



OFAC SANCTIONS ON RUSSIA AND IRAN

Global aluminium trader United Company RUSAL PLC ("Rusal") and several other Russian tycoons, companies and allies of President Vladimir Putin¹ were the target of blocking sanctions by OFAC on 6 April 2018 ("April 2018 Sanctions"), following Treasury's reports to Congress in January 2018 in the US government's efforts to counter its adversaries through sanctions².

1. Full list available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180406.aspx>

2. Section 241 of the Countering America's Adversaries Through Sanctions Act 2017 (CAATSA)



This time around, senior Russian political figures and oligarchs were directly affected.

CAATSA³, which was signed into federal law on 2 August 2017⁴, brought with it tightened sanctions on Russia, Iran and North Korea by the US Government, requiring the US Treasury Department to submit to Congress, within 180 days, its report on senior political figures and oligarchs in Russia, and on Russian parastatal entities (i.e. companies in which state ownership is at least 25% or more, and that had 2016 revenues of approximately \$2 billion or more)⁵. This led to the Section 241 CAATSA report to Congress on 29 January 2018.

CAATSA and the April 6 sanctions

The April Sanctions create rather extensive primary and secondary sanctions risks.

Primary sanctions

The listed individuals and entities in the April Sanctions are marked by OFAC as specially designated nationals (SDNs), effectively "blocking" them under US law ("Sanctioned Persons"). This creates a "primary sanctions" risk by generally

prohibiting US persons from transacting with such Sanctioned Persons unless otherwise authorised by OFAC. The prohibition further requires US persons (including US banks) to block or freeze assets and/or property of Sanctioned Persons in their control. The restriction extends not only to the Sanctioned Persons but also to entities owned 50% or more by one or a combination of the Sanctioned Persons. Sanctioned Persons as used here means both individuals and entities.

Secondary sanctions

While the main restrictions apply to US persons directly, non-US persons (foreign persons and foreign financial institutions) are not completely exempt and could face secondary sanctions pursuant to Section 228 of CAATSA for knowingly facilitating "significant transactions" for or on behalf of the Sanctioned Persons, or their spouse, child, parent or sibling⁶ (or entities owned 50% or more by Sanctioned Persons). OFAC takes into account seven broad factors in determining the significance of a transaction: (i) the size, number and frequency of the transaction(s); (ii) the nature of the transaction(s); (iii) the level of awareness of the management and whether the

transaction(s) are part of a pattern of conduct; (iv) the nexus between the transaction(s) and a blocked person; (v) the impact of the transaction on statutory objectives; (vi) whether the transaction(s) involves deceptive practices; and (vii) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis.

Section 226 of CAATSA further provides that "facilitating" a transaction extends to the "purchasing, selling, transporting, swapping, brokering, financing, approving, guaranteeing the provision of services of any kind, the provision of personnel, or the provision of software, technology, or goods of any kind."

Winding down operations: Impact of general licences

The nature of the OFAC Sanctions regime is such that there are constant updates:

- OFAC provided General Licences 12 and 13 (concurrent to the announcement of the April Sanctions), to reduce disruptions and facilitate the winding down of business dealings between US persons and the Sanctioned

3. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_pl115-44.pdf

4. Further details available at <http://www.hfw.com/Increased-sanctions-on-Russia-Iran-and-North-Korea-August-2017>

5. Section 241(a)(2) CAATSA

6. OFAC FAQ 567

“CAATSA, which was signed into federal law on 2 August 2017, brought with it tightened sanctions on Russia, Iran and North Korea by the US Government...”

Persons. The licences come with a reporting obligation: within 10 business days of the expiration of the licenses, US persons involved in affected transactions are required to provide the names and addresses of all parties involved, the type and scope of activities carried out as well as the dates on which they occurred. General Licences 12 and 13 have since been, and continue to be, updated on each occasion further extending the scope of the wind down provision, and with each update replacing the previous in its entirety

- Both (i) General Licence 15 (of 22 May 2018), providing wind down relief for transactions with GAZ Group and its subsidiaries; and (ii) General Licence 16 (dated 4th June 2018) authorising US persons to engage EN+ Group PLC, JSC EuroSibEnergo, or any entity in which these companies own directly or indirectly 50% or greater interest; extend the respective wind down periods until 23 October 2018
- General Licence 13B (of 31 May 2018) extends the expiration of the general licence authorising

transactions and activities necessary to divest or transfer debt, equity or other holdings in EN+ Group, GAZ Group, or Rusal until 5 August 2018 (previously 5 June 2018). It also authorises such transactions in entities in which those persons own (directly or indirectly) a 50% or greater interest, provided that such debt, equity, or other holdings were issued by Irkutskenergo, GAZ Auto Plant, or Rusal Capital Designated Activity Company

Iran

Iran is a recent target of OFAC Sanctions following President's Trump's announcement to withdraw the US government's participation in the Joint Comprehensive Plan of Action ("JCPOA") under which Iran agreed to curb its nuclear program in exchange for sanctions relief. The effect of Trump's announcement is a return to the pre- January 2016 US sanctions position on Iran, with the President calling for the sanctions to snap back into effect. As a result, secondary sanctions on non-US companies doing business in Iran will be reimposed. A 90-day and a 180-day "wind down period" is in place for certain sanctions before their

actual effective date.

Secondary sanctions

The sanctions effective on Iran following the 90 day wind down period (ending on 6 August 2018) specifically target:

- The purchase or acquisition of US dollar banknotes by the Iranian government
- Iran's trade in gold or precious metals
- The sale, supply or transfer to or from Iran of graphite, raw or semi-finished metals such as aluminium and steel, coal and software for integrating industrial processes
- Significant transactions related to the purchase or sale of Iranian rials or the maintenance of significant funds or accounts outside Iran denominated in Iranian rial
- The purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt
- Sanctions on the country's automotive sector

- Activities undertaken specific to licensing issued in connection with the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services, including those undertaken pursuant to OFAC's General License

The second group of sanctions to be reimposed after the 180 day wind down period (ending on 4 November 2018) are made up of the following:

- Iran's port operators and shipping and shipbuilding sectors
- Petroleum related sanctions with among others, the National Iranian Oil Company, affecting the purchase of petroleum, petroleum products of petrochemical products from Iran
- Foreign financial institutions doing business with the Central Bank of Iran (CBI) and designated Iranian financial institutions⁷
- Provision of specialised financial messaging services to the CBI and Iranian financial institutions⁸
- Provision of underwriting services, insurance or re-insurance
- Iran's energy sector as a whole

The primary sanctions prohibiting US persons from participating in

business transactions with Iran were (save for limited exceptions) not lifted by the JCPOA in 2016 and therefore continue to remain in effect.

Conclusion: Going forward

US Persons as well as foreign entities affected by the recent sanctions may need to seek guidance from OFAC in order to conduct certain wind down activities. The possibility remains for further sanctions on Russia without notice, and entities dealing with Russian counterparties are advised to remain aware of the extent of the sanctions. Meanwhile, Russia is said to be considering the creation of special administrative regions akin to foreign offshore zones where large Russian holdings may be re-registered to enable continued operation of the sanctioned entities in spite of the restriction.

Companies with Iran-related trade flows will need to re-examine their counterparties, agents and other representatives to ascertain their status, whether or not they are likely to be targeted by the OFAC SDN list and if so assess the risk of their continuing obligations.

Clients and trading counterparties exposed to Russia and Iran will need to carefully evaluate the impact of the extended sanctions on their financial dealings and operations and continue to "watch this space".

For further information, please contact the authors of this briefing:



SARAH HUNT

Partner, Geneva
T +41 (0)22 322 4816
E sarah.hunt@hfw.com



DANIEL MARTIN

Partner, London
T +44 (0)20 7264 8189
E daniel.martin@hfw.com



VITI PLANGE

Associate, Geneva
T +41 (0)22 322 4807
E viti.plange@hfw.com

7. Designated Iranian Financial Institution as defined in Section 1245 of the National Defense Authorization Act for Fiscal Year 2012.

8. As set out in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010.

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