

# Alert

## Sanctions Update: Crimea

February 5, 2015

On Dec. 19, 2014, President Barack Obama signed Executive Order 13685 (“E.O. 13685”), imposing broad sanctions on business dealings between U.S. persons and the Crimea region of Ukraine.<sup>1</sup> Since that date, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) has issued a number of General Licenses easing the prohibitions contained in E.O. 13685, enabling U.S. persons to engage in certain, limited activities involving individuals located in Crimea.

U.S. firms, including financial institutions and investment fund managers, engaged in any business activity in Crimea or with persons in Crimea are urged to pay close attention to these new prohibitions and to identify any existing relationships that may need to be discontinued or restricted. A broader review of activity in Ukraine may be required in those cases where the firm is unsure if the activity touches Crimea or relates solely to regions of Ukraine outside of Crimea.

### Executive Order 13685

Issued in response to the continued Russian occupation of the Crimea region of Ukraine and with reference to earlier Ukraine-related Executive Orders,<sup>2</sup> E.O. 13685 prohibits certain activities involving the Crimea region of Ukraine and authorizes the blocking of interests in property held by certain persons in Crimea. For purposes of E.O. 13685, the “Crimea region of Ukraine” includes “the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.”<sup>3</sup>

Section 1 of E.O. 13685 broadly prohibits U.S. persons from engaging in certain activities involving the Crimea region of Ukraine. U.S. persons, as defined in Section 8(c) of E.O. 13685, include “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States[.]”

The following activities are prohibited under Section 1:

- New investment in the Crimea region of Ukraine by a U.S. person, wherever located;

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<sup>1</sup> Executive Order 13685, [Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine](#) (Dec. 19, 2014) (hereinafter “E.O. 13685”).

<sup>2</sup> Earlier Ukraine-related Executive Orders include Executive Order 13660 (March 6, 2014); Executive Order 13661 (March 16, 2014); and Executive Order 13662 (March 20, 2014).

<sup>3</sup> E.O. 13685, at § 8(d).

- The importation into the United States, directly or indirectly, of any goods, services or technology from the Crimea region of Ukraine;
- The exportation, reexportation, sale or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of any goods, services or technology to the Crimea region of Ukraine; and
- Any approval, financing, facilitation or guarantee by a U.S. person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by this section if performed by a U.S. person or within the United States.

Section 2 of E.O. 13685 authorizes the Secretary of the Treasury to designate, in consultation with the Secretary of State, certain persons<sup>4</sup> determined to satisfy any of four criteria outlined in the Order.<sup>5</sup> All property and interests in property of such designated persons that are in the United States, come into the United States or come into the possession or control of any U.S. person are to be blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in. The entry of such designated persons, as immigrants or nonimmigrants, is also suspended by E.O. 13685.<sup>6</sup>

Similar to the Ukraine-related Executive Orders issued earlier in 2014, E.O. 13685 also prohibits U.S. persons from engaging in transactions that evade or avoid, or have the purpose of evading or avoiding, or attempting to violate, the provisions in the Order.<sup>7</sup>

#### **General License No. 4<sup>8</sup>**

Concurrent with the release of E.O. 13685, OFAC issued Ukraine-related General License No. 4, which authorizes the exportation or reexportation of certain agricultural commodities, medicine, medical supplies and replacement parts.<sup>9</sup> General License No. 4 also authorizes U.S. persons to engage in transactions related to such export or reexport of goods.<sup>10</sup> It does not, however, authorize export or reexport of such goods to military or law enforcement purchasers or importers; nor does it authorize any transactions or dealings with persons whose property or interests in property are blocked pursuant to any OFAC sanctions program.<sup>11</sup>

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<sup>4</sup> “Person” is defined to include an individual or an entity. *See id.* § 8(a).

<sup>5</sup> The Secretary of the Treasury may designate persons determined: (1) to operate in the Crimea region of Ukraine; (2) to be a leader of an entity operating in the Crimea region of Ukraine; (3) 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; or (4) 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. *See id.* § 2.

<sup>6</sup> *See id.* § 3.

<sup>7</sup> *See id.* § 6.

<sup>8</sup> General License No. 4, [Authorizing the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Supplies, and Replacement Parts](#) (Dec. 19, 2014).

<sup>9</sup> *See id.* §§(a)(1)-(2).

<sup>10</sup> *See id.*

<sup>11</sup> *See id.* §§ (a)(3), (c)(5).

### **General License No. 5<sup>12</sup>**

On Dec. 30, 2014, OFAC issued Ukraine-related General License No. 5, which authorized certain activities otherwise prohibited by E.O. 13685 in order to enable the wind-down of operations involving the Crimea region of Ukraine. The authorizations in General License No. 5 expired on Feb. 1, 2015.<sup>13</sup>

General License No. 5 authorized all transactions and activities prohibited by Section 1 of E.O. 13685 that are ordinarily incident and necessary to:

- The winding down or divestiture or transfer to a foreign person of a U.S. person's share of ownership, including an equity interest, in pre-Dec. 20, 2014 investments located in the Crimea region of Ukraine;
- The winding down of operations, contracts or other agreements that were in effect prior to Dec. 20, 2014 involving the exportation, reexportation, sale or supply of goods, services or technology to the Crimea region of Ukraine; or
- The winding down of operations, contracts or other agreements that were in effect prior to Dec. 20, 2014 involving the importation of any goods, services or technology from the Crimea region of Ukraine into the United States.<sup>14</sup>

U.S. persons who engaged in transactions authorized by General License No. 5 were required, within 10 business days of the completion of such wind-down activities, to furnish, to OFAC's Licensing Division, a detailed report identifying: (1) the parties involved; (2) the type and scope of activities conducted; and (3) the dates of the activities.<sup>15</sup> General License No. 5 did not authorize any new activities involving the Crimea region of Ukraine, nor did it authorize any transactions or dealings otherwise prohibited by any OFAC sanctions programs.<sup>16</sup>

### **General License Nos. 6 and 7**

On Jan. 30, 2015, with the authorizations in General License No. 5 due to expire, OFAC issued additional General Licenses applicable to the provisions of E.O. 13685. Together, the licenses enable U.S. financial institutions to maintain and operate personal accounts for individuals located in the Crimea region of Ukraine, while still prohibiting business transactions and dealings involving the region.

General License No. 6 authorizes U.S. persons to send and receive, and U.S. depository institutions, broker-dealers and money transmitters to transfer, funds to or from the Crimea region of Ukraine for or on behalf of an individual ordinarily resident in the Crimea region of Ukraine, so long as the transfer involves a noncommercial, personal remittance and does not involve any persons blocked pursuant to the Ukraine-related Executive Orders.<sup>17</sup> Noncommercial, personal remittances do not include charitable donations of funds to or for the benefit of an entity or funds transfers for use in supporting or operating

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<sup>12</sup> General License No. 5, [Authorizing Certain Activities Prohibited by Executive Order 13685 of December 19, 2014 Necessary to Wind Down Operations Involving the Crimea Region of Ukraine](#) (Dec. 30, 2014).

<sup>13</sup> See *id.* § (a).

<sup>14</sup> *Id.* § (a).

<sup>15</sup> *Id.* § (c).

<sup>16</sup> See *id.* § (b).

<sup>17</sup> General License No. 6, [Noncommercial, Personal Remittances Authorized](#), § (a)(1) (Jan. 30, 2015).

a business, including a family-owned business.<sup>18</sup> For compliance purposes, financial institutions are permitted to rely on the originator of the funds transfer for purposes of determining whether the transfer is for noncommercial, personal purposes (unless the transferring institution knows or has reason to know that transfer is *not* of a noncommercial, personal nature).<sup>19</sup>

General License No. 7 authorizes U.S. financial institutions to operate accounts for individuals ordinarily resident in the Crimea region of Ukraine, so long as that person is not a person blocked pursuant to any of the Ukraine-related Executive Orders, or any other OFAC sanctions program.<sup>20</sup> However, transactions processed through such accounts must be of a personal nature and not for use in supporting or operating a business, may not involve transfers directly or indirectly to the Crimea region of Ukraine not authorized by General License No. 6, and may not be of the sort otherwise prohibited by any of the Ukraine-related Executive Orders.<sup>21</sup>

Together, General License No. 6 and General License No. 7 authorize U.S. financial institutions to maintain and operate personal accounts for individuals located in the Crimea region of Ukraine. Business dealings and transactions, however, remain prohibited pursuant to E.O. 13685.

### **General License No. 8**

On Jan. 30, 2015, OFAC also issued General License No. 8, which authorizes transactions with respect to the receipt and transmission of telecommunications involving the Crimea region of Ukraine, provided those transactions do not involve blocked persons.<sup>22</sup> The provision, sale or lease of telecommunications equipment or technology or capacity on telecommunications transmission facilities are not authorized under the license and therefore remain prohibited.<sup>23</sup> General License No. 8 also authorizes transactions of common carriers incident to the receipt or transmission of mail and packages between the United States and the Crimea region of Ukraine, provided that the importation or exportation of such mail and packages is authorized.<sup>24</sup>

### **Conclusion**

The prohibitions embodied in E.O. 13685 broadly proscribe U.S. persons from engaging in transactions or activities involving the Crimea region of Ukraine, including supplying goods or services to individuals or entities located in Crimea. The interpretation of these prohibitions and the General Licenses subsequently issued by OFAC, particularly as they apply to financial transactions with individuals located in the Crimea region of Ukraine, is complex and may require detailed analysis. Any business dealings or transactions for business purposes involving an individual or entity located in the Crimea region of Ukraine, whether direct or indirect, should be carefully scrutinized for compliance with these sanctions.

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<sup>18</sup> See *id.* § (a)(2).

<sup>19</sup> See *id.* § (b).

<sup>20</sup> General License No. 7, [Operation of Accounts Authorized](#) (Jan. 30, 2015).

<sup>21</sup> See *id.* §§ (a)-(c).

<sup>22</sup> General License No. 8, [Transactions Related to Telecommunications and Mail Authorized](#), § (a)(1) (Jan. 30, 2015).

<sup>23</sup> See *id.* § (a)(2)(i)-(ii).

<sup>24</sup> See *id.* § (b).

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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