

New Licenses Ease Ukraine, Russia Business Wind-Downs

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In recent weeks, the U.S. Treasury Department's Office of Foreign Assets Control has continued its effort to allow U.S. persons to divest holdings and engage in transactions relating to the winding down of operations or existing contracts that would otherwise violate Ukraine- and Russia-related sanctions.

Specifically, OFAC has issued four general licenses, and published several new and revised FAQs concerning these general licenses:

- On May 22, 2018, OFAC issued General License 15, authorizing certain activities necessary to the maintenance or wind-down of operations or existing contracts with GAZ Group and its subsidiaries until Oct. 23, 2018.
- On the same day, OFAC also issued General License 12C (replacing and superseding General License 12B in its entirety), authorizing U.S. financial institutions to process certain funds transfers for the benefit of 12 specifically identified blocked persons, and clarifying that firms can release such funds for authorized maintenance and wind-down purposes.
- Also on May 22, 2018, OFAC also published six new FAQs and revised three existing FAQs concerning the Ukraine/Russia sanctions. On May 25, 2018, OFAC published two additional related FAQs.
- 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 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.

General License 15

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 a 50 percent or greater interest.[1]

As clarified in accompanying FAQs, accounts of GAZ Group and its subsidiaries remain blocked, except for use in maintenance and wind-down activities.[2] 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.[3]

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.[4] 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, or 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” for the purpose of a sanctions determination under CAATSA or the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act, or SSIDES.[5]

OFAC also clarified in an 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 indirectly, to the blocked person, such as an escrow account, will not be considered “significant” for the purposes of a sanctions determination under CAATSA or SSIDES.[6]

General License 12C

Replacing and superseding General License 12B (issued May 1, 2018), General License 12C 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.[7]

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.[8]

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[9] and RUSAL,[10] 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, a Russian Federation senior official. In that regard, recent press suggests that Deripaska is taking steps to divest his ownership in and control over RUSAL[11].

General License 13B

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 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.[12]

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, RUSAL or other issuer holdings on behalf of U.S. persons.

General License 16

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.[13]

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),[14] 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.

Takeaways

OFAC's efforts to update general licenses and issue supplemental FAQ guidance reflect a recognition that compliance with the new Ukraine/Russia sanctions can be complex, given that many newly sanctioned persons and entities have global business relationships, including with U.S. persons.

Even though OFAC has issued these general licenses, U.S. persons may need to obtain specific licenses to fully divest their interests. Firms should continue to use a sanctions screening process to ensure they are not engaging in prohibited transactions or with blocked persons, and should keep in mind OFAC's 50 percent rule, pursuant to which, if a company is owned 50 percent or more in the aggregate by a blocked person, dealings with that company are prohibited as well.[15]

In addition to carefully scrutinizing customers and transactions, firms should continue to monitor for further Ukraine/Russia-related sanctions, review relevant FAQs and, when in doubt, consult counsel.

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[1] General License No. 15, "Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with GAZ Group" (May 22, 2018).

[2] See OFAC FAQs at Nos. 586 and 588 (May 22, 2018).

[3] See OFAC FAQs at Nos. 586 and 590 (May 22, 2018).

[4] See OFAC FAQs at No. 591 (May 22, 2018).

[5] See OFAC FAQs at No. 589 (May 22, 2018).

[6] See OFAC FAQs at No. 592 (May 25, 2018).

[7] General License No. 12C, "Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts" (May 22, 2018).

[8] See OFAC FAQs at No. 592 (May 25, 2018).

[9] See OFAC FAQs at No. 587 (May 22, 2018).

[10] See OFAC FAQs at No. 576 (May 22, 2018).

[11] See, e.g., Scott Patterson and Ian Talley, "Sanctioned Russian Oligarch Deripaska Distances Himself From Rusal," *The Wall Street Journal*, April 27, 2018.

[12] General License No. 13B, "Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or other Holdings in Certain Blocked Persons" (May 31, 2018).

[13] 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).

[14] 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).

[15] OFAC, Revised Guidance on Entities Owned by Persons Whose Property and Interest in Property are Blocked (Aug. 13, 2014).