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ExxonMobil Enforcement Penalty Highlights Risk in Transacting with SDN Officers or Representatives

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July 24, 2017 – On July 20, 2017, the Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued a civil monetary penalty of \$2,000,000 to ExxonMobil Corp., ExxonMobil Development Company, and ExxonMobil Oil Corp. (collectively, “ExxonMobil”) for violations of the Ukraine-related Sanctions Regulations. The transactions at issue involved eight legal documents signed by Igor Sechin, the President and Chairman of Russian oil company Rosneft, following his designation as a Specially Designated National (“SDN”) by OFAC in April 2014. ExxonMobil subsequently filed suit in the Northern District of Texas to challenge the finding of violation and the imposition of a penalty.

Although the enforcement action has received media attention because Secretary of State Rex Tillerson was ExxonMobil’s CEO at the time of the alleged infractions, the crux of the case regards whether a distinction is to be made between an SDN acting in his or her professional capacity and an SDN acting in his or her individual capacity. In its civil complaint, ExxonMobil argues that the contracts at issue were between itself and Rosneft, and did not involve a property interest of Sechin, who was merely acting as a representative of Rosneft. In support of this argument, ExxonMobil cites a series of public statements made by Treasury Department and Administration officials made at or around the time Sechin was designated, which stated that U.S. persons were not generally prohibited from transacting with Rosneft and that the designation was intended to target only Sechin’s “personal assets.”

In its civil penalty notice, OFAC asserted that it has never interpreted its regulations to make such a distinction, and that no such exception for transactions with SDNs acting in their “professional capacity” exists. Indeed, as OFAC noted, it has publicly opined on this issue before, albeit in an FAQ that was formerly posted on its website with respect to the Burma sanctions program – that guidance advised U.S. persons to be cautious when transacting with non-designated entities (such as Rosneft) to ensure they are not, in part, signing contracts with individual SDNs.

OFAC's notice also indicated that \$2,000,000 was both the base civil monetary penalty and the statutory maximum civil monetary penalty for the eight violations (the statutory maximum of \$250,000 per violation has since risen to \$289,238). This suggests that OFAC found the offending conduct to be ExxonMobil's dealing in services of an SDN, and that the legal documents themselves were not blocked property; if they had been, OFAC would have been authorized to assess a penalty "twice the amount of the transaction" – i.e., twice the value of the contracts themselves.

As we noted in a recent [article](#), there are risks in transacting with non-sanctioned entities that are represented by SDNs. While board meetings or personal communications involving SDNs would not generally be prohibited, any transactions involving the provision or receipt of a service to that SDN – whether acting in his or her "professional" or "individual" capacity – will trigger close scrutiny from OFAC. As we previously advised, U.S. persons should carefully assess the potential role of SDNs in any transactions, even if the entity they are transacting directly with is not itself sanctioned.

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