

# Client Update

## U.S. Issues Guidance on New Russia Sanctions

On Tuesday, October 31, the U.S. Departments of State and Treasury issued new guidance the Countering America's Adversaries Through Sanctions Act ("CAATSA") relating to sanctions against Russia. This is in addition to guidance that the State Department previously issued on CAATSA Section 231.

An overview of CAATSA is provided in our [client update](#) of July 28, 2017, and the State Department's earlier guidance on Section 231 is covered in our [client update](#) of October 30, 2017.

### AMENDMENTS TO DIRECTIVE 4

Section 223(d) of CAATSA directed the Treasury Department to expand the scope of Directive 4 of the Sectoral Sanctions Identifications ("SSI") List, which governs the provision of goods and services by U.S. persons to certain types of oil projects. The new restrictions are effective January 29, 2018.

Currently, the restrictions apply only to certain deepwater, Arctic offshore or shale projects located in Russia or Russian territorial waters in which an entity designated under Directive 4 has an interest. As amended, the restrictions also will apply to any project, regardless of location, if an entity designated under Directive 4 has a 33 percent or greater ownership interest or a majority voting interest in the project.

In two FAQs, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") confirmed that (i) the new global restrictions will apply only to projects initiated on or after January 29, 2018, (ii) the 33% ownership interest requirement refers to the Directive 4 SSI entity's interest in the relevant project and (iii) the global restrictions also do not apply to the provision of financial services.

### GUIDANCE FROM OFAC

OFAC also published FAQs on CAATSA Sections 223(a), 226, 228, and 233:

- **Section 223(a)** authorizes sectoral sanctions against any “state-owned entity operating in the railway or metals and mining sector” of the Russian economy. OFAC stated in its FAQ that “maintaining unity with partners on sanctions implemented with respect to the Russian Federation is important to the U.S. government,” and emphasized that this section does not require the imposition of any sanctions. It appears unlikely that the U.S. government is currently considering any entities under this authority on a unilateral basis.
- **Section 226** mandates restrictions on the maintenance of U.S. correspondent accounts by foreign financial institutions determined to engage in “significant” transactions involving the sale of Russian defense articles to Syria; Russian deepwater, Arctic offshore or shale oil projects; or persons blocked under U.S. sanctions against Russia. OFAC explained the seven factors it will consider to determine whether a transaction is “significant” and noted that “financial transactions” include any transfer of value involving a financial institution. OFAC also declared that any foreign financial institutions designated under this provision would be included on a publicly available list, separate from the SDN or SSI lists.
- **Section 228** authorizes sanctions against persons that “facilitate” activities relating to sanctions evasion or human rights abuses and also against persons that facilitate significant transactions for or on behalf of “any person subject to sanctions imposed by the United States with respect to the Russian Federation.” OFAC provided guidance on a number of the statutory terms, including “facilitation” and “significant transaction.” OFAC also clarified that SSI entities are within the scope of Section 228, but that non-deceptive transactions with SSI entities will not be considered significant.
- **Section 233** authorizes sanctions against persons who knowingly contribute to or facilitate corrupt privatizations of Russian government assets. OFAC provided guidance on key terms, including “unjustly benefits” and “facilitates.”

## GUIDANCE FROM THE STATE DEPARTMENT

The State Department issued guidance on Sections 225 and 232 of CAATSA. This is in addition to the State Department’s earlier guidance on Section 231.

- **Section 225** mandates sanctions against persons who make significant investments in special Russian crude oil projects. The State Department provided guidance on key terms, including what constitutes a “significant” investment, and explained that an “investment” may include arrangements where equity is provided in exchange for goods or services.
- **Section 232** authorizes sanctions against persons who make significant investments related to Russian energy export pipelines or provide goods or services in support of their construction. The State Department made clear that it “would seek to avoid harming the energy security of our partners or endangering public health and safety” when considering designations under this authority. In addition, the guidance notes that investments and loan agreements in effect prior to August 2, 2017, are not subject to sanctions under this

authority and that these sanctions would not target investments or other activities related to standard repair and maintenance of pipelines in existence as of August 2, 2017.

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APPENDIX

**Timing of New Sanctions on Russia, Iran and North Korea**

On 2 August 2017, the “Countering America’s Adversaries through Sanctions Act” was signed into law. The act calls for the imposition of a number of new sanctions with respect to Russia. In the chart below, we have identified several key provisions in the act that call for new or modified sanctions or other sanctions-related actions. Included in the chart are section references to the [legislation](#) itself and the timeframe within which new sanctions must be imposed or other actions must be taken. We have highlighted below, in green, the sections concerning Russian sanctions for which guidance has been issued by the U.S. government.

In addition, the act calls for several reports related to U.S. sanctions to be submitted by the President or other individuals, such as the Secretary of State, to the appropriate congressional committees and leadership. Some of those reports are briefly described at the end of this chart, as they may shed light on U.S. sanctions priorities going forward.

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
223	<p>Energy and Financial Service Sectors.</p> <p>Modification of implementation of Executive Order No. 13662 (Blocking Property of Additional Persons Contributing to the Situation in Ukraine):</p> <p>Allows the Secretary of the Treasury to designate a person if that person is a state-owned entity operating in the railway or metals and mining sector of the Russian economy.</p>	Secretary of the Treasury	N/A

<sup>1</sup> Unless otherwise stated, the timing given refers to the date of enactment of the act (2 August 2017).

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
223	<p>Energy and Financial Service Sectors.</p> <p>The Secretary of the Treasury shall modify Directives 1, 2 and 4 of Executive Order No. 13622.</p> <p>(1) Modification of Directive 1 with respect to Russia’s Financial Services Sector: restricts equity and debt financing of certain Russian state-owned financial institutions and their subsidiaries. Limits permissible transactions in new debt of designated entities to a maximum maturity of 14 days (currently 30 days).</p> <p>(2) Modification of Directive 2 with respect to Russia’s Energy Sector: restricts equity and debt financing of certain Russian oil and gas companies and their subsidiaries. Limits permissible transactions in new debt of designated entities to a maximum maturity of 60 days (currently 90 days).</p> <p>(3) Modification of Directive 4 with respect to supporting exploration or production for new deep-water, Arctic offshore or shale projects: restricts supply of goods and services to oil exploration and production. Applies to any deep water, Arctic offshore or shale project of the exploration or production of oil, whether in Russia or elsewhere, in which a designated Russian company holds at least a 33% interest (currently only applies to projects in Russian territory).</p>	Secretary of the Treasury	<p>(1) Implemented; Effective November 28, 2017</p> <p>(2) Implemented; Effective November 28, 2017</p> <p>(3) To be implemented; Within 90 days (30 October 2017); Effective date: 90 days after date of implementation</p>

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
224	<p>Cyber-activities.</p> <p>Imposition of Sanctions with respect to Activities of the Russian Federation Undermining Cybersecurity.</p> <p>The President shall impose the sanctions described in section 224(b) (asset blocking and exclusion from the United States and revocation of visa or other documentation) against persons determined by the President to be engaged in significant activities on behalf of Russia undermining the cybersecurity of any person, including a democratic institution, or government.</p>	President	On and after 60 days (1 October 2017)
225	<p>Energy.</p> <p>Imposition of Sanctions relating to Special Russian Crude Oil Projects.</p> <p>Amends Section 4(b)(1) of the Ukraine Freedom Support Act of 2014. The language, which previously stated that the President “may impose” certain sanctions, now states that the President “shall impose” such sanctions, unless the President determines it not to be in the national interest of the United States.</p>	President	On and after 30 days (1 September 2017)

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
231	<p>Defense and Intelligence.</p> <p>Imposition of Sanctions with respect to Persons Engaging in Transactions with the Intelligence or Defense Sectors of the Government of the Russian Federation.</p> <p>Calls for the President to impose at least five of the categories of sanctions described in Section 235, which describe certain significant transactions or economic activities the President may block where they involve the Russian defense and intelligence sectors. The President shall issue regulations or guidance on the persons these sanctions shall be imposed on (see below).</p>	President	On and after 180 days (29 Jan 2018)
231	<p>Defense and Intelligence.</p> <p>President to issue regulations or other guidance to specify the persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation.</p>	President	Within 60 days (1 October 2017)
234	<p>Support of Syrian Government.</p> <p>Sanctions with Respect to the Transfer of Arms and Related Material to Syria.</p> <p>The President shall impose sanctions described in Section 234(b) (blocking property and exclusion from the United States and revocation of visa or other documentation) on foreign persons providing significant financial, material, or technological support to the Government of Syria.</p>	President	The President shall impose these sanctions on foreign persons if certain specified criteria are met.

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
241	Secretary of the Treasury, in consultation with the Director of National Intelligence and the Secretary of State, shall submit to the appropriate congressional committees a report concerning senior political figures and oligarchs in the Russian Federation.	Secretary of the Treasury, in consultation with the Director of National Intelligence and the Secretary of State	Within 180 days (29 January 2018)
242	Secretary of the Treasury, in consultation with the Director of National Intelligence and the Secretary of State, shall submit to the appropriate congressional committees a report describing in detail the potential effects of expanding sanctions under Directive 1 (as amended), dated September 12, 2014, issued by the Office of Foreign Assets Control under Executive Order No. 13662 (79 Fed. Reg. 16169; relating to blocking property of additional persons contributing to the situation in Ukraine), or any successor directive, to include sovereign debt and the full range of derivative products.	Secretary of the Treasury, in consultation with the Director of National Intelligence and the Secretary of State	Within one year (2 August 2018)
243	Secretary of the Treasury shall submit to the appropriate congressional committees a report describing interagency efforts in the United States to combat illicit finance relating to the Russian Federation.	Secretary of the Treasury	Within one year (2 August 2018)

Section	Sanctions and Related Actions	Responsible Party	Timing <sup>1</sup>
255	President shall submit to the appropriate congressional committees a report that includes a description of media organizations that are controlled and funded by the Government of the Russian Federation, and any affiliated entities, whether operating within or outside the Russian Federation, including broadcast and satellite-based television, radio, Internet, and print media organizations.	President	Within 90 days (31 October 2017)
256	President shall submit to the appropriate congressional committees and leadership a report on funds provided by, or funds the use of which was directed by, the Government of the Russian Federation or any Russian person with the intention of influencing the outcome of any election or campaign in any country in Europe or Eurasia during the preceding year, including through direct support to any political party, candidate, lobbying campaign, nongovernmental organization, or civic organization.	President	Within 90 days (31 October 2017)