

---

# Hughes Hubbard & Reed

## New Russia Sanctions: What You Need to Know to Manage Risks

### Client Advisories

Hughes Hubbard & Reed LLP • A New York Limited Liability Partnership  
One Battery Park Plaza • New York, New York 10004-1482 • +1 (212) 837-6000

Attorney advertising. Readers are advised that prior results do not guarantee a similar outcome. No aspect of this advertisement has been approved by the Supreme Court of New Jersey. For information regarding the selection process of awards, please visit <https://www.hugheshubbard.com/legal-notices-methodologies>.

---

**April 8, 2018** – On April 6, 2018, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) announced its most significant Russia sanctions action in years, adding to the Specially Designated Nationals and Blocked Persons (SDN) List seven prominent and politically connected Russian oligarchs, 12 companies they own or control, 17 senior Russian government officials, and a state-owned Russian weapons trading company and its subsidiary, a Russian bank. The sanctions came closely on the heels of OFAC’s March designation of five entities and 19 individuals in connection with Russia’s interference in the 2016 U.S. elections, as well as the expulsion of 60 Russian diplomats following Moscow’s alleged involvement in the poisoning of a former intelligence officer in the United Kingdom. The actions also came after months of criticism from Congress, which accused the Trump Administration of failing to faithfully implement the Countering America’s Adversaries Through Sanctions Act (“CAATSA”).

As discussed below, U.S. companies now face heightened primary sanctions risks when doing business in Russia or with Russian business partners anywhere in the world. OFAC’s actions on April 6 are especially notable for using long-existing authorities in a new way, signaling that virtually any individual or entity operating in Russia – and especially in the financial, defense, and energy sectors – could potentially find themselves a sanctions target going forward. In announcing the new actions, OFAC also went out of its way to remind non-U.S. persons that they remain subject to the imposition of secondary sanctions under CAATSA for engaging in “significant” transactions with sanctioned Russian persons. Accordingly, non-U.S. persons may want to consider the potential CAATSA implications of their future dealings with sanctioned Russian persons.

### New Designations

- The Oligarchs

The Russian oligarchs and senior officials designated by OFAC on April 6 include many of those named by Treasury as “significant senior political figures and oligarchs” in the January report submitted to Congress pursuant to CAATSA section 241, fulfilling a pledge by Treasury Secretary Steven Mnuchin to use that report as the basis for future sanctions.

They include many high-profile individuals close to Vladimir Putin and who maintain significant business holdings in and outside of Russia. Notable designations include: Kirill Shamalov, who married Putin's daughter in 2013 and is a major shareholder in the gas and petrochemicals company Sibur; Oleg Deripaska, the billionaire owner of a Russian industrial group with sprawling business interests; Viktor Vekselberg, an investment fund manager; Alexey Miller, the deputy chairman of state-owned energy firm Gazprom (Russia's largest company); and Andrey Kostin, the president and chairman of state-owned VTB Bank. While neither Sibur, Gazprom, nor VTB Bank is blocked as a consequence, the designations of Miller and Kostin pose particular compliance challenges for companies dealing with these companies, as demonstrated by OFAC's 2017 enforcement action against Exxon for signing agreements with the SDN CEO representing the non-blocked Rosneft.

- Designated Companies

OFAC also designated 12 of the "most prominent" companies owned or controlled by those individuals, including the Deripaska-linked RUSAL PLC, which is one of the world's largest aluminum producers, and Vekselberg's Renova Group, which owns several energy companies. Russia's state-owned weapons trading company, Rosoboronoeksport (ROE) and the Russian Financial Corporation Bank (RFC Bank), which is owned by ROE, were also added to the SDN List. Russia, which remains the world's second largest arms exporter after the United States, uses ROE to facilitate its exports and imports of defense related and dual-use products. This means that ROE has significant contracts and business relationships around the world, including in Europe, India, and China. Such deals will now be impacted to the extent they involve U.S. persons, U.S. dollar financing, or potentially any U.S. goods, services, and technology.

Companies should also pay close attention to the Department of Commerce's Bureau of Industry and Security (BIS), which typically follows OFAC's designations of Russian companies by adding them to its Entity List. Such a listing imposes additional restrictions on the re-exportation of U.S. origin goods and technology to those companies.

- Inclusion of Subsidiaries

In its press release, OFAC stressed that the list of 12 designated companies "should not be viewed as exhaustive." Pursuant to OFAC's 50 Percent Rule, any entities that are 50% or more owned, directly or indirectly, by one or more SDNs are blocked, whether or not OFAC formally identifies them. Also, given the extensive reach the designated oligarchs have throughout the Russian economy, it would not be surprising if OFAC designates additional entities owned or controlled by those individuals in the coming months.

### **Authorizations for Wind-downs and Divestitures**

OFAC issued two general licenses (GLs) to help mitigate the immediate impact of its April 6 designations on U.S. persons. GL 12 authorizes activities necessary to maintain or wind-down operations, contracts, or other agreements that were in effect *prior* to April 6, 2018, and that involve the blocked entities listed in GL 12. Importantly, GL 12 only authorizes such transactions through June 5, 2018, and only with the entities specified in GL 12 or any entity in which those specified entities own a 50% or greater interest. In other words, GL 12 would not appear to authorize the wind-down of operations with, for instance, an entity 50% or more owned by Oleg Deripaska but that is not identified in the general license itself. GL 12 also requires that any payment made to or directly or indirectly for the benefit of the blocked entities listed in GL 12 be deposited in a blocked account at a U.S. financial institution, and that U.S. persons engaging in transactions pursuant to the general license file a report with OFAC by June 19, 2018.

Companies should also note that the activities authorized by GL 12 are themselves limited. In general, GL 12 authorizes all transactions "ordinarily incident and necessary" to the continuity of operations or to facilitate a wind-

down of covered operations or contracts. This includes the receipt of salary payments, pension payments, or other benefits from the blocked entities listed in GL 12, the provision of services by a U.S. person employee to such blocked entities, or the acceptance of goods ordered from such blocked entities prior to April 6, 2018. It does not authorize the exportation of goods from the United States to any of the listed entities, nor entering into any new contracts or agreements for the provision of goods or services with those entities.

Similarly, GL 13 authorizes a time-limited divestiture or transfer of debt, equity, or other holdings in EN+ Group PLC, GAZ Group, and RUSAL PLC *to a non-U.S. person*. In general, GL 13 authorizes all transactions “ordinarily incident and necessary” to such transactions – including facilitating, clearing, or settling transactions to divest such debt or equity to a non-U.S. person on behalf of U.S. or non-U.S. persons – through May 7, 2018. Importantly, the general license authorizes U.S. financial institutions to process, rather than block, such transactions even if the buyer and seller of such debt or equity are both non-U.S. persons. However, GL 13 does not authorize U.S. persons to sell, purchase, or invest in such debt or equity and, like GL 12, it is limited only to transactions involving the SDNs specified in the general license itself (*i.e.*, it is applicable to fewer than all of the entities blocked as a result of the April 6 designations).

## Takeaways

The immediate practical impact of the April 6 designations is significant. Numerous U.S. companies are likely to have existing contracts, joint venture agreements, or equity investments in or from some of the sanctioned individuals or entities, as reflected by the general licenses and guidance issued by OFAC in connection with the action. Notably, OFAC appears to have foreseen circumstances where U.S. companies are owned, in significant part, by sanctioned entities – advising that, while such U.S. companies are not themselves blocked if the SDN interest is below 50% and thus *maybe* able to continue operating, any payments, dividends, or disbursement of profits to the blocked person would be prohibited. U.S. companies should carefully consider whether a license or other authorization might be required for any activities or payments involving persons designated on April 6.

The implications are less clear, but no less concerning, for foreign companies impacted by OFAC’s action. While non-U.S. persons are not generally subject to U.S. primary sanctions, they do face the possibility of secondary sanctions if they engage in transactions with the individuals or entities designated on April 6 (or blocked pursuant to OFAC’s 50 Percent Rule). Pursuant to sections 226 and 228 of CAATSA, foreign financial institutions and businesses are subject to sanctions if they facilitate certain “significant” transactions on behalf of individuals or entities sanctioned under authorities related to Russia. OFAC has explained that a transaction by a foreign person is *not* “significant” if U.S. persons would not require a specific license from OFAC to participate in it. This suggests that foreign persons engaged in an activity that would otherwise be authorized by GL 12 or GL 13 if they were U.S. persons – *e.g.*, the maintenance or wind-down of existing contracts with certain entities through June 5, 2018 – would *not* be facilitating a “significant” transaction. Foreign companies engaged in other transactions that would be prohibited for U.S. persons – such as the payment of dividends to SDN joint venture partners – are operating in more ambiguous territory, and will need to assess such transactions against the seven factors OFAC has identified to determine “significance.”

Finally, the April 6 designations suggest a newly aggressive approach by OFAC in using its sanctions authorities to target Russian actors. The use of Executive Order (E.O.) 13661 to target Russian government officials was typical, but OFAC also used E.O. 13582 – which is a Syria-related authority targeting support to the Assad regime – to designate ROE. Most notably, OFAC made liberal use of E.O. 13662 to, for the first time, block both individuals and entities operating in Russia’s financial, defense, and energy sectors. E.O. 13662 remains the legal authority under which OFAC has imposed more limited, non-blocking sanctions against major Russian entities identified on the Sectoral Sanctions Identifications (SSI) List. However, by its literal terms, it allows OFAC to block any individual or entity simply for “operating” in a sector of the Russian economy. While OFAC will likely remain constrained by the financial and political repercussions of blocking a major Russian firm like Gazprom (absent a major escalation

in tensions), the expansive authority provided by E.O. 13662 suggests that virtually anyone of prominence in Russia could become a sanctions target.

## **Conclusion**

The new sanctions represent a major escalation of Russia sanctions. They strike a wide swath of Russian oligarchs, their companies, and the defense industry. Under the 50 Percent Rule that flows down sanctions to subsidiaries, the full impact of these sanctions goes further than the SDN designations. Companies engaging in business with Russia need to exercise caution and carefully comply with the wind-down and divestiture provisions as needed.

## **Related People**



**Alan G. Kashdan**

## **Related Areas of Focus**

International Trade

Sanctions, Export Controls & Anti-Money Laundering