

CLIENT ALERT

Updates to Russia Sanctions as CAATSA Continues to be Implemented

NOVEMBER 6, 2017

- Russian Defense and Intelligence Parties Identified by State Department
- Directive 4 of the Ukraine/Russia Sanctions (Russian Oil Industry) Expanded in Scope

The U.S. Department of State and the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") have taken several steps recently to move forward with the implementation of the Russian provisions of the Countering America's Adversaries Through Sanctions Act ("CAATSA").¹

Russian Defense and Intelligence Parties Identified by State Department: Significant Transactions with These Entities May Subject U.S. and Non-U.S. Persons to Sanctions

On October 27, 2017, the U.S. State Department released a list of 39 entities that are a part of or operating on behalf of, the defense and intelligence sectors of the Russian Federation. The list may be found [here](#). This list is tied to Section 231(d) of Title II CAATSA which requires the U.S. President to impose sanctions against individuals or entities that knowingly engage in "significant transactions" with persons that are a part of, or operating for or on behalf of, Russia's defense or intelligence sectors. Sanctions may be imposed on U.S. or Non-U.S. persons who engage in such "significant" transactions. The type of sanctions available range from prohibitions concerning property transactions, export license restrictions, Export-Import Bank assistance restrictions, debt and equity restrictions, visa ramifications for corporate officers, and United States government procurement prohibitions.

Whether or not a transaction is considered "significant" will depend on the totality of the circumstances surrounding the transaction. The State Department has issued guidance, stating it will weigh various factors on a case-by-case basis. These factors include: the significance of the transaction to U.S. national security and foreign policy interests, the nature and magnitude of the transaction, and the relation and significance to the transaction to the Russian defense or intelligence sector.

CAATSA requires the imposition of sanctions beginning on or after January 29, 2018, with respect to persons determined to have knowingly engaged significant transactions related to the defense and intelligence sectors after the enactment of CAATSA on August 2, 2017. Therefore, it is possible that significant transactions with the defense or intelligence sectors of Russia even prior to the recent release of the list of 39 entities may subject a person to sanctions. However, the issuance of this list puts parties on clear notice that transactions with these particular listed entities are a risk.

Directive 4 of the Ukraine/Russia Sanctions (Russian Oil Industry) Expanded in Scope

On October 31, 2017, as required under section 223(d) of Title II of CAATSA, OFAC issued an amended Ukraine-/Russia-related Directive 4 under Executive Order 13662. Specifically, the amendment adds part 2 below, so that U.S. persons or persons within the United States are prohibited from providing goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects:

1. that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory, and that involve any person determined to be subject to this Directive or any earlier version thereof, their property, or their interests in property; or
2. that are initiated on or after January 29, 2018, that have the potential to produce oil in any location, and in which any person determined to be subject to this Directive or any earlier version thereof, their property, or their interests in property has (a) a 33 percent or greater ownership interest, or (b) ownership of a majority of the voting interests. **(new provision)**²

Impact on Business

As always, companies should undertake careful diligence to ensure compliance with U.S. sanctions laws.

U.S. and non-U.S. businesses should consider whether a transaction calls for additional due diligence on buyers and end-users to ensure that they are not engaging in a transaction with persons that are operating on behalf of the Russian defense or intelligence sector.

Businesses that operate in the oil and gas sector should exercise additional caution to ensure that their transactions do not run afoul of the newly expanded prohibitions of Directive 4.

¹ For more information on CAATSA, its impacts, and its implementation, see our prior briefings [here](#) and [here](#).

² OFAC guidance, also released October 31, states that if a deepwater, Arctic offshore, or shale project has the potential to produce oil, and the other requirements for either of the Directive 4 prohibitions are fully satisfied, then the relevant Directive 4 prohibition applies, irrespective of whether the project also has the potential to produce gas. If the project has the potential to produce gas only, then the Directive 4 prohibitions do not apply.

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