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U.S. Authorizes Additional Sanctions for Election Interference

On September 12, 2018, President Trump issued an Executive Order setting up sanctions in the event of foreign interference in a U.S. election. The executive order directs the intelligence community to investigate potential foreign meddling in U.S. elections, and imposes mandatory and discretionary sanctions on persons who have interfered in a U.S. election and their co-conspirators. The order does not immediately impose any sanctions or identify particular targets, nor does it single out, or apply solely to, Russia. Rather, it sends a signal to foreign countries by calling out the issue and establishing a sanctions process in advance of the November midterm elections. Moreover, it is unclear whether this executive order even creates any new sanctions authority, as U.S. sanctions regulators already have the ability to impose sanctions on persons who have interfered with a U.S. election.

The executive order directs the intelligence community to assess within a 45-day period whether there has been interference in U.S. elections and by whom. The intelligence community is then directed to provide a report to the Departments of Justice and Homeland Security, who would then have 45 days to make findings as to what persons were responsible for election interference. Any person found to be responsible would trigger automatic blocking sanctions under the executive order, and the Departments of State and Treasury would have the authority to impose additional sanctions, such as export license restrictions, restrictions on the provision of credit, restrictions on the trading of equity or debt, visa bans, and foreign exchange restrictions.

The sanctions authority outlined in this executive order may not create new powers or any additional class of persons to face sanctions. Executive Order 13694 (as amended by Executive Order 13757), which related to "malicious cyber-enabled activities," already provided for blocking sanctions to be imposed on any person who was found to be involved with "tampering with, altering, or causing a misappropriation of information with the purpose or effect of interfering with or undermining election processes or institutions." EO 13757 contained an annex with five Russian entities and four Russian individuals, and has been used to designate additional actors suspected of election-related hacking. Additionally, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) has published cyber-related sanctions regulations that prohibit these actions, on which we have previously reported. However, the issuance of this executive order indicates that the Trump administration remains aware of potential election interference issues and will use sanctions as a deterrent in response.

If you have any questions regarding OFAC sanctions programs or how they may affect your business, please reach out to the contacts listed below.

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