

THE NATIONAL LAW REVIEW

United States Imposes Additional Sanctions Against Russian Entities and Individuals

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On April 6, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") [announced expanded sanctions](#) against Russian entities and individuals, targeting a number of Russian oligarchs in the energy, banking, and other sectors and companies they own or control, as well as 17 senior Russian government officials. The Treasury Department also issued a detailed [press release](#) outlining the rationale for each of these designations. Given the prominence of the targeted oligarchs in Russian business and the extent of their business holdings, as well as the size and importance of the targeted companies in the Russian economy, the action could have a significant impact on companies doing business in Russia.

The OFAC action blocks the property and interests in property of the targeted entities and individuals when it comes into the United States or the possession or control of a U.S. person, and also prohibits virtually all dealings or transactions by U.S. persons with the targeted parties, who are now on OFAC's List of Specially Designated Nationals and Blocked Persons ("SDN List"). The sanctions also apply to entities that are owned 50 percent or more by sanctioned persons, including the newly sanctioned parties. Non-U.S. persons also could be impacted by the new designations, through potential exposure to secondary sanctions for undertaking significant transactions with these parties.

The action follows the enactment last year of the Countering Americas Adversaries through Sanctions Act of 2017 ("CAATSA"), as discussed in [our client alert](#), which imposed certain sanctions on Russia that apply to U.S. and non-U.S. companies, and the release earlier this year of an [Administration report](#) to Congress that identified Russian oligarchs, as called for in CAATSA. A number of the individuals sanctioned in today's action were identified in that report.

At the same time it announced the new designations, OFAC also issued two general licenses. One authorizes U.S. persons doing business with certain of the newly sanctioned entities to wind down their activities between now and June 5, 2018. The other general license authorizes U.S. persons to divest or transfer debt, equity, or other holdings in three of the blocked entities to non-U.S. persons (other than sanctioned parties) between now and May 7, 2018. OFAC also issued [related guidance](#) on these actions in the form of responses to new Frequently Asked Questions ("FAQs").

Companies and Individuals Targeted by the Sanctions

The new sanctions were imposed under existing Executive Orders, but follow from the enactment last year of CAATSA, which among other things required (in CAATSA Section 241) that the Administration report to Congress on significant "senior political figures and oligarchs in the Russian Federation." This report, filed with Congress on January 29, 2018, did not entail the imposition of sanctions against the individuals identified in the report. At the time, however, Treasury Secretary Steven Mnuchin warned that some of the individuals could be later targeted for sanctions, saying that "there will be sanctions that come out of this report."



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Today's designations target several individuals included in the CAATSA Section 241 report, and others who are closely tied to Russian President Vladimir Putin. In total, 26 individuals and 15 entities were designated today (including several non-Russian parties designated under sanctions authorities related to narcotics trafficking and several Russian parties designated for activities involving Syria).

Among the designated Russian oligarchs are close associates of President Putin who are operating in the energy sector, such as Vladimir Bogdanov, Director General and Vice Chairman of the Board of Directors of Surgutneftgaz; Victor Vekselberg, the founder and

Chairman of the Board of Directors of the Renova Group; Oleg Deripaska, the founder of

Russia's largest industrial group Basic Element, which includes EN+ and Rusal; Igor Rotenberg, the son of previously sanctioned Arkady Rotenberg and owner of the gas drilling company,

Gazprom Burenie; and Kirill Shamalov, who married President Putin's daughter in 2013 and is a minority shareholder of SIBUR.

Among the sanctioned Russian government officials are top managers of state companies and financial institutions, such as Alexey Miller, the Chairman of the Management Committee and Deputy Chairman of the Board of Directors of Gazprom; Andrey Akimov, the Chairman of the

Management Board of Gazprombank; and Andrey Kostin, the President, Chairman of the Management Board, and Member of the Supervisory Council of VTB Bank. Additionally, the sanctioned Russian Senator, Suleiman Kerimov, is connected to Russia's largest gold producer, Polyus, and Duma member Andrei Skoch has ties to USM Holdings.

Notably, Russia's major state-owned weapons trading company, Rosoboronexport, also was designated for asset-blocking for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the Government of Syria. Previously, Rosoboronexport had been targeted only by U.S. sectoral sanctions that restricted U.S. person dealings in new debt of Rosoboronexport of greater than 30 days' maturity.

As noted above, the addition of these entities and individuals to OFAC's SDN List has several important ramifications.

First, U.S. persons are required to block the property and interests in property—as broadly defined—of these parties when it comes into the United States or the possession or control of U.S. persons. A "U.S. person" for these purposes is a U.S. entity and its non-U.S. offices and branches; individual U.S. citizens and lawful permanent residents ("green-card" holders), no matter where located or by whom employed; and non-U.S. persons when present in or operating from the United States. Funds of SDNs that are blocked must be placed into segregated, "frozen" accounts and reported to OFAC within 10 business days.

Second, U.S. persons are broadly prohibited from transacting or dealing with SDNs, unless authorized by OFAC (such as through the two new general licenses described below or specific licenses issued by OFAC).

As noted above, the above-described restrictions extend not just to listed persons, but also to entities in which those persons own a 50 percent or greater interest, individually or collectively with other SDNs. The application of this long-standing OFAC rule is particularly significant here, where the named individuals have wide-ranging business holdings, since the sanctions on the designated oligarchs also apply to any companies in which they, individually or with other sanctioned parties, own a 50 percent or greater interest.

The designations also can impact non-U.S. persons dealing with the designated parties, as more fully described below.

New General Licenses

To minimize immediate disruptions to U.S. persons from these designations, OFAC issued [General License 12](#), which temporarily authorizes all transactions and activities that are ordinarily incident and necessary to the maintenance or "wind down" of operations, contracts, or other agreements, including the importation of goods, services, or technology into the United States involving one or more blocked entities identified in the general license.

For those entities listed on General License 12, U.S. persons may, until June 5, 2018, permissibly wind down operations, contracts, or agreements in effect prior to April 6, 2018. This General License also would apply to any

entity owned 50 percent or more by entities listed in the General License. In FAQs issued with the new sanctions designations, OFAC explains that the blocked entities listed in General License 12 may, for the duration of the General License, make salary and pension payments, and provide other benefits, to U.S. persons. In addition, U.S. persons may continue to provide services to the listed entities until the License expires. General License 12 also permits U.S. persons to import goods into the United States from blocked entities listed on General License 12.

Significantly, although wind-down activities would include *accepting* payments from the enumerated entities, General License 12 clarifies that U.S. persons may *not* make payments to such entities; instead, any payments to, or for the direct or indirect benefit of, a blocked person—whether listed in General License 12 or not—must be deposited in a blocked, interestbearing account located in the United States. Therefore, although the new FAQs explain that U.S. persons may import goods into the United States from blocked entities listed on General License 12 until its expiration, any outstanding payments for such goods must be deposited into a blocked account.

Importantly, the list of blocked persons with whom U.S. persons may conduct wind-down activities is not coextensive with the newly designated individuals and entities. Instead, General License 12 covers only 12 of the 15 newly designated entities. It omits three newly designated entities—Gallistica Diamante, Rosoboronexport, and Russian Financial Corporation, each of which was designated under authorities other than those related to Russia—and all newly designated individuals. Therefore, General License 12 does not permit wind-down activities with these three entities, with any of the newly designated individuals, or with any entity owned 50 percent or more by the designated persons and not separately listed on General License 12.

OFAC also issued [General License 13](#), which authorizes transactions and activities that are ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in three blocked entities to a non-U.S. person (other than a sanctioned party), or to facilitate the transfer of debt, equity, or other holdings in those same three entities by a non-U.S. person to another non-U.S. person (other than a sanctioned party). General License 13 applies only to three of the newly designated entities: EN+ Group PLC, GAZ Group, and United Company RUSAL PLC. General License 13 expires on May 7, 2018.

The activities permitted by General License 13 include facilitating, clearing, and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in the blocked persons, including on behalf of U.S. persons. The License does not authorize unblocking any property other than as described above, or for U.S. persons to sell debt, equity, or other holdings to, or to invest in the debt, equity, or other holdings in, any blocked person, including those listed on General License 13. (It also prohibits facilitating any such transactions.)

With respect to both General License 12 and General License 13, U.S. persons participating in transactions authorized by the licenses must file detailed reports with OFAC within 10 days of the applicable General License's expiration. Those reports must include the names and addresses of the parties involved, the type and scope of activities conducted, and the dates on which the activities occurred. Reports under General License 12 are due on June 15, 2018, and reports under General License 13 are due on May 17, 2018.

Secondary Sanctions under CAATSA Sections 226 and 228

In addition to the direct implications for U.S. persons associated with the new SDN

designations, there are certain secondary sanctions risks for non-U.S. parties that have dealings with these parties.

Section 228 of CAATSA, in amending earlier legislation, requires that asset-blocking sanctions be imposed against non-U.S. persons that knowingly “facilitate a significant transaction..., including deceptive or structured transactions, for or on behalf of...any person subject to sanctions imposed by the United States with respect to the Russian Federation.” This would include any of the newly added SDNs or parties owned 50 percent or more, individually or collectively, by SDNs. And Section 226 of CAATSA, again amending earlier legislation, requires the imposition of mandatory secondary sanctions on foreign financial institutions if the Treasury Department determines that they have knowingly facilitated “significant financial transactions” on behalf of any Russian person added to OFAC’s SDN List pursuant to existing Ukrainerelated authorities. In particular, foreign financial institutions can lose the ability to maintain or open U.S. correspondent accounts or payable-through accounts as a consequence of certain dealings with the individuals or entities designated today.

OFAC’s FAQ guidance clarifies the scope of these secondary sanctions authorities. Among other things, FAQ 545 provides that “facilitating” a transaction for or on behalf of a sanctioned person means “providing assistance for a transaction from which the person in question derives a particular benefit of any kind,” and sets out factors OFAC will consider in evaluating whether a transaction is “significant.” It also provides that a transaction is not “significant” if a U.S. person would not require a specific license from OFAC to conduct the transaction.

FAQ 542 provides guidance on the term “significant financial transaction” in the context of secondary sanctions against foreign financial institutions. It confirms, among other things, that “OFAC will generally interpret the term ‘financial transaction’ broadly to encompass any transfer of value involving a financial institution.” This would include, but is not limited to, the receipt or origination of wire transfers; the acceptance or clearance of commercial paper; the receipt or origination of ACH or ATM transactions; the holding of nostro, vostro, or loro accounts; the provision of trade finance or letter of credit services; the provision of guarantees or similar instruments; the provision of investment products or instruments or participation in investment; and any other transactions for or on behalf of, directly or indirectly, a person serving as a correspondent, respondent, or beneficiary. FAQ 542 also provides that a transaction is not “significant” if a U.S. person would not require a specific license from OFAC to conduct the transaction.

In this regard, new FAQ 547 confirms that activity authorized by new General Licenses 12 and 13, if occurring within the time period authorized in these general licenses, would not be considered “significant” for purposes of a secondary sanctions determination. The new FAQ guidance also emphasizes that the “intent” of the new designations is to “impose costs on Russia for its malign behavior.” It indicates that the U.S. government “remains committed to coordination with our allies and partners in order to mitigate adverse and unintended consequences of these designations.”

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