

U.S. Sanctions Against Russia Continue to Disrupt

April 30, 2018

On April 23, 2018, recognizing the continued market turmoil caused by recent U.S. sanctions against Russian “oligarchs” and their related companies, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued expanded relief from these sanctions. Despite these and earlier mitigating efforts by OFAC, both U.S. and non-U.S. persons continue to grapple with questions arising from OFAC’s recent expansion of sanctions.

REMARKABLE IMPACT

On April 6, 2018, OFAC announced new blocking sanctions “in response to [Russia’s] worldwide malign activity.”¹ The sanctions apply to seven Russian “oligarchs” and twelve related companies, as well as several Russian government officials, a state-owned defense exporter and its subsidiary bank.

The sanctions, as a result of their broad scope, their targets’ role in the world economy and their expansive implications for financial and commercial activities worldwide, have had a substantial impact. In previous rounds of sanctions against Russia, the United States took care to target globally significant companies only for limited restrictions on their access to U.S. equity and debt financing. These new sanctions marked a departure from this previous approach in several ways.

First, as blocking sanctions, these measures are the harshest sanctions imposed under U.S. law. U.S. persons are prohibited from dealing with a designated person and must “block” (i.e., freeze) any property or interests in property of a designated person. Among other disruptions, this action immediately cut off the designated individuals and companies from access to U.S. dollars for financial and commercial transactions.

¹ OFAC, Ukraine-/Russia-related Designations and Identification Update; Syria Designations; Kingpin Act Designations; Issuance of Ukraine-/Russia-related General Licenses 12 and 13; Publication of New FAQs and Updated FAQ (Apr. 6, 2018), *available here*.

Our earlier discussions of U.S. sanctions targeting Russia-related persons are available at our [Sanctions Resource](#).

Second, several of the designated companies are, unusually for targets of U.S. blocking sanctions, well integrated into global financial and commodity markets. Among those sanctioned were global energy investment companies, including Renova Group and publicly-traded En+ Group, and RUSAL, another publicly-traded company and one of the largest global producers of aluminum. Additionally, under OFAC's "50% Rule," which extends U.S. sanctions to any legal entity owned 50% or more by sanctioned persons, other companies also were caught by these sanctions, including some with business in the United States.

Finally, so-called "secondary" sanctions, passed by Congress in August 2017, extend the disruptions caused by the recent designations even to non-U.S. persons conducting their business entirely outside the United States. These secondary sanctions target certain activities involving a sanctioned Russia-related person, such as facilitating a "significant" transaction for that designated individual or company. A non-U.S. person may itself become subject to U.S. blocking or other sanctions for engaging in a targeted activity.

MITIGATING MEASURES AUTHORIZED

OFAC issued two general licenses when announcing the new sanctions, stating that the purpose of these licenses is "to minimize immediate disruptions to U.S. persons, partners, and allies," and subsequently expanded the relief by issuing a third general license applicable to RUSAL.

- General License ("GL") 13 authorizes, until May 7, 2018, all transactions and activities "ordinarily incident and necessary to divest or transfer debt, equity, or other holdings" in En+ Group, GAZ Group and RUSAL, provided that no sanctioned person, including the issuer, is a counterparty.
- GL 12, amended on April 23 and now designated as GL 12A, permits U.S. persons, until June 5, 2018, to engage in any transactions or activities "ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements" involving several of the newly designated companies or their subsidiaries. Activities authorized under GL 12A are subject to certain limits, including a requirement that payments to a designated company must be placed into a blocked account at a U.S. financial institution.
- A third general license, GL 14, issued on April 23, 2018, recognizes what Treasury Secretary Mnuchin called "the impact on our partners and allies" of RUSAL's designation. GL 14, which applies only to RUSAL, contains broader authorizations than GL 12A. Among other things, it allows payments to RUSAL in connection with winding down or maintenance of existing arrangements, and it remains in effect through October 23, 2018.

Each general license requires U.S. persons participating in authorized transactions to file with OFAC a “comprehensive, detailed report of each transaction” within 10 business days of the license’s expiration. This is a new reporting requirement, which has not accompanied previously issued general licenses under the sanctions related to Russia and Ukraine.

DISRUPTIONS CONTINUE

Despite OFAC’s efforts to mitigate impacts on U.S. persons and allies, we continue to see a general struggle to understand and assess the impact of these designations and adapt to the potential risks raised by the new sanctions. As one example, confusion persists among both U.S. and non-U.S. persons regarding the scope and application of the general licenses. Despite OFAC’s apparent intent to authorize broadly for a temporary period all transactions and activities necessary to wind down relationships with certain of the sanctioned companies, concerns about the risks of even inadvertent violations of OFAC’s requirements have promoted conservative interpretations of the conduct permitted under the licenses. In some cases, important intermediaries reportedly have refrained, out of an abundance of caution, from a range of activities that appear to fall outside the scope of the sanctions.

As another example, conflicting signals from the U.S. government continue to cause confusion about the risk of application of U.S. secondary sanctions. Several days after the April 6 designations, the Under Secretary of the U.S. Treasury Department overseeing OFAC reportedly told U.K. officials in London that British banks would face consequences under U.S. secondary sanctions if they carried out significant transactions with the newly designated Russia-related persons. On April 15, the U.S. Ambassador to the United Nations, Nikki Haley, told the media that new sanctions against Russia were imminent in connection with the conflict in Syria. Then, the next day, the Trump administration announced that consideration of any new sanctions is in a “holding pattern” and likely would be contingent on another triggering event by Russia.

We are aware of continuing efforts to solicit additional guidance from OFAC, and we will report any future updates, as relevant.

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We are hosting seminars on this and related sanctions developments in the Trump era. They will be scheduled for 8:30 a.m. to 10 a.m. in London (May 16) and New York (May 23).

To RSVP for the London event, click [here](#), and for the New York event, click [here](#).

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For a periodic e-mail summary of developments in economic and trade sanctions, please subscribe to the Debevoise & Plimpton LLP Sanctions Alert by e-mailing sanctions@debevoise.com, or sign up on the [Insights Subscribe](#) page of our website. The firm's sanctions-related publications may also be found at [The Sanctions Resource](#) page on our website.

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Please do not hesitate to contact us with any questions.

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