

## Alert

### Sanctions Update: Venezuela and Ukraine/Russia

June 6, 2018

On May 21, 2018, in response to recent activities of the Maduro regime, President Trump issued a new Executive Order, “Prohibiting Certain Additional Transactions with Respect to Venezuela.”<sup>1</sup> Previous sanctions under Executive Order 13808, issued Aug. 24, 2017, had prohibited transactions related to, provisions of financing for, or other dealings in, among other things, “new debt” of certain maturities and new equity of the Government of Venezuela, bonds issued by the Government of Venezuela, dividend payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled by the Government of Venezuela, as well as the purchase of securities from the Government of Venezuela.<sup>2</sup> As explained below, the new sanctions prohibit, among other things, transactions involving *the purchase of any debt* owed to the Government of Venezuela, as well as transactions involving any debt owed to the Government of Venezuela that is pledged as collateral. The new sanctions also prohibit transactions related to, financing for or other dealings relating to the sale, transfer, assignment or pledging as collateral by the Government of Venezuela of any equity interests involving entities in which the Government of Venezuela has a 50 percent or greater ownership interest. By targeting debt owed to the Government of Venezuela, the new sanctions limit the Government of Venezuela’s ability to liquidate assets into usable capital.

Separately, on May 22, 2018, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued two Ukraine/Russia-related general licenses in its continued effort to allow U.S. persons to divest from relationships that violate recent sanctions. General License 15 authorizes certain activities necessary to the maintenance or wind down of operations or existing contracts with GAZ Group and its subsidiaries until Oct. 23, 2018. General License 12C (replacing General License 12B) authorizes U.S. financial institutions to process certain funds transfers for the benefit of twelve specifically identified blocked persons and clarifies that firms can release such funds for authorized maintenance and wind-down purposes. On the same day, OFAC also published six new Frequently Asked Questions (“FAQs”), and revised three existing FAQs concerning these general licenses. OFAC also published two additional related FAQs on May 25, 2018. In addition, on May 31, 2018, OFAC issued General License 13B (replacing and superseding General License 13A in its entirety) authorizing certain transactions necessary to divest or transfer debt, equity or other holdings in EN+ Group PLC, GAZ Group and United Company RUSAL PLC (“RUSAL”) and extending the expiration date of the general license to Aug. 5, 2018. Finally, on June 4, 2018, OFAC issued General License 16, authorizing U.S. persons to engage in certain transactions related to the wind down or maintenance of business involving EN+ Group PLC, JSC EuroSibEnergO or their subsidiaries.

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<sup>1</sup> An electronic copy of the Executive Order “Prohibiting Certain Additional Transactions with Respect to Venezuela” is available [here](#).

<sup>2</sup> See Executive Order 13808, [Imposing Additional Sanctions with Respect to the Situation in Venezuela](#), (Aug. 24, 2017). See also “Sanctions Update: U.S. Imposes Immediate Restrictions Relating to Venezuelan Securities,” SRZ Alert, Aug. 28, 2017, available [here](#).

## I. Venezuelan Sanctions

The Executive Order applies to U.S. persons and to transactions within the United States. Subsection 1(a) of the Order prohibits “[a]ll transactions related to, provision of financing for, and other dealings” in “(i) the purchase of any debt owed to the Government of Venezuela,<sup>3</sup> including accounts receivable; (ii) any debt owed to the Government of Venezuela that is pledged as collateral after the effective date of th[e] order, including accounts receivable; and (iii) the sale, transfer, assignment, or pledging as collateral by the Government of Venezuela of any equity interest in which the Government of Venezuela has a 50 percent or greater ownership interest.”

These new sanctions, according to the Executive Order, were issued “particularly in light of the recent activities of the Maduro regime, including endemic economic mismanagement and public corruption at the expense of the Venezuelan people and their prosperity, and ongoing repression of the political opposition; attempts to undermine democratic order by holding snap elections that are neither free nor fair; and the regime’s responsibility for the deepening humanitarian and public health crisis in Venezuela.”<sup>4</sup> Fundamentally, the new sanctions, like prior sanctions, are a further attempt to prevent U.S. persons from contributing to the Government of Venezuela’s financial scheme.<sup>5</sup>

Unlike prior sanctions, which, among other things, prohibited transactions involving certain new debt of specific maturities and bonds issued *by* the Government of Venezuela, the new sanctions prohibit, among other things, transactions involving debt owed *to* the Government of Venezuela. This includes debt instruments traded in the secondary market. The prohibition is phrased broadly and extends to accounts receivable and any other type of debt owed to the Venezuelan Government. The new sanctions do not, however, further restrict trading in debt issued *by* the Venezuelan Government beyond the significant limitations imposed in August 2017.<sup>6</sup>

Subsection 1(b) provides that the prohibitions in subsection (a) apply “notwithstanding any contract entered into or any license or permit granted before the effective date” of the Executive Order. Since the Executive Order overrides any previously issued licenses or permits, firms engaging in the performance of certain categories of transactions previously authorized by a general license, and even firms that have received a specific license authorizing a particular transaction, must cease transactions prohibited by the Executive Order by its effective date of May 21, 2018, unless and to the extent they obtain a new license.

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<sup>3</sup> The term “Government of Venezuela” is defined to mean “the Government of Venezuela, any political subdivision, agency, or instrumentality thereof, including the Central Bank of Venezuela and Petroleos de Venezuela, S.A. (PdVSA), and any person owned or controlled by, or acting for or on behalf of, the Government of Venezuela.” See Subsection 3(d) of the Executive Order.

<sup>4</sup> Executive Order “[Prohibiting Certain Additional Transactions with Respect to Venezuela](#),” (May 21, 2018).

<sup>5</sup> Concurrent with the issuance of previous sanctions in July 2017, Secretary of the Treasury Steven T. Mnuchin stated: “Yesterday’s illegitimate elections confirm that Maduro is a dictator who disregards the will of the Venezuelan people. By sanctioning Maduro, the United States makes clear our opposition to the policies of his regime and our support for the people of Venezuela who seek to return their country to a full and prosperous democracy.” See Press Release, U.S. Department of the Treasury, Treasury Sanctions the President of Venezuela (July 31, 2017), available [here](#).

<sup>6</sup> For a fuller explanation of the prior Venezuela sanctions, see “Sanctions Update: Russia, Iran, North Korea and Venezuela,” SRZ Alert, Aug. 2, 2017, available [here](#); “Sanctions Update: U.S. Imposes Immediate Restrictions Relating to Venezuelan Securities,” SRZ Alert, Aug. 28, 2017, available [here](#) and “Sanctions and AML Update: North Korea and Venezuela,” SRZ Alert, Sept. 27, 2017, available [here](#).

Subsection 2(a) prohibits “[a]ny transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions set forth in” the Executive Order. In addition, Subsection 2(b) prohibits a conspiracy to violate the Executive Order.

The sanctions were not accompanied by any new or revised general or specific licenses, nor to date has OFAC issued any new or revised FAQs concerning the scope of the sanctions.

As the political situation in Venezuela continues to deteriorate, firms should monitor for further sanctions-related actions targeting the Government of Venezuela, and carefully scrutinize customers and transactions that may be connected to the Government of Venezuela.

## **II. Ukraine/Russia-Related General Licenses; Publication of FAQs**

In an effort to allow GAZ Group and its subsidiaries to continue maintenance or wind-down activities, General License 15 authorizes otherwise prohibited transactions (through 12:01 a.m. Eastern Daylight Time, Oct. 23, 2018) that are “ordinarily incident and necessary to the maintenance or wind down of operations, contracts or, other agreements, including the importation of foods, services, or technology into the United States” involving GAZ Group, or entities in which it owns 50 percent or more.<sup>7</sup> As clarified in accompanying FAQs, accounts of GAZ Group and its subsidiaries remain blocked, except for use in maintenance and wind-down activities.<sup>8</sup> In addition, U.S. and foreign persons may engage in activities authorized by General License 15 that occur on or after May 22, 2018, except for activities involving blocked persons other than GAZ Group or its subsidiaries, without making associated payments into a blocked account.<sup>9</sup>

The new FAQs issued on May 22, 2018 clarify that U.S. persons may export goods to GAZ Group from the United States pursuant to General License 15, provided that the activity is for maintenance or wind down and consistent with the requirements of other federal agencies.<sup>10</sup> General License 15 does not, however, authorize any divestiture or transfer of debt, equity or other holdings to or for the benefit of the blocked entities it identifies.

The new FAQs issued on May 22, 2018 also confirm that foreign persons will not be subject to sanctions under the Countering America’s Adversaries Through Sanctions Act (“CAATSA”) for engaging in activity with GAZ Group or its subsidiaries that is allowed by General License 15. Specifically, the FAQs clarify that because U.S. persons would not require a specific license to engage in activity authorized by General License 15, the activity would not be considered “significant” of the purpose of a sanctions determination under the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act (“SSIDES”) or CAATSA.<sup>11</sup> OFAC also clarified in a FAQ issued on May 25, 2018 that paying dividends into a blocked account or in a manner that does not provide economic benefit, directly or

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<sup>7</sup> General License No. 15, “[Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with GAZ Group](#)” (May 22, 2018).

<sup>8</sup> See OFAC FAQs at Nos. 586 and 588 (May 22, 2018).

<sup>9</sup> See OFAC FAQs at Nos. 586 and 590 (May 22, 2018).

<sup>10</sup> See OFAC FAQs at No. 591 (May 22, 2018).

<sup>11</sup> See OFAC FAQs at No. 589 (May 22, 2018).

indirectly, to the blocked person, such as an escrow account, will not be considered “significant” for the purposes of a sanctions determination under SSIDES or CAATSA.<sup>12</sup>

General License 12C replaces and supersedes General License 12B of May 1, 2018, to provide for the new General License 15, discussed above. General License 12C, like General License 12B, authorizes otherwise prohibited transactions and activities (until 12:01 a.m. Eastern Daylight Time, June 5, 2018) that are “ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements, including the importation of foods, services, or technology into the United States” with the following blocked persons: AgroHolding Kuban, Basic Element Limited, B-Finance Ltd., EN+ Group PLC, JSC EuroSibEnergo, GAZ Group, Gazprom Burenie OOO, Ladoga Menedzhment OOO, NPV Engineering Open Joint Stock Company, Renova Group, Russian Machines, RUSAL or any other entity in which these persons own a 50 percent or greater interest.<sup>13</sup>

OFAC’s FAQs clarify that under General License 12C, General License 14 and General License 15, U.S. persons may receive regularly scheduled payments — and even accelerated payments or voluntary prepayments — of principal and interest from a blocked person listed in the respective general license, so long as the loan or bond was in existence prior to April 6, 2018, and the payments are in accordance with the terms of the preexisting loan or bond contract.<sup>14</sup>

General License 12C contains the same prohibition as General License 12B with respect to any divestiture or transfer of debt, equity or other holdings to or for the benefit of the blocked entities it identifies, or the exportation of goods from the United States. Further, any payment for the benefit of a blocked person must be made into a blocked, interest-bearing account located in the United States.

OFAC’s FAQs also address what further sanctions relief OFAC can give to GAZ Group<sup>15</sup> and RUSAL,<sup>16</sup> or entities in which they own a majority interest. OFAC advised that “parties may be removed by demonstrating a change in the circumstances that led to their designation,” and in the case of GAZ Group and RUSAL, that is through divestment and relinquishment of control of the entities by any Specially Designated Nationals, including Oleg Deripaska. In that regard, recent press suggests that Mr. Deripaska is taking steps to divest his ownership in and control over RUSAL.<sup>17</sup>

Replacing and superseding General License 13A (issued May 1, 2018), General License 13B authorizes otherwise prohibited transactions (through 12:01 a.m. Eastern Daylight Time, Aug. 5, 2018) that are ordinarily incident and necessary (1) to divest or transfer debt, equity or other holdings in EN+ Group PLC, GAZ Group or RUSAL to a non-U.S. person or (2) to facilitate the transfer of debt, equity or other holdings in EN+ Group PLC, GAZ Group or RUSAL by a non-U.S. person to another non-U.S. person. In addition, General License 13B authorizes all otherwise prohibited transactions and activities (through

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<sup>12</sup> See OFAC FAQs at No. 593 (May 25, 2018).

<sup>13</sup> General License No. 12C, “[Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts](#)” (May 22, 2018).

<sup>14</sup> See OFAC FAQs at No. 592 (May 25, 2018).

<sup>15</sup> See OFAC FAQs at No. 587 (May 22, 2018).

<sup>16</sup> See OFAC FAQs at No. 576 (May 22, 2018).

<sup>17</sup> See, e.g., Scott Patterson and Ian Talley, “Sanctioned Russian Oligarch Deripaska Distances Himself From Rusal,” *The Wall Street Journal*, April 27, 2018, available [here](#).

12:01 a.m. Eastern Daylight Time, Aug. 5, 2018) that are ordinarily incident and necessary (1) to divest or transfer debt, equity or other holdings in EN+ Group PLC, GAZ Group or RUSAL (or its subsidiaries) that were issued by Irkutskenergo, GAZ Auto Plant or Rusal Capital Designated Activity Company (also referred to as “Other Issuer Holdings”) to a non-U.S. person or (2) to facilitate the transfer of Other Issuer Holdings by a non-U.S. person to another non-U.S. person.<sup>18</sup> Such “transactions and activities” include facilitating, clearing and settling transactions to divest to a non-U.S. person debt, equity or other holdings in EN+ Group PLC, GAZ Group, or RUSAL, or Other Issuer Holdings on behalf of U.S. persons.

Most recently, on June 4, 2018, OFAC issued General License 16, authorizing otherwise prohibited transactions (through 12:01 a.m. Eastern Daylight Time, Oct. 23, 2018) 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 EN+ Group PLC, JSC EuroSibEnergo or any other entity in which these entities own a 50 percent or greater interest.<sup>19</sup> Except as authorized by General License 14 (authorizing certain activities necessary to maintenance or wind down of operations or existing contracts with RUSAL or entities in which RUSAL owns a 50 percent or greater interest),<sup>20</sup> any payment for the benefit of a blocked person must be made into a blocked, interest-bearing account located in the United States. General License 16 does not authorize, among other things, any divestiture or transfer of debt, equity or other holdings in, to or for the benefit of the blocked entities it identifies.

U.S. persons participating in transactions authorized by the general licenses are required to file with OFAC a comprehensive, detailed report of each transaction — including the names and addresses of the parties involved, the type and scope of activities conducted, and the dates on which the activities occurred — within 10 business days of the expiration of the license.

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<sup>18</sup> General License No. 13B, “[Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or other Holdings in Certain Blocked Persons](#)” (May 31, 2018).

<sup>19</sup> General License No. 16, “[Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with EN+ Group PLC or JSC EuroSibEnergo](#)” (June 4, 2018).

<sup>20</sup> General License No. 14, “[Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC](#)” (April 23, 2018).