

US ANNOUNCES NEW RUSSIA SANCTIONS DESIGNATIONS AND RELEASES NEW GUIDANCE

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Legal Briefings

Given the broad coverage of the new designations and their importance, both US persons and non-US persons currently having or anticipating business transactions with Russia should conduct robust due diligence and monitoring on their counterparties and understand the potential impact of the new sanctions.

On April 6, 2018, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") [announced](#) new designations of seven high-net-worth Russian individuals and 12 companies they own or control, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary, a Russian bank. The designation announcement followed the release of [the Report Regarding Senior Foreign Political Figures and Oligarchs in Russia and Russian Parastatal Entities](#) pursuant to Section 241 of the Counter America's Adversaries Through Sanctions Act ("CAATSA") on January 29, 2018, and restricts dealings with a number of individuals and companies of economic significance.

IMPACT IN THE US AND FOR US PERSONS

All assets subject to US jurisdiction of the designated individuals and entities, and of any other entities owned 50% or more, directly or indirectly, by one or more designated persons, are frozen, and US persons are generally prohibited from dealings with them. US persons who are directors or employees of the blocked entities are expected to terminate their continued employment or board membership. Additionally, non-US persons could face sanctions for knowingly facilitating "significant" transactions for or on behalf of the individuals or entities blocked under the "secondary sanctions" described further below. The designations do not impact the status of other previously designated entities, including entities only subject to sectoral sanctions pursuant to Executive Order 13662, although Rosoboroneksport, an entity previously designated for sectoral sanctions only, is now designated for full asset blocking.

GENERAL LICENCES

Concurrently, OFAC issued two general licenses to authorize certain winding-down and divestment activities involving certain designated persons. In issuing [General License 12](#), OFAC has authorized a time-limited winding down of pre-existing operations, contracts, or other agreements in which the blocked entities listed in General License 12 have an interest, but requiring that any payment made to the blocked entities be deposited in a blocked account at a US financial institution. In general, General License 12 would authorize all transactions necessary to the maintenance of operations or to facilitate a wind-down, including the provision of salary payments, pension payments, or other benefits, by the blocked entities listed in General License 12, or the provision of services by the employee to such blocked entities, until June 5, 2018. However, OFAC stated that employees of entities that have not been listed in General License 12 need to contact OFAC separately to be able to carry out wind-down activities; any continued employment of US persons by the designated entities outside of the authorized wind-down activities is prohibited.

[General License 13](#) authorizes certain divestment and transfer activities related to debt, equity, or other holdings in the blocked entities listed in General License 13 before May 7, 2018, subject to certain conditions and exceptions. Specifically, General License 13 authorizes US persons to divest, or transfer to a non-US person, debt, equity, or other holdings in the blocked entities listed in General License 13, provided that such divestment does not result in US persons dealing with the entities listed in General License 13 (as opposed to third-party, non-US person purchasers of the assets). This will enable US investors of the blocked entities to exit their investment through the secondary market.

SECONDARY SANCTIONS

So-called "secondary sanctions" enable sanctions to be imposed on non-US persons for certain categories of activity. As detailed in our prior alerts, CAATSA, which President Trump signed into law in August 2017, provided several new categories of primary and secondary sanctions relating to Russia, Iran and North Korea.

One such secondary sanctions provision was to enable, from January 29, 2018, secondary sanctions to be imposed on persons determined to have engaged in any "significant transaction", including deceptive or structured transactions, for or on behalf of any relevant listed person following the enactment of CAATSA. In subsequent guidance issued by OFAC, it was clarified that, in determining whether a transaction is "significant," the US Government would consider the totality of the facts and circumstances surrounding the transaction and weigh various factors on a case-by-case basis, 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 OFAC deems relevant on a case-by-case basis.

Foreign Financial Institutions (that is, non-US financial institutions) also face certain secondary sanctions (correspondent account or payable through accounts sanctions) if OFAC determines, inter alia, that they have knowingly facilitated significant financial transactions on behalf of relevant sanctioned persons. OFAC's guidance notes that the term "financial transaction" is broadly defined to include "any transfer of value involving a financial institution."

Accordingly, there is scope for "significant transactions" with the newly-listed individuals and entities (and other entities captured by the 50% rule) to be sanctionable, even if conducted outside the US, by non-US persons or financial institutions.

The two general licenses discussed above are also relevant to potential secondary sanctions, against non-US persons, because for secondary sanctions to be imposed under CAATSA, a transaction is not "significant" if US persons would not require specific licenses from OFAC to participate in it. Therefore, activity authorized by General Licenses 12 and 13 would not be considered "significant" for the purposes of secondary sanctions determinations under CAATSA.

CONCLUSION

Given the broad coverage of the new designations and their importance, both US persons and non-US persons currently having or anticipating business transactions with Russia should conduct robust due diligence and monitoring on their counterparties and understand the potential impact of the new sanctions. In particular, US persons should pay special attention to the operation of the so-called "50% rule," which states that entities directly or indirectly 50% or more owned by sanctioned persons are subject to the restrictions applicable to such owners.

Companies doing business with Russian counterparties should review their position to ensure compliance with the US-Russia sanctions.

Herbert Smith Freehills' New York office continues to monitor developments in this area.

KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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