

Memorandum

Broader Than They Look: New OFAC Sanctions on Russian Oligarchs, Government Officials, and Associated Entities Will Likely Have Wide-Ranging Implications for the International Financial Sector

April 13, 2018

On Friday, April 6, 2018, the Office of Foreign Assets Control of the U.S. Department of the Treasury (“OFAC”) designated certain individuals and entities connected to the Russian government and Vladimir Putin as Specially Designated Nationals (“SDNs”). Despite the relatively small number of additions to the SDN List, these new designations will likely have a broad impact on the international financial community. Both U.S. and non-U.S. clients should evaluate their portfolios and dealings for relationships with the newly-designated individuals and entities and with any entity owned 50% or more by the designees. U.S. persons must cease dealings with SDNs and entities owned or controlled by these SDNs, although wind-downs have been licensed for a limited period of time. Non-U.S. persons may face secondary sanctions for engaging in significant transactions with or for the benefit of the SDNs (or entities they own or control) and should carefully consider any dealings with these newly-designated SDNs. Foreign financial institutions (“FFIs”) are likely to reject any “significant transaction” with the SDNs regardless of whether there is a U.S. nexus and may refuse to process *any* transaction involving an SDN.

Newly Designated Individuals and Businesses

On April 6, 2018, OFAC in consultation with the U.S. Department of State, designated seven Russian oligarchs, 12 companies controlled by those oligarchs, 17 Russian senior government officials, a state-owned Russian weapons firm, and a Russian bank (listed below) as SDNs.¹ The designations are intended to cut off money flows—both in the U.S. and outside the U.S.—to these individuals and entities.

¹ Any entity owned 50% or more individually or in the aggregate by one or more SDNs is also treated as an SDN.

Implications for U.S. Persons

U.S. persons are prohibited from engaging in any transaction or dealing with any SDN, although certain allowances for wind-downs have been made concerning dealings with the SDNs listed below. Moreover, any U.S. person holding the property or an interest in property belonging to an SDN must block that property and not deliver it to the listed individuals. Thus, financial institutions, alternative asset managers, and other U.S. persons that have contractual relationships with the newly-designated entities may need to “block” any contract, account, stocks, limited partnership interest, or other ownership interest, and disclose the extent of those blocked property interests to OFAC.

Implications for Non-U.S. Persons

The designations, which were made pursuant to Executive Orders (“EOs”) 13661 and 13662, also aim to discourage non-U.S. persons from dealing with these SDNs by exposing non-U.S. persons to the possibility of being designated as SDNs, as well as to so-called “secondary sanctions”:

- EOs 13661 and 13662 authorize OFAC to designate an SDN a non-U.S. person who materially supports a sanctioned party, if such person is (1) acting or purporting to act for or on behalf of, directly, or indirectly, any of the sanctioned parties; or (2) materially assisting, sponsoring, or providing financial, material, or technical support for or goods or services in support of any of the sanctioned parties.
- Two sections of the recently enacted Countering America’s Adversaries Through Sanctions Act (“CAATSA”) expose non-U.S. persons to secondary sanctions if they engage in “significant transactions”² with the SDNs designated pursuant to EO 13661 or 13662 (along with certain other Russia-related EOs):
 - Section 228 of CAATSA imposes blocking sanctions on any non-U.S. person who knowingly facilitates a significant transaction or transactions with persons subject to sanctions imposed by the United States with respect to the Russian Federation³, including deceptive or structured transactions, for or on behalf of any person subject to U.S. sanctions with respect to the Russian Federation or any child, spouse, parent, or sibling of such sanctioned person; and

² OFAC has stated in an FAQ that it will determine whether a transaction is “significant” with reference to seven factors: (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.

³ Note that such persons include persons listed on either the SDN List or the SSI List, as well as persons subject to sanctions pursuant to OFAC’s 50 percent rule.

- Section 226 of CAATSA requires the imposition of mandatory secondary sanctions on an FFI that OFAC determines has knowingly facilitated “significant financial transactions” on behalf of any Russian person added to the SDN List pursuant to EO 13661 or 13662 (along with the other Russia-related EOs). The mandatory sanctions that must be imposed on FFIs pursuant to Section 226 of CAATSA include the blocking or restricting of an FFI’s ability to open or maintain a correspondent or payable-through account in the United States, effectively meaning that the FFI would be cut off from the U.S. banking system.

These provisions change the calculus for dealings by non-U.S. persons with Russian SDNs designated under the authority of EO 13661 or 13662 because they present the very real possibility of being subject to secondary sanctions or even being designated as an SDN. This heightened risk for non-U.S. persons is different from dealing with many other SDNs and is comparable to the situation that non-U.S. persons found themselves in prior to 2016 when contemplating dealings with Iran. Those Iranian sanctions effectively cut Iran off from much of the world’s financial system and the specter of secondary sanctions in this instance has the same intent vis-à-vis persons and entities tied to the Kremlin.

General Licenses Authorize Certain Wind-Down Activities

OFAC has, however, issued general licenses to facilitate an orderly wind-down of dealings with recently designated entities:

- General License 12 authorizes all transactions or other activities ordinarily incident and necessary to the maintenance or wind-down of operations, contracts, or other agreements with designated SDNs and entities in which they own a 50% or greater interest. General License 12 runs through June 4, 2018.
 - A U.S. person employed with or sitting on the board of one of the sanctioned entities, or their owned or controlled entities, may no longer be so engaged. General License 12 permits certain wind-down activities, but any actions required to sever ties or wind down operations with designated persons that are beyond the scope of General License 12 require a specific license from OFAC.
- General License 13 authorizes the disposition of holdings in three recently designated SDNs which are publicly traded. Such dispositions made pursuant to General License 13 must be made by May 6, 2018.
 - General License 13 authorizes U.S. persons to divest or transfer to a non-U.S. person, or to facilitate the transfer by a non-U.S. person to another non-U.S. person, of debt, equity, or other holdings in the blocked entities listed in General License 13, provided that such divestment, transfer, or facilitation does not result in U.S. persons selling debt, equity, or other holdings to; purchasing or investing in debt, equity, or other holdings in; or facilitating such transactions with,

directly or indirectly, any blocked person, including the entities listed in General License 13. However, this license extends only to shares in EN+ Group PLC, GAZ Group and United Company RUSAL PLC and dispositions must be made by May 6, 2018. The disposition of holdings in designated entities other than the three firms listed in General License 13 or at a time after the limited timeframe specified in General License 13 will require a specific license from OFAC.

U.S. persons relying on either General License 12 or 13 are subject to a detailed reporting obligation and must file a report with OFAC within 10 days of the expiration of the applicable license. The obligatory report is required to comprehensively describe the transaction(s), including information on the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the licensed activities occurred.

In summary, these designations and the prospect for secondary sanctions on non-U.S. persons and FFIs, will put significant pressure on non-U.S. persons to refrain from business with the designees and will mean that both U.S. persons and non-U.S. persons will have to engage in enhanced diligence in transactions involving Russia or Russians so as to ensure that parties with whom they are transacting are not owned or controlled by the SDNs listed below.

Designated Individuals and Entities

Vladimir Bogdanov
Oleg Deripaska
Suleiman Kerimov
Igor Rotenberg
Kirill Shamalov
Andrei Skoch
Viktor Vekselberg
Andrey Akimov
Mikhail Fradkov
Sergey Fursenko
Oleg Govorun
Alexey Dyumin
Vladimir Kolokoltsev
Konstantin Kosachev
Andrey Kostin
Alexey Miller
Nikolai Patrushev
Vladislav Reznik
Evgeniy Shkolov
Alexander Torshin

Vladimir Ustinov
Timur Valiulin
Alexander Zharov
Viktor Zolotov
B-Finance Ltd.
Basic Element Limited
EN+ Group
EuroSibEnerg
United Company RUSAL PLC
Russian Machines
GAZ Group
Agroholding Kuban
Gazprom Burenie
NPV Engineering Open Joint Stock Company
Ladoga Menedzhment, OOO
Renova Group
Rosoboroneksport (not designated under EO 13661 or 13662)
The Russian Financial Corporation Bank (RFC Bank) (not designated under EO 13661 or 13662)

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