orders is a must as the clauses are very specific.

As the OFAC'S 50% ownership criteria became more complex and stringent, it remains crucial for businesses and individuals to remain vigilant in knowing their counterparties. As ownership itself

can already be a complicated study, OFAC's inclusion of combined ownership in its updated guidance requires closer inspection of designated individuals' economic engagements.

Author's bio:

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- 1 Executive Order 13660 of March 6, 2014 Blocking Property of Certain Persons Contributing to the Situation in Ukraine, Executive Order 13661 of March 16, 2014, Blocking Property of Additional Persons Contributing to the Situation in Ukraine, Executive Order 13662 of March 20, 2014 Blocking Property of Additional Persons Contributing to the Situation in Ukraine, treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf.
- 2 Ukraine/Russia-Related Sanctions Program, treasury.gov/resource-center/sanctions/Programs/Documents/ukraine.pdf.
- 3 Directive 1 (As Amended) Under Executive Order 13662, treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive1.pdf.
- 4 Directive 2 (As Amended) Under Executive Order 13662, treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive2.pdf.
- 5 Directive 3 Under Executive Order 13662, treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive3.pdf.

- 6 Directive 4 Under Executive Order 13662, treasury.gov/resource-center/sanctions/Programs/Documents/eo13662_directive4.pdf
- 7 Ukraine-related Designations, treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20140320_33.aspx.
- 8 Russia/Ukraine-related Designations, treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20161114_33.aspx. Russia/Ukraine-related Designations and Identifications; Publication of Russia/Ukraine-related General License, treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20161220.aspx.
- 9 Sectoral Sanctions List, treasury.gov/ofac/downloads/ssi/ssilist.pdf.
- 10 Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked, treasury.gov/resource-center/sanctions/Documents/licensing_guidance.pdf.
- 11 OFAC FAQs: General Questions, treasury.gov/resource-center/faqs/Sanctions/Pages/faq_general.aspx#398.

