

## THE US IMPOSES SANCTIONS ON CERTAIN RUSSIAN OLIGARCHS, PROMINENT COMPANIES, AND GOVERNMENT OFFICIALS IN RESPONSE TO ONGOING "WORLDWIDE MALIGN ACTIVITY"

On April 6, 2018, the US Office of Foreign Assets Control (OFAC) listed 38 individuals and entities as Specially Designated Nationals (SDNs) under existing Russia and Syria-related sanctions authorities in response to ongoing Russian activity against US interests worldwide.

In announcing the designations, US Treasury Secretary Steven T. 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.*"

### Blocking Requirement

The designations have the effect of blocking the assets of 7 Russian oligarchs, 12 prominent companies owned or controlled by them, 17 senior Russian government officials, a state-owned Russian weapons trading company and its Russian bank subsidiary. As a result, US persons are prohibited from engaging in commercial activity with the designated individuals and entities, as well as with entities owned 50% or more by them directly or indirectly, unless authorized by an OFAC license. In addition, US persons are required to **block** the property and interests in property of the SDNs that come within their possession or control.

These targeted individuals and entities are designated under the Ukraine-related Sanctions Regulations (URSR), Executive Orders 13661 and/or 13662, with the exception of state-owned Rosoboronekспорт and its subsidiary, The Russian Financial Corporation Bank (RFC Bank), which are designated under OFAC's Syria sanctions. This is the first time that OFAC has used the authority of Executive Order 13662 to impose blocking sanctions as opposed to the more limited sectoral sanctions.

The designations of the Russian oligarchs follow the report under Section 241 of the Countering America's Adversaries Through Sanctions Act (CAATSA)

### Key issues

- US persons are prohibited from engaging in commercial activity with the newly designated Russian SDNs and any entities owned 50% or more by them directly or indirectly.
- General Licenses 12 and 13 authorize US persons to engage in specified wind-down activities related to the SDN companies and their subsidiaries, subject to some exceptions.
- Non-US persons, including financial institutions, who engage in certain "*significant*" transactions for or on behalf of the Russian SDNs may also face secondary sanctions risks.

that became available on January 29, 2018 (*available at <http://prod-upp-image-read.ft.com/40911a30-057c-11e8-9650-9c0ad2d7c5b5>*). Through Section 241, Congress required the US Treasury Department to provide a report on "*senior political figures and oligarchs in the Russian Federation*." The unclassified version of the Section 241 report lists 114 Russian "*senior political figures*" and 96 Russian "*oligarchs*." However, until now, a listing in the report did not result in sanctions or any other restrictions, a fact that came under criticism from certain members of Congress. Of the seven oligarchs designated on April 6, 2018, six were listed in the Section 241 report, including Russian President Vladimir Putin's son-in-law, Kirill Shamalov.

### **General Licenses**

OFAC has issued two new general licenses under the URSR in connection with these designations (*available at <https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>*). General License 12 authorizes, until June 5, 2018, US persons to engage in activities necessary and ordinarily incident to the maintenance or wind down of existing operations, contracts or agreements with the 12 companies newly designated under the URSR and their 50%-or-more-owned subsidiaries. However, the license is subject to several exceptions and includes a list of unauthorized activity, such as the export of goods from the United States. The license also requires that any payments made to or for the benefit of a blocked person as part of an activity taking place under the license be made into blocked, interest-bearing accounts located in the United States. Further, General License 12 requires that US persons that engage in activity under authorization of the license must provide a detailed report to OFAC on the activity by June 19, 2018.

General License 13 authorizes, until May 7, 2018, US persons to engage in activities "*that are ordinarily incident and necessary to divest or transfer debt, equity, or other holdings*" in three of the designated companies (EN+ Group PLC, GAZ Group and United Company RUSAL PLC) to non-US persons or to facilitate such transfers between non-US persons. However, US persons may not sell debt, equity or other holdings to, or purchase or invest in debt, equity or other holdings in, or facilitate such transactions with, SDNs or other blocked persons, including the three companies listed in the license. General License 13 also requires that US persons submit a detailed report to OFAC of activity under the license by May 21, 2018.

### **Secondary Sanctions Risk**

Under Section 228 of CAATSA, non-US persons that, among other things, knowingly facilitate "*significant*" transactions, including "*deceptive or structured transactions*", for or on behalf of a person blocked under CAATSA, the Ukraine Freedom Support Act of 2014 (UFSA), or the Russia-related Executive Orders may themselves face blocking sanctions.

In addition, under Section 226 of CAATSA, non-US financial institutions that knowingly facilitate a "*significant financial transaction*" on behalf of any Russian SDN or person blocked under UFSA or Russia-related Executive Orders may face sanctions on their correspondent or payable through accounts. OFAC has stated in Frequently Asked Question (FAQ) 542 regarding Section 5 of UFSA that it will interpret the term "*facilitated*" broadly for purposes of enforcing this provision.

Simultaneous with the above designations, OFAC issued a series of new FAQs (available at [https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq\\_other.aspx#567](https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#567)), including FAQ 574 that confirms a transaction is not "*significant*" if a US person would not require a specific license to engage in it, including if it is authorized by an OFAC general license. Non-US persons could therefore engage in winding down activities under General License 12 or debt or equity transfers under General License 13 without risking secondary sanctions, subject to the terms of, and up to the termination of, the licenses.

FAQ 574 also states: "*The intent of the designation on April 6, 2018 is to impose costs on Russia for its malign behavior. The United States remains committed to coordinating with our allies and partners in order to mitigate adverse and unintended consequences of these designations.*" This language indicates that the Trump Administration may be open to negotiation with non-US companies in allied countries who need additional time to wind down existing business with the individuals and entities designated under the Russia-related authorities described above. However, these designations also show the Trump Administration's willingness to continue increasing pressure on Russia through sanctions.

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