

New Russian Oligarch Sanctions Will Require Prompt Action

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On April 6, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) imposed new sanctions against Russia by adding several Russian oligarchs, political officials and businesses under their control to its Specially Designated Nationals and Blocked Persons List (SDN list). These sanctions mark the Trump administration's most significant action taken against Russia to date, and will likely impose serious compliance challenges for both U.S. and non-U.S. persons doing business with Russia.

OFAC has issued 2 general licenses which allow potentially affected persons limited opportunities to unwind any existing transactions with the newly sanctioned parties; however, anyone seeking to utilize those licenses has only a limited amount of time to do so.

Background on CAATSA Legislation and the Oligarch Sanctions

The recent sanctions were made possible by the Countering America's Adversaries Through Sanctions Act (CAATSA), which took effect on Aug. 2, 2017, following approval of the legislation by a combined 517-5 margin in the U.S. Senate and House of Representatives. Among other things, CAATSA required President Donald Trump to impose sanctions on persons engaged in significant corruption within Russia, and to issue a formal report identifying senior political figures and oligarchs within Russia as well as their indices of corruption and business holdings.

The Trump administration issued that report on Jan. 29, 2018, but elected not to sanction any of the individuals named in the report at that time. After receiving significant criticism, Treasury Secretary Steven Mnuchin offered his assurances that some form of oligarch sanctions would be forthcoming after OFAC performed further internal review. These sanctions are the result of that review process; however, CAATSA does authorize OFAC to sanction additional Russian oligarchs and government officials if it chooses to do so at some point in the future.

Officials, Oligarchs and Entities Named in OFAC's Announcement



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OFAC issued a press release announcing the sanctions, in which Secretary Mnuchin stated:

The Russian government engages in a range of malign activity around the globe, including continuing to occupy Crimea and instigate violence in eastern Ukraine, supplying the Assad regime with material and weaponry as they bomb their own civilians, attempting to subvert Western democracies and malicious cyber activities. Russian oligarchs and elites who profit from this corrupt system will no longer be insulated from the consequences of their government's destabilizing activities.

In total, OFAC announced new sanctions against 7 Russian oligarchs, 17 Russian government officials and 15 business entities. Those sanctioned parties include:

- Kirill Shamalov, who is Russian President Vladimir Putin's son-in-law
- Andrey Kostin, who is the president of Russia's state-owned VTB Bank
- EN+ Group, an international aluminum and power producer
- EuroSibEnergo, which produces an estimated nine percent of Russia's total electricity
- GAZ Group, which is Russia's leading manufacturer of commercial vehicles
- United Company Rusal PLC, which is estimated to produce seven percent of the world's aluminum
- Rosoboroneksport, a state-owned Russian weapons trading company (which was sanctioned, in part, because of its historical transactions with the government of Syria)

As a result of these sanctions, U.S. persons are generally prohibited from transacting with any of the sanctioned persons and entities named in the announcement. Assets belonging to the sanctioned persons and entities and held within the U.S. financial system are now frozen.

Additionally, under OFAC's 50 percent ownership rule, these transaction blocking sanctions and asset freezes also apply to any business entities in which any of these sanctioned persons or entities hold an ownership interest of 50 percent or greater. OFAC's press release specifically stated that the list of business entities named in its announcement "should not be viewed as exhaustive, and the regulated community remains responsible for compliance with OFAC's 50 percent ownership rule."

OFAC has made several updates to its online FAQ guidance in connection with these new sanctions, which are outlined in greater detail below.

General Licenses for Winding Down Transactions and Divesting Debt and Ownership Interests

In connection with the sanctions announcement, OFAC issued General License No. 12, which allows U.S. persons a grace period of 60 days in order to engage in limited transactions and activities that are ordinarily incident to maintaining or winding down transactions with 12 of the oligarch-owned business entities named in its announcement (as well as any of their subsidiaries that are captured under OFAC's 50 percent ownership rule), but only if those transactions were entered into prior to April 6, 2018.

General License No. 12 will allow U.S. persons to finish importing goods from the licensed entities into the U.S., but will not allow U.S. persons to conclude any export of goods from the U.S. to the entities. Additionally, any payments owed to an entity covered under License No. 12 must be paid into a blocked, interest-bearing account located in the United States.

To the extent that U.S. persons might hold debt, equity or other holdings in the sanctioned entities EN+ Group PLC, GAZ Group or United Company Rusal PLC, OFAC also issued General License No. 13, which allows a 31-day grace period for transactions ordinarily incident and necessary to divest or transfer or facilitate the transfer of those holdings to non-U.S. persons. Any U.S. person conducting a transaction under General License No. 12 or General License No. 13 must also submit comprehensive reporting to OFAC within 10 business days following the conclusion of the applicable 60-day or 31-day grace period.

Special Concerns for Non-U.S. Persons

Although the majority of OFAC's sanctions programs are focused on U.S. persons, the CAATSA sanctions are unique, because the CAATSA legislation extends them to non-U.S. persons in 2 key respects:

- Section 228 of CAATSA requires OFAC to impose sanctions against non-U.S. persons who knowingly facilitate "significant transactions" on behalf of persons who are subject to OFAC's Russian sanctions or on behalf of their children, spouses, parents or siblings. OFAC's FAQ guidance states that "facilitation" can include (but is not limited to) transmitting currency, providing goods or services and performing acts such as financing, approving or guaranteeing a transaction. OFAC will determine a transaction's "significance" based on the totality of its facts and circumstances, and according to a seven-factor test specified in OFAC's FAQ guidance. Non-U.S. persons who violate Section 228 and facilitate significant transactions on behalf of sanctioned Russian individuals are at risk of being placed on OFAC's SDN list and becoming subject to blocking sanctions and asset freezes.
- Section 226 of CAATSA requires OFAC to impose sanctions against foreign financial institutions who knowingly facilitate "significant financial transactions" on behalf of sanctioned Russian persons and entities. According to OFAC's FAQ guidance, the types of "financial transactions" that could trigger liability for foreign financial institutions under Section 226 include (but are not limited to): receiving or originating wire transfers, receiving or originating ACH or ATM transactions, providing trade finance or letter of credit services and providing guarantees or similar instruments. For foreign financial institutions, OFAC will apply interpretations of "facilitation" and "significance" that are consistent with their Section 228 interpretations. Foreign financial institutions who violate Section 226 are at risk of losing their ability to open or maintaining correspondent or payable-through accounts in the United States.

OFAC has indicated that non-U.S. persons and foreign financial institutions who are currently facilitating significant transactions with these newly sanctioned Russian parties can take advantage of the authorizations provided in General Licenses 12 and 13 in order to unwind those transactions and avoid sanctions liability.

What This Means to You

In light of OFAC's imposition of these new sanctions, persons doing business in Russia should consider implementing some or all of the following compliance practices:

- Careful screening of Russian counterparties against OFAC's SDN list;
- Performing additional diligence to identify the owners of Russian counterparties, and also screening those owners against OFAC's SDN list in order to avoid any sanctions violations under OFAC's 50 percent ownership rule;

- Special care by non-U.S. persons and foreign financial institutions in recognition of the fact that OFAC’s interpretations of “facilitation” and “significance” can potentially extend CAATSA’s Section 228 and 226 liability to a wide range of activity; and
- Quick action by companies who are currently engaged in transactions with a sanctioned entity but eligible to unwind that transaction under either General License 12 or 13 — in particular, budgeting of the additional time required for any financial institutions or other third-party intermediaries involved in those transactions to conduct their own diligence and compliance reviews.

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