
April 10, 2018

Trump Administration Imposes New Sanctions on Russian Oligarchs and Government Officials

On April 6, 2018, the Trump administration imposed new sanctions on 7 Russian oligarchs, 12 companies they own or control, 17 Russian government officials, and a state-owned Russian weapons trading company and its subsidiary, a Russian bank. These specially designated national (“SDN”) designations came just over two months after the Treasury Department met its statutory obligation to provide Congress with a report (the “Report”) on Russian political figures and oligarchs as determined by their “closeness to the Russian regime and their net worth.”¹ The public portion of the Report identified 114 Russian senior political figures and 96 individuals characterized as Russian oligarchs meeting this criteria. The Report was “not a sanctions list”; however, Treasury Secretary Steven Mnuchin warned at the time that “there will be sanctions that come out of this report.”²

Announcing the new sanctions, Secretary Mnuchin stated: “The Russian government operates for the disproportionate benefit of oligarchs and government elites. The Russian government engages in a range of malign activity around the globe, including continuing to occupy Crimea and instigate violence in eastern Ukraine, supplying the Assad regime with material and weaponry as they bomb their own civilians, attempting to subvert Western democracies, and malicious cyber activities. Russian oligarchs and elites who profit from this corrupt system will no longer be insulated from the consequences of their government’s destabilizing activities.”³

The designations were made pursuant to Obama-era Executive Orders 13661, 13662, and 13582, as well as authorities codified by the Countering America’s Adversaries Through Sanctions Act (“CAATSA”). In conjunction with the designations on April 6, Treasury’s Office of Foreign Assets Control (“OFAC”) issued guidance and two general licenses to minimize immediate disruptions.

Below, we summarize Treasury’s actions and their implications. As Treasury cautioned, not only are transactions with a U.S. nexus involving these newly designated parties generally prohibited, but non-U.S. persons also face the risk of secondary sanctions for knowingly facilitating significant transactions with these parties even without a U.S. nexus.

Newly Sanctioned Individuals and Entities

All of the newly designated individuals were listed in the January 2018 Report. Given the administration’s public statements that sanctions would result from the Report, the designations—apparently targeted at those with the most senior positions and closest ties to Putin and Russia’s state-run

energy sector—are not surprising, and mark an escalation in recent tensions between the U.S. and Russian governments. The action also demonstrates that the Trump administration, which has been under consistent pressure from Congress, is willing to employ sanctions against Russia. The key elements of OFAC’s action are as follows:

Of the seven designated oligarchs, five are high-level executives in the Russian energy sector.⁴ In some cases, these individuals were associated with companies that have already been subject to sectoral sanctions and are on the SSI List. For example, Vladimir Bogdanov is the Director General and Vice Chairman of Surgutneftegaz, a Russian oil company designated under sectoral sanctions since September 2014. Two of these recently designated oligarchs in the energy sector have allegedly engaged in criminal activities such as bribery, money laundering, and murder. One such individual is Oleg Deripaska, who says he does not separate himself from the Russian state and has been accused of threatening the lives of business rivals, illegally wiretapping a government official, and taking part in extortion and racketeering.⁵

These five individuals are the first persons designated as blocked under E.O. 13662, which has previously been used only to impose more limited sectoral sanctions. OFAC issued a new FAQ, clarifying that unlike with persons subject to sectoral sanctions and placed on the SSI List, persons designated as blocked under E.O. 13662 are added to the SDN List.⁶

Three oligarchs were designated pursuant to E.O. 13661 for their close ties to the Russian state. These oligarchs are also allegedly involved in criminal activities, including bribery, money laundering, organized crime, and murder.⁷

OFAC also designated 12 companies owned or controlled, directly or indirectly, by the newly designated oligarchs. These 12 companies operate in a wide breadth of industries, including finance, energy, oil and gas exploration, aluminum production, heavy equipment manufacture, commercial vehicle manufacture, and management and consulting. OFAC cautioned that these entities do not represent the exhaustive list of entities owned by the newly-designated oligarchs and that the regulated community remains responsible for complying with the 50 percent rule,⁸ which blocks any entity that is owned 50 percent or more by one or more blocked persons or entities, even if the entity itself is not on the SDN List.

In addition, OFAC designated seventeen individuals pursuant to E.O. 13661 for being Russian government officials.

Finally, OFAC designated two Russian state-owned firms that provide military support to the Assad regime in Syria: a weapons trading company, Rosoboronekспорт, and its subsidiary bank, Russian Financial Corporation Bank, which engages in deposit banking activities.

General Licenses to Ease Disruption on U.S. Persons and Allies

In conjunction with the new sanctions, OFAC issued two general licenses with the intent of easing disruption to U.S. persons, partners, and allies with respect to certain existing dealings with the companies of the newly sanctioned oligarchs.

General License 12 authorizes transactions and activities ordinarily incident and necessary to the maintenance or wind-down of operations, contracts, or other agreements with certain newly designated entities. The license allows these activities to continue until June 5, 2018. It covers the 12 newly designated entities: AgroHolding Kuban; Basic Element Limited; B-Finance Ltd.; EN+ Group PLC; JSC EuroSibEnergO; GAZGroup; Gazprom Burenie, OOO; Ladoga Menedzhment, OOO; NPV Engineering Open Joint Stock Company; Renova Group; Russian Machines; United Company RUSAL PLC; and any other entity in which one or more of the seven newly-designated oligarchs own, directly or indirectly, a 50 percent or greater interest.⁹ OFAC guidance specifies that permitted activities include the provision of salary payments, pension payments, or other benefits, by the newly designated entities listed in General License 12, or the provision of services by the employee to such blocked entities.¹⁰ Further, during the wind-down period, U.S. companies may continue to accept goods ordered from a newly designated entity, provided the importation of those goods conforms to the requirements of General License 12.¹¹

General License 13 authorizes transactions and activities ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in three newly designated entities to a non-U.S. person, or to facilitate the transfer of debt, equity, or other holdings in the following newly designated entities by a non-U.S. person to another non-U.S. person: EN+ Group PLC; GAZ Group; and United Company RUSAL PLC. General License 13 authorizes such activities until May 7, 2018.¹² Notably, General License 13 does not authorize the unblocking of property blocked pursuant to other OFAC sanctions or transactions with individuals blocked pursuant to other Russia/Ukraine-related sanctions.

OFAC issued guidance explaining that General License 13 applies to shares or global depository receipts related to shares in a newly designated entity.¹³ OFAC explained that the general license authorizes U.S. persons to divest or transfer to a non-U.S. person, or to facilitate the transfer by a non-U.S. person to another non-U.S. person, of debt, equity, or other holdings in the blocked entities listed in General License 13, provided that such divestment, transfer, or facilitation does not result in U.S. persons selling debt, equity, or other holdings to; purchasing or investing in debt, equity, or other holdings in; or facilitating such transactions with, directly or indirectly, any blocked person, including the entities listed in General License 13.¹⁴

New Guidance for U.S. Persons

In addition to the guidance described above, OFAC's new FAQs also caution that a U.S. person's employment with or board membership on an SDN entity is prohibited. OFAC advises that any U.S.

person employed by, or sitting on the board of, a newly designated entity should review the actions necessary to sever ties with the blocked entity, and, where necessary, apply for a specific license from OFAC to do so.¹⁵

With respect to U.S. companies that are less than 50 percent owned by one or more of the newly designated persons, OFAC explains that, consistent with the 50 percent rule, the U.S. company is not itself blocked. However, the U.S. company has an obligation to block all property and interests in property in which the blocked person has an interest. Depending on the nature of the property blocked by the U.S. company, the U.S. company may be able to continue operating, but any payments, dividends, or disbursement of profits to the blocked person would be prohibited and, to the extent such payments are required, must be placed in a blocked account at a U.S. financial institution.¹⁶ OFAC encourages U.S. companies facing this scenario to contact OFAC to determine whether a license may be required.

New Secondary Sanctions Guidance for Non-U.S. Persons

OFAC provided guidance that, in certain instances, non-U.S. persons may be subject to secondary sanctions for doing business with the individuals or entities designated under E.O. 13661 or E.O. 13662. Section 228 of CAATSA added a mandatory sanctions provision regarding non-U.S. persons that Treasury determines, *inter alia*, knowingly facilitate significant transactions, including deceptive or structured transactions, for or on behalf of any person subject to U.S. sanctions with respect to the Russian Federation, or their child, spouse, parent, or sibling. Additionally, section 226 of CAATSA provides that foreign financial institutions face correspondent account or payable through account sanctions if the Secretary of the Treasury determines, *inter alia*, that they knowingly facilitate¹⁷ significant financial transactions¹⁸ on behalf of any Russian person added to the SDN List pursuant to, *inter alia*, E.O. 13661 or E.O. 13662. OFAC reiterated its prior guidance that a transaction is not “significant” if U.S. persons would not require specific licenses from OFAC to participate in it. Therefore, activity authorized by new General Licenses 12 and 13, and occurring within the time period authorized in these general licenses, would not be considered “significant” for the purposes of a secondary sanctions determination.¹⁹

Implications

Both U.S. and non-U.S. persons that have business relationships with newly sanctioned individuals and companies should immediately assess the actions necessary to comply with OFAC’s requirements. Depending on the circumstances, the new general licenses may be relied upon to wind down business relationships with and/or divest from certain of the companies owned by the newly designated oligarchs. In some cases, seeking guidance or, potentially, special licenses from OFAC may be warranted.

The new designations demonstrate that the Trump administration, which has been under consistent pressure from Congress, is willing to take measures against Russia. It is unclear whether additional sanctions may be imposed against other individuals and entities listed in the Report. Among other things,

financial institutions and other companies conducting business with persons listed in the Report or with Russian parastatal entities may wish to consider undertaking or renewing enhanced due diligence to assess the risk that such persons or entities could be sanctioned in the future.

We will provide future updates in this area, as circumstances warrant.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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¹ Section 241 of the Countering America's Adversaries Through Sanctions Act ("CAATSA"). For additional information regarding the Report, please refer to our prior Client Memorandum, "Treasury Department Releases Report Listing Russian Senior Political Figures and Oligarchs," (Feb. 5, 2018), *available* [here](#). For an overview of Russia-Ukraine sanctions following CAATSA, see our prior memorandum, "U.S. Sanctions Relating to Russia and Ukraine: Navigating the Current Landscape," (Dec. 20, 2017), *available* [here](#).

² See Frequently Asked Question No. 552, *available* [here](#).

³ U.S. Dep't of the Treasury, Press Release, Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity (Apr. 6, 2018), *available* [here](#).

⁴ These five individuals are Vladimir Bogdanov, Igor Rotenberg, Kirill Shamalov, Viktor Vekselberg, and Oleg Deripaska.

⁵ Treasury Designates Russian Oligarchs, *supra* note 3.

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- ⁶ See Frequently Asked Question No. 572, available [here](#). For a discussion of the difference between sectoral sanctions and traditional blocking sanctions, see our prior memorandum, U.S. Sanctions Relating to Russia and Ukraine: Navigating the Current Landscape, available [here](#).
- ⁷ These three individuals are Suleiman Kerimov, Andrei Skoch, and Oleg Deripaska. Deripaska was designated under both E.O. 13661 and E.O. 13662. See Treasury Designates Russian Oligarchs, *supra* note 3.
- ⁸ See Treasury Designates Russian Oligarchs, *supra* note 3.
- ⁹ See Ukraine General License No. 12, available [here](#).
- ¹⁰ See Frequently Asked Question No. 567, available [here](#).
- ¹¹ See Frequently Asked Question No. 569, available [here](#).
- ¹² See Ukraine General License No. 13, available [here](#).
- ¹³ See Frequently Asked Question No. 570, available [here](#).
- ¹⁴ See Frequently Asked Question No. 571, available [here](#).
- ¹⁵ See Frequently Asked Question No. 568, available [here](#).
- ¹⁶ See Frequently Asked Question No. 573, available [here](#).
- ¹⁷ OFAC will generally interpret the term “facilitated” broadly. “Facilitated” refers to the provision of assistance for certain efforts, activities, or transactions, including the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling; transporting; swapping; brokering; financing; approving; guaranteeing; the provision of other services of any kind; the provision of personnel; or the provision of software, technology, or goods of any kind. See Frequently Asked Question No. 542, available [here](#).
- ¹⁸ New Frequently Asked Question No. 542 provides that, OFAC will consider the totality of the facts and circumstances when determining whether transactions or financial transactions are “significant.” OFAC will consider the following list of seven broad factors that can assist in the determination of whether a transaction is “significant”: (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis.
- ¹⁹ See Frequently Asked Question 574, available [here](#). Nothing in the general licenses should be construed as authorizing deceptive or structured transactions.