

US Treasury Department's New Designations Under the Russia-Related Sanctions: 3 Key Takeaways

The new designations of Russian individuals and entities broadly expand the scope and impact of sanctions.

Background

On April 6, 2018, the US Treasury Department's Office of Foreign Assets Control (OFAC) added [more than three dozen individuals and entities from the Russian Federation](#) to OFAC's List of Specially Designated Nationals (SDN List), including seven oligarchs and 12 companies they own or control, 17 senior government officials, and a state-owned weapons trading company and its Russian bank subsidiary.

OFAC made the designations pursuant to Executive Orders [13661](#) and [13662](#), both introduced in 2014 in response to the situation in Ukraine, and Executive Order [13582](#), which was linked to the escalation of violence in Syria. While these new US sanctions follow an established legal and policy framework, they are noteworthy for their breadth and impact on a number of individuals and entities with substantial assets and business ties outside of Russia.

The new designations follow a Treasury Department report submitted to the US Congress on January 29, 2018, as required by Section 241 of the Countering America's Adversaries Through Sanctions Act (CAATSA), which identified 114 senior political figures and 96 oligarchs based on their "closeness to the Russian regime" and their net worth. The Treasury Department issued a [press release](#) in connection with the new designations and further explained through its [Frequently Asked Question \(FAQ\) 574](#) that the United States "remains committed to coordinating with our allies and partners in order to mitigate adverse and unintended consequences of these designations."

In connection with the designations, OFAC simultaneously issued two general licenses: [General License 12](#), which authorizes certain activities necessary to maintain or wind down operations or existing contracts with 12 of the newly blocked entities, and [General License 13](#), which authorizes certain transactions necessary to divest or transfer debt, equity, or other holdings in three of the newly blocked entities. OFAC also published [eight new FAQs](#) and [an updated FAQ related to Section 226 of CAATSA](#).

This *Client Alert* summarizes some of the key takeaways from the new sanctions.

1. The new designations have significant implications for US and non-US persons.

The new sanctions impose broad prohibitions on US entities, including their overseas branches, as well as US nationals and US lawful permanent residents, and anyone present in the United States. Unless otherwise authorized by OFAC, US persons are prohibited from engaging in most transactions or dealings (including the provision or receipt of goods or services) with parties on the SDN List, as well as entities that are 50% or more owned by one or more SDNs. In addition, the property and property interests of an SDN that are in the United States or within the possession or control of a US person, must be blocked and reported to OFAC within 10 business days. Unlike certain so-called “sectoral sanctions” previously imposed on other Russian parties, the SDN sanctions are not limited to “new” debt or “new” equity transactions; rather, they apply to any property of an SDN or property in which an SDN has an interest.

Notably, even non-US persons can face sanctions risks if they engage in “significant transactions” involving SDNs. Section 228 of [CAATSA](#) mandates the imposition of sanctions on any foreign person that facilitates a significant transaction or transactions, including deceptive or structured transactions, for or on behalf of an individual or entity subject to Russia-related sanctions, or for the child, spouse, parent, or sibling of a sanctioned individual. Separately, under CAATSA Section 226, non-US financial institutions are subject to US secondary sanctions for knowingly facilitating “significant financial transactions” on behalf of an SDN subject to Russia-related sanctions.

[FAQ 574](#) explains that the maintenance and wind down activities authorized for a limited time period under General Licenses 12 and 13 (discussed below) would not be considered “significant” for purposes of potential secondary sanctions under CAATSA Sections 228 and 226. This means that non-US persons can engage in the activities authorized by the two general licenses, while they remain in effect, without facing the risk of secondary sanctions under CAATSA.

Several of the newly designated SDNs are chief executives of major Russian companies that were not themselves designated. US persons are not prohibited from dealing with non-sanctioned entities, but consistent with prior OFAC guidance and [enforcement activity](#), US persons should exercise caution to ensure that they do not provide funds, goods, or services to an SDN.

2. Certain otherwise-prohibited activities will be permitted for a limited time.

General License 12 authorizes “maintenance” and “wind down” activities until June 5, 2018.

General License 12 authorizes certain transactions and activities by US persons relating to the maintenance or wind down of existing operations or contracts with 12 of 14 of the newly blocked entities (or other parties owned 50% or more by one of those 12 parties) until June 5, 2018. To qualify for the general license, the operations, contracts, or other agreements must have been in effect prior to April 6, 2018, and the activities must be “ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements.”

The general license prohibits (i) the divestiture or transfer of debt, equity, or other holdings to or for the benefit of the 12 entities identified in the general license, (ii) any transactions or dealings with blocked entities not identified in the general license, (iii) the unblocking of certain previously blocked property, or (iv) the exportation of goods from the United States.

Notably, US persons taking advantage of the general license must, within 10 business days after the expiration of the general license (currently June 5, 2018), file with OFAC a “comprehensive, 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.”

General License 13 authorizes certain transactions necessary to divest or transfer assets until May 7, 2018.

Under General License 13, US persons are authorized, until May 7, 2018, to divest or transfer debt, equity, or other holdings in three of the newly sanctioned entities: (i) EN+ Group PLC, (ii) GAZ Group, and (iii) United Company RUSAL PLC. While these interests can be divested or transferred only to a non-US person, US persons are allowed to facilitate such divestments or transfers between two non-US persons.

This general license does not allow US persons to (i) unblock previously blocked property, (ii) sell debt, equity, or other holdings to any SDNs, (iii) purchase or invest in debt, equity, or other holdings in SDNs, or (iv) facilitate such transactions, in each case even with respect to the three SDNs identified in the general license. US persons taking advantage of the general license must file a comprehensive report with OFAC within 10 business days of the expiration of the general license (currently May 7, 2018).

3. New OFAC FAQs illustrate the impact of the sanctions and the significance of the new general licenses.

OFAC also released several new FAQs that underscore the broad impact of these new designations on various parties, including:

- **US person employees of blocked entities.** [FAQ 567](#) explains that General License 12 authorizes US persons employed by SDN entities identified in that general license to engage in transactions ordinarily incident to the continuity of operations or to facilitate a wind down, such as paying salaries, pension payments, or other benefits. Notably, any payments owed by a US person to an SDN identified in the general license must be made to a blocked account at a US bank. The FAQ explains that absent a specific license, US persons cannot engage in transactions with SDNs not included in General License 12.
- **US person employees or board members of blocked entities.** [FAQ 568](#) explains that US persons are prohibited from working for or serving on the board of a designated entity absent authorization from OFAC (which would presumably include General License 12).
- **US persons owning shares in a blocked entity, or Global Depositary Receipts (GDRs) related to shares in a blocked entity.** [FAQ 570](#) confirms that US persons can, until May 7, 2018, divest and transfer GDRs or shares of the three SDNs named in General License 13, provided the requirements of the general license are met.
- **Blocked persons owning less than 50% of a US company.** As described in [FAQ 573](#), if one or more SDNs do not individually or collectively own a 50% or more interest in a US company, that US company is not itself blocked. However, the US company must block all property and interests in property in which the blocked person has an interest. While a US company under such circumstances may be able to continue operations, OFAC notes that “any payments, dividends, or disbursement of profits to the blocked person” are prohibited and must be placed in a blocked account. OFAC also encourages US companies in this situation to contact OFAC to determine whether a license is needed.

If you have questions about this *Client Alert*, please contact one of the authors listed below or the Latham lawyer with whom you normally consult:

Les P. Carnegie

les.carnegie@lw.com
+1.202.637.1096
Washington, D.C.

Olga Ponomarenko

olga.ponomarenko@lw.com
+7.495.644.1923
Moscow

Eric S. Volkman

eric.volkman@lw.com
+1.202.637.2237
Washington, D.C.

Charles Claypoole

charles.claypoole@lw.com
+44.20.7710.1178
London

Robert E. Sims

bob.sims@lw.com
+1.415.395.8127
San Francisco

Elizabeth K. Annis

elizabeth.annis@lw.com
+1.415.395.8007
San Francisco

Ragnar Johannesen

ragnar.johannesen@lw.com
+7.495.644.1931
Moscow

J. David Stewart

j.david.stewart@lw.com
+7.495.644.1927
Moscow

Jennifer Kendrex

jennifer.kendrex@lw.com
+1.202.637.2292
Washington, D.C.

William M. McGlone

william.mcglone@lw.com
+1.202.637.2202
Washington, D.C.

Mikhail Turetsky

mikhail.turetsky@lw.com
+7.495.644.1910
Moscow

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