

ALERTS

OFAC Focuses on Oligarchs, Adds Sanctions on Russian Persons and Entities

April 26, 2018

On Friday, April 6, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) updated the Russia/Ukraine and Syria sanctions by, among other things, designating a number of individuals and companies as Specially Designated Nationals (SDNs).[1] The new Russia/Ukraine sanctions mark the first time that OFAC has designated publicly traded companies as SDNs — a significant development for firms that trade in the securities of these companies or otherwise have ongoing relationships with them. The new sanctions also designate as SDNs several well-known Russian industrialists with ownership interests in various public companies, requiring firms to assess whether entities not specifically named on the SDN List would be considered blocked parties (i.e., SDNs under OFAC's 50 percent rule,[2] which includes entities that are, in the aggregate, 50 percent or more owned by one or more SDNs). Finally, the new sanctions are noteworthy in that they extend to foreign persons who “knowingly facilitate significant transactions” for any person subject to U.S. sanctions, their child, spouse, sibling or parent.

The new sanctions were issued pursuant to Executive Orders 13661, 13662 and 13582. These actions follow OFAC's Countering America's Adversaries Through Sanctions Act (CAATSA) Section 241 report in late January 2018.[3] In the Section 241 report, OFAC identified senior Russian government officials and oligarchs, but did not impose sanctions against them. The new sanctions target a number (but not all) of those previously identified government officials and oligarchs, as well as corporate entities associated with them, freezing all of their assets subject to U.S.

jurisdiction and prohibiting U.S. persons from dealings with them. The new sanctions also designate as SDNs a state-owned Russian weapons trading company and its subsidiary, a Russian bank.

General Licenses

To allow U.S. persons to divest from relationships that violate the new sanctions, OFAC has over the last several weeks issued various general licenses, including General License 12A, “Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts,”^[4] General License 13, “Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons,”^[5] and General License 14, “Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC.”^[6]

On Monday, April 23, 2018, OFAC issued General License 12A (which replaces and supersedes General License 12 of April 6, 2018, to provide for the new General License 14, discussed below). General license 12A allows U.S. persons to engage in otherwise prohibited transactions and activities with certain blocked persons and entities for a limited time period (until 12:01 am, Eastern Daylight Time, on June 5, 2018), to the extent they are “ordinarily incident to and necessary to the maintenance or wind down of operations, contracts or other agreements, including the importation of goods, services, and technology into the United States.”^[7] General License 12A allows wind-down transactions and activity as described above, with the following blocked persons: AgroHolding Kuban, Basic Element Limited, B-Finance Ltd., EN+ Group PLC, JSC EuroSibEnerg, GAZ Group, Gazprom Burenie OOO, Ladoga Menedszhement OOO, NPV Engineering Open Joint Stock Company, Renova Group, Russian Machines, United Company RUSAL PLC (“RUSAL”),^[8] or any other entity in which these blocked persons own, directly or indirectly, a 50 percent or more interest.

General License 12A 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, or the exportation of goods from the U.S. General License 12A also requires that any payment for the direct or indirect benefit of a blocked person named in the license must be made into a blocked, interest-bearing account in the United States.

In FAQs accompanying the sanctions, OFAC also clarifies that permitted transactions include salary payments, pension payments and other benefits or services to U.S. persons who are employees of the blocked persons named in General License 12A.[9] The FAQs also clarify that, absent authorization from OFAC, continued employment or board membership with an entity designated under E.O. 13661 or E.O. 13662, or blocked by operation of the 50 percent rule, are prohibited, and advise U.S. persons who are employed by or hold board memberships in any designated company to evaluate whether activities necessary to exit that relationship are authorized, and if not, to seek guidance or a specific license from OFAC.[10]

General License 13, issued April 6, 2018, similarly provides a grace period (until 12:01 am, Eastern Daylight Time, on May 7, 2018), during which U.S. persons are allowed to conduct transactions or other activity “ordinarily incident and necessary to divest or transfer debt, equity, or other holdings in the blocked persons [specified below] to a non-U.S. person, or to facilitate the transfer of debt, equity, or other holdings” in the same blocked persons by a non-U.S. person to another non-U.S. person. Transactions permitted under General License 13 include facilitating, clearing and settling transactions to a non-U.S. person to divest debt, equity or other holdings in the blocked persons, including on behalf of U.S. persons. General License 13 allows such transactions and activity with respect to the following: EN+Group PLC, GAZ Group, and United Company RUSAL PLC. General License 13 does not, however, allow a U.S. person “to sell debt, equity, or other holdings, to; to purchase or invest in debt, equity, or other holdings in; or to facilitate such transactions with, directly or indirectly,” any blocked person or entity, including blocked persons identified in the license.[11]

On Monday, April 23, 2018, OFAC issued General License 14, which extends the grace period for maintenance or wind down transactions involving United Company RUSAL PLC and its subsidiaries until 12:01 am, Eastern Daylight Time, on Oct. 23, 2018. OFAC also issued new FAQs related to General License 14. Any funds in accounts of blocked persons that were blocked as of 12:01 am on April 23, 2018 remain blocked, but such funds may be used consistent with the above maintenance or wind-down activity. The license does not permit divestiture or transfer of debt, equity or other holdings in or for the benefit of RUSAL, or the unblocking of any property related to RUSAL except as provided in the license, but exports to RUSAL are permitted for maintenance or wind-down purposes.

Payments authorized by General License 14 license do not need to be deposited into a blocked account at a U.S. financial institution.

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

In response to questions from the industry regarding General License 13, which limits divestments of debt, equity or holdings in certain blocked persons to non-U.S. persons, OFAC has indicated that it plans to publish guidance clarifying that it will allow financial institutions or registered broker-dealers in securities to rely upon the information ordinarily available to them for purposes of conducting the activities authorized under General License 13. But, consistent with FAQ 116,[12] if a U.S. broker is involved in the divestment or transfer of equity, debt or other holding and has information in its possession leading it to know or have reason to know that the buyer is a U.S. person, it is responsible for making sure that the transaction does not occur. OFAC has indicated that it expects U.S. persons to conduct due diligence on their own direct customers, and OFAC will consider the totality of the circumstances surrounding the processing of the transaction to determine what, if any, enforcement action to take.

OFAC also clarified, in FAQs accompanying the new Russia/Ukraine sanctions, that if a person designated under the new sanctions owns less than 50 percent of a U.S. company, the U.S. company itself is not blocked, but that U.S. company must block all property and interests in property in which the designated person has an interest.[13] This FAQ guidance could have significant consequences for any U.S. company whose shares are publicly traded and potentially owned by a newly designated SDN. OFAC notes that depending on the nature of the blocked property, the U.S. company may be able to continue operations, but encourages such companies to seek further guidance.

CAATSA's Extension to Foreign Persons

CAATSA permits the Treasury to impose mandatory sanctions on foreign 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.”[14] These secondary sanctions are applicable with respect to the Apr. 6 designations.

OFAC’s FAQs explain that it will consider the “totality of the facts and circumstances” in determining whether a transaction is “significant,” which is the primary factor that triggers secondary sanctions.[15] The FAQs outline other factors that could impact its analysis, including “(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.”[16]

The FAQs also note that a transaction is not “significant” if a U.S. person could participate in it without a specific license.[17] Therefore, according to OFAC, activity authorized by General Licenses 12A, 13 and 14 would not be considered “significant” for purposes of imposition of secondary sanctions.[18]

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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[1] Announcement and details available here.

[2] Details of the 50 percent rule available here, under heading *Entities Owner by Persons Whose Property and Interest in Property are Blocked (50 percent)*.

[3] For a fuller explanation of the prior Russian sanctions, see “Treasury Identifies Russian Political Figures and Oligarchs,” *SRZ Alert*, Feb. 1, 2018, available here, and “Sanctions Update: Russia, Iran, North Korea and Venezuela,” *SRZ Alert*, Aug. 2, 2017, available here, republished in *The Hedge Fund Journal*, August 2017.

[4] Full content for General License 12A available here.

[5] Full content for General License 13 available here.

[6] Full content for General License 14 available here.

[7] See General License 12A available here.

[8] See information on General License 14, included below, for the specific parameters of the license relating to United Company RUSAL PLC.

[9] See FAQ 567 available here.

[10] See FAQ 568 available here.

[11] See General License 13 available here.

[12] See FAQ 116 available here.

[13] See FAQ 573 available here.

[14] See FAQ 574 (summarizing CAATSA Section 228) available here.

[15] See FAQ 542 available here.

[16] *Id.*

[17] See FAQ 574 available here.

[18] See *Id.* and FAQ 579 available here.

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