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US Imposes New Licensing Requirements on Exports to Russia of Oil and Gas Equipment and 'Dual-Use' Items

If you have any questions regarding the matters discussed in this memorandum, please contact the following attorneys or call your regular Skadden contact.

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On August 6, 2014, in response to continuing developments in Ukraine, the U.S. Commerce Department's Bureau of Industry and Security (BIS) published a new final rule that significantly expands restrictions on U.S. exports to Russia under the Export Administration Regulations (EAR). In addition to tightening existing restrictions on exports of certain "dual-use" items, the new rule imposes new licensing requirements on exports of a wide range of items that are "used directly or indirectly in Russia's energy sector for exploration or production from deepwater (greater than 500 feet), Arctic offshore, or shale projects in Russia."[1] Many of these items could previously be shipped to Russia without a license.

Among the oil and gas-related items affected by the new rule are:

- tubular steel products such as oil country tubular goods, line pipe and drill pipe;
- oil and gas exploration equipment, machinery, and related parts and components;
- oil well pumps, gas separators, and other equipment, machinery, and parts and components used in the extraction of oil and gas from existing wells;
- systems and software for detecting hydrocarbons;
- the product of certain data analysis services related to oil and gas exploration;
- detonators and components; and
- surface and submersible marine vessels, equipment and related software.

U.S. exporters and other companies (wherever located) that are subject to the jurisdiction of the EAR must now obtain a license to export, re-export or transfer any of the designated items to Russia whenever they "know or are informed" that the items will be used "directly or indirectly" in Russia's energy sector for exploration or production from deepwater (greater than 500 feet), Arctic offshore or shale projects in Russia that have the potential to produce oil or gas. All such licenses will be subject to a "presumption of denial" — meaning that it is highly unlikely that they will be approved by BIS. In effect, the new rule greatly restricts, if not completely forecloses, exports and re-exports of the newly designated items to Russia.

Significantly, a BIS license also is required if it is impossible for the exporter or re-exporter to determine whether or not a designated item will be used in oil or gas projects in Russia. The new rule thus establishes a system whereby exporters and re-exporters of items that could potentially be used in oil and gas projects in Russia but who are in doubt about the actual end use of their exports must approach BIS and wait for approval or risk incurring civil and criminal penalties.

1 Russian Oil Industry Sanctions and Addition of Person to the Entity List, 79 Fed. Reg. 45675, 45677 (Dep't Commerce Aug. 6, 2014) (final rule).

Given its scope, the new rule will affect a broad range of companies involved in exports of goods, technology, software and data analysis for use in the oil and gas industry. Failure to comply with the EAR, including the provisions added by the new rule, can result in significant civil and criminal penalties. Accordingly, companies involved in these sectors should conduct thorough due diligence on all export and re-export transactions that could potentially involve Russia. We encourage you to contact any of the attorneys listed here or your regular Skadden contact with questions concerning the new rule and U.S. export controls.