

International Trade Alert

April 9, 2018

Key Points

- On April 6, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) placed seven prominent Russian businessmen, 12 companies, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary Russian bank on the SDN List.
- Effective immediately, U.S. persons are generally prohibited from dealing with these sanctioned persons and must block the property and interests in property of these sanctioned persons that come within such U.S. persons' possession or control, unless otherwise authorized by OFAC. These restrictions apply not only to the named individuals and entities on the SDN List, but also to any entity that is 50 percent or more owned, directly or indirectly, by one or more SDNs. Additionally, non-U.S. persons can face secondary sanctions for engaging in certain types of transactions with these sanctioned persons. Finally, non-U.S. persons should also consider and avoid transactions that the U.S. government may assert "caused" U.S. persons to deal impermissibly with SDNs.
- To "minimize immediate disruptions to U.S. persons, partners, and allies," OFAC issued two general licenses on April 6, 2018, to allow U.S. persons (i) to divest or transfer debt, equity or other holdings of three specific sanctioned entities to non-U.S. persons until May 7, 2018 (and to facilitate such divestment or transfer by non-U.S. persons) and (ii) to wind down operations, contracts or other agreements involving 12 specific sanctioned entities (and entities they own by 50 percent or more) until June 5, 2018. Importantly, these general licenses do not allow U.S. persons to distribute or otherwise provide funds to sanctioned persons.



OFAC Sanctions Leading Russian Businessmen, Government Officials and Companies

Background

Although OFAC imposed the April 6, 2018, sanctions designations under executive orders issued in 2014, these sanctions follow the enactment of the Countering America's Adversaries Through Sanctions Act (CAATSA), a law passed by Congress in August 2017 with overwhelming bipartisan approval, which includes a variety of measures targeting Russia. As required by CAATSA, on January 29, 2018, the U.S. Department of the Treasury ("Treasury") submitted to Congress an unclassified report and classified annex regarding "Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities," listing 114 "senior foreign political figures" in the Russian Federation, including members of the presidential administration, cabinet of ministers and other senior political leaders, as well as 96 individuals who are worth over \$1 billion "according to reliable public sources."¹ Although Section 241 of CAATSA required the Trump administration to submit this report to Congress ("Section 241 report"), it did not specifically require sanctions to be imposed on persons included in the report.

Since the release of the Section 241 report, senior Trump administration officials, including Secretary of the Treasury Steven Mnuchin and Under Secretary for Terrorism and Financial Intelligence Sigal Mandelker, indicated in various public fora that Treasury was preparing additional sanctions based on the Section 241 report to "hold Russian government officials and oligarchs accountable for their destabilizing activities by severing their access to the U.S. financial system."²

The press release issued by Treasury announcing these new sanctions states that OFAC's sanctions designations on April 6, 2018 "target[] a number of the individuals listed in the Section 241 report, including those who benefit from the Putin regime and play a key role in advancing Russia's malign activities."³

Summary of April 6, 2018 OFAC Sanctions Designations

On April 6, 2018, OFAC placed seven Russian individuals, 12 companies, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary on the Specially Designated Nationals and Blocked Persons List ("SDN List"). As a result of such actions, U.S. persons⁴ must generally terminate all dealings with such SDNs and entities that are 50 percent or more owned,

¹ See Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities, (Jan. 29, 2018), available at <http://prod-upp-image-read.ft.com/40911a30-057c-11e8-9650-9c0ad2d7c5b5>.

² U.S. Department of the Treasury, "Treasury Sanctions Russian Cyber Actors for Interference with the 2016 U.S. Elections and Malicious Cyber-Attacks," (Mar. 15, 2018), available at <https://home.treasury.gov/news/press-releases/sm0312>.

³ U.S. Department of the Treasury, "Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity," (Apr. 6, 2018), available at <https://home.treasury.gov/news/press-releases/sm0338>.

⁴ U.S. persons include U.S. citizens and permanent residents (wherever located), companies incorporated in the United States and their foreign branches, and persons in the United States (including non-U.S. persons when present or operating in the United States).

directly or indirectly, by one or more SDNs (whether listed on April 6 or previously) (collectively, “blocked persons”). Furthermore, U.S. persons must block any property of such blocked persons that is in, or comes into, their possession or control. As a practical matter, U.S. persons must (i) transfer blocked funds into a separate blocked, interest-bearing account at a U.S. financial institution that cannot be debited without authorization from OFAC and (ii) report the blocked property to OFAC within 10 business days. Similarly, U.S. persons must block other property, or interests in property, held by such blocked persons and report such blocked property to OFAC within 10 business days as well.

SDN Designations

The new SDN designations are provided below:

Russian Individuals

OFAC placed certain individuals on the SDN List, and indicated certain positions held by such persons (listed below as indicated by OFAC):

- Vladimir Bogdonov, Director General and Vice Chairman of the Board of Directors, Surgutneftegaz
- Oleg Deripaska, Owner and/or President of Basic Element, United Company RUSAL, EN+ Group and other aluminum/power entities
- Suleiman Kerimov, Member, Russian Federation Council
- Igor Rotenberg, Owner, Gazprom Burenie
- Kirill Shamalov, who has an ownership interest in Sibur, an oil and gas exploration company
- Andrei Skoch, Deputy, Russian Federation’s State Duma
- Viktor Vekselberg, Chairman of the Board of Directors, Renova Group.

All of these businessmen were listed in the unclassified version of the Section 241 report except for Igor Rotenberg, who is the nephew of Boris Rotenberg and the son of Arkady Rotenberg, both of whom appear in the Section 241 report and were designated on the SDN List in 2014.

Companies

The following companies were designated by OFAC:

- B-Finance Ltd.
- Basic Element Limited
- EN+ Group
- EuroSibEnerg
- United Company RUSAL PLC

- Russian Machines
- GAZ Group
- Agroholding Kuban
- Gazprom Burenie
- NPV Engineering OJSC
- Ladoga Menedzhment
- Renova Group.

Russian Government Officials

OFAC also placed 17 Russian officials on the SDN List, and indicated certain positions held by such officials (listed below as indicated by OFAC):

- Andrey Akimov, Chairman of the Management Board, Gazprombank
- Mikhail Fradkov, President, Russian Institute for Strategic Studies
- Sergey Fursenko, Member of the Board of Directors, Gazprom Neft
- Oleg Govorun, Head, Presidential Directorate for Social and Economic Cooperation with the Commonwealth of Independent States Member Countries
- Alexey Dyumin, Governor, Tula Region of Russia
- Vladimir Kolokoltsev, Minister of Internal Affairs and General Police
- Konstantin Kosachev, Chairman, Foreign Affairs Committee, Russian Federation Council
- Andrey Kostin, Chairman of the Management Board and President, VTB Bank
- Alexey Miller, Chairman of the Management Committee, Gazprom
- Nikolai Patrushev, Secretary, Russian Federation Security Council
- Vladislav Reznik, Member, Russian State Duma
- Evgeniy Shkolov, Aide to the President of the Russian Federation
- Alexander Torshin, State Secretary - Deputy Governor, Central Bank of Russia
- Vladimir Ustinov, Plenipotentiary Envoy to the Southern Federal District
- Timur Valiulin, Head, General Administration for Combatting Extremism, Ministry of Internal Affairs
- Alexander Zharov, Head, Roskomnadzor
- Viktor Zolotov, Director, Federal Service of National Guard Troops.

Russian State-owned Companies

OFAC also placed the following two entities on the SDN List (described below as indicated by OFAC):

- Rosoboronexport, state-owned Russian weapons trading company
- Russian Financial Corporation (RFC) Bank (owned by Rosoboronexport)

General Licenses

OFAC also issued two general licenses “to minimize immediate disruptions to U.S. persons, partners, and allies,” temporarily authorizing transactions with these blocked persons that would otherwise be prohibited by U.S. sanctions:

- General License 12 authorizes U.S. persons to engage in transactions until June 5, 2018, “that are ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements” in effect prior to April 6, 2018, involving the 12 sanctioned companies, as well as any other entities in which such companies own, directly or indirectly, a 50 percent or greater interest.
 - Notably, General License 12 applies **only** to the 12 companies specifically listed in the license and any other entities in which such companies own, directly or indirectly, a 50 percent or greater interest. General License 12 does not apply to the other two state-owned entities designated (Rosoboronexport and RFC Bank), the individuals designated by the same action on April 6, or entities owned 50 percent or more by such entities and individuals.
 - General License 12 does **not** allow (i) the exportation of goods from the United States or (ii) the divestiture or transfer of debt, equity or other holdings in, to or for the benefit of the 12 companies listed in General License 12, or entities in which such companies own, directly or indirectly, a 50 percent or greater interest.
 - Importantly, this general license would authorize U.S. persons to receive payments from these entities that are “incident and necessary to” maintenance or wind down of operations, contracts or other agreements, but any payments made by U.S. persons to such entities for these wind-down activities would have to be placed in a blocked, interest-bearing account located in the United States.
 - U.S. persons must also submit a detailed report to OFAC describing each transaction undertaken under this general license within 10 business days of June 5, 2018 (i.e., by June 19, 2018).
- OFAC also released several FAQs providing further clarifications regarding General License 12:
 - FAQ #569 clarifies that General License 12 provides “authorization for U.S. persons to import goods into the United States from the blocked entities listed in General License 12, provided that any outstanding payment for the goods be deposited in a blocked account at a U.S. financial institution.”

- [FAQ #567](#) explains that U.S. employees of the entities within the scope of the general license are generally authorized to receive salary payments, pension payments or other benefits by such entities, and to provide services to such entities until the general license expires. OFAC encourages U.S. person employees of a designated company to review applicable OFAC regulations, authorizations and public guidance, and to contact OFAC if their “activities as an employee are not authorized.”
- [General License 13](#) authorizes transactions and activities through May 7, 2018 “that are ordinarily incident and necessary to divest or transfer debt, equity, or other holdings” in EN+ Group, GAZ Group and United Company RUSAL to a non-U.S. person (other than a blocked person), and to facilitate such transfers between non-U.S. persons (other than blocked persons), subject to certain conditions and reporting requirements. The transactions and activities authorized include facilitating, clearing and settling transactions to divest to a non-U.S. person debt, equity, or other holdings in EN+ Group, GAZ Group and United Company RUSAL.
 - General License 13 only applies to three of the newly designated entities and, unlike General License 12, General License 13 does not apply to debt, equity or other holdings in entities that are owned 50 percent or more, directly or indirectly, by these three entities.
 - General License 13 also does not permit U.S. persons to sell debt, equity or other holdings to; purchase or invest in debt, equity or other holdings in; or facilitate such transactions, directly or indirectly, with SDNs and blocked persons under the Russia sanctions program.
 - U.S. persons must submit a detailed report to OFAC describing each transaction undertaken under this general license within 10 business days of the expiration of General License 13 (i.e., by May 21, 2018).

Secondary Sanctions Exposure for Non-U.S. Persons

The parties subject to the April 6, 2018 sanctions were designated pursuant to authorities contained in Executive Orders 13661 and 13662. These same executive orders authorize the U.S. government to sanction other non-U.S. persons that provide certain types of support for the sanctioned parties, including:

- acting or purporting to act for or on behalf of, directly or indirectly, any of the sanctioned parties; or
- materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services in support of any of the sanctioned parties.

Additionally, two sections of CAATSA may expose non-U.S. persons to potential secondary sanctions if they engage in “significant transactions” with the sanctioned parties, as follows:

- First, section 228 of CAATSA requires the President to impose property-blocking sanctions, subject to certain waiver authority, on any non-U.S. person who knowingly “facilitates a significant⁵ transaction or 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 “any child, spouse, parent, or sibling” of such sanctioned persons.
- Second, section 226 of CAATSA imposes U.S. correspondent account restrictions on foreign financial institutions that the President determines have “knowingly facilitated a significant financial transaction on behalf of any Russian person included” on the SDN List pursuant to the Russia and Ukraine-related sanctions program.

These secondary sanctions are a critical consideration for any non-U.S. individual or entity considering doing business with these newly sanctioned parties, as these secondary sanctions authorities extend to business that may be conducted wholly outside of U.S. jurisdiction, including business conducted wholly within the Russian Federation.

Review and Consideration of Potential Risk Exposure

The SDN designations described above target substantial companies and Russian businessmen, as well as entities owned 50 percent or more by such companies and businessmen, making these the toughest and most far-reaching sanctions measures that the Trump administration has imposed against Russia.

Importantly, these sanctions do not affect U.S. persons only. The U.S. government has asserted jurisdiction over non-U.S. persons for “causing” U.S. persons to violate U.S. economic sanctions, including prohibited dealings with SDNs. Secondary sanctions also target non-U.S. companies that engage in “significant transactions” with these sanctioned persons, even if such transactions have no U.S. nexus (e.g., no U.S. persons, no U.S. dollars, etc.).

For these reasons, companies should analyze their business interests that intersect with Russia and these blocked persons to determine the impact of these measures and take any necessary actions to comply with applicable law and reduce sanctions risks. Further, companies should review and update their compliance procedures to ensure that they address these new changes.

Looking ahead, it is currently unclear what actions Russia may take in response to these sanctions and/or whether the European Union or United Kingdom will join the United States in imposing additional sanctions measures against Russia. Furthermore, it remains possible that OFAC could impose additional sanctions targeted at Russian interests, including against other individuals listed in the Section 241 report or others close to President Putin, in the days, weeks and months ahead.

⁵ In an [FAQ](#), OFAC confirms that a transaction is not “significant” if U.S. persons would not require a specific license from OFAC to participate in it. Accordingly, activities that are within the scope of General Licenses 12 or 13 and that occur within the time period authorized in these general licenses would not be considered “significant” for the purposes of a sanctions determination under Section 226 and 228 of CAATSA.

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