



Russia Sanctions – United States

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1. Background

1. U.S. sanctions in relation to Russia and Ukraine comprise the following.
 - 1.1. A comprehensive embargo against the territory of Crimea in response to Russia's annexation of the territory from Ukraine.
 - 1.2. Designations in relation to a number of persons and entities in and connected to Ukraine and Russia as Specially Designated Nationals (SDNs) as a result of their role in contributing to the crisis in Ukraine.
 - 1.3. Sectoral sanctions in relation to the financial services, energy and defense and related material sectors, in respect of which a sanctions list called the Sectoral Sanctions Identification Lists (SSIL) has been created and updated over time.
2. On August 2, 2017, U.S. sanctions targeting Russia were significantly expanded when President Trump signed into law the Countering America's Adversaries through Sanctions Act (CAATSA), PL 115-44 ("the Act"), see CAATSA. The Act is significant because it codified many of the Russia-related sanctions previously imposed through executive order, thereby requiring the President to obtain Congressional approval before easing the targeted U.S. sanctions relating to Russia. The Act also expanded several key restrictions in the oil and gas industry, and designated as SDNs a number of Russian Oligarchs and their businesses.

2. Legislative Framework

3. The legal framework for U.S. Ukraine/Russia-related sanctions comprises the implementation of multiple legal authorities. Some of these authorities are executive orders issued by the President. Others are public laws (statutes) passed by Congress, such as the Act. These authorities are further codified by the U.S. Treasury Department, Office of Foreign Assets Control (“OFAC”) in its regulations which are published in the Code of Federal Regulations (CFR).

A. Executive Orders

4. There are four:

- 13660—Blocking Property of Certain Persons Contributing to the Situation in Ukraine (March 6, 2014), see 13660.
- 13661—Blocking Property of Additional Persons Contributing to the Situation in Ukraine (March 17, 2014), see 13661.
- 13662—Blocking Property of Additional Persons Contributing to the Situation in Ukraine (March 20, 2014), see 13662.
- 13685—Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine (December 19, 2014), see 13685.

B. Statutes

5. There are three:

- The Act (see above), see CAATSA.
- International Emergency Economic Powers Act (IEEPA), 50 U.S.C. §§1701-1706, see IEEPA.
- National Emergencies Act (NEA), 50 U.S.C. §§1601-1651, see NEA.

C. Code of Federal Regulations

6. The Ukraine-Related Sanctions Regulations appear at 31 CFR Part 589, see 31 CFR Part 589.

D. Federal Register Notices

7. 79 FR 26365-14 Issuance of regulations to implement Executive Order 13660, Executive Order 13661 and Executive Order 13662, see 79 FR 26365-14.

3. Application: Who do the U.S. Sanctions apply to?

A. U.S. Persons

8. Under the Ukraine-Related Sanctions Regulations, so-called “primary sanctions” apply to “U.S. Persons”—defined as: “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” 31 CFR § 589.312. As discussed below, primary sanctions under the Ukraine-Related Sanctions Regulations include the following:

- Crimea Embargo, prohibiting U.S. Persons from engaging in most commercial transactions with Crimea (discussed in Section IV.A)
- Blocking Provisions, prohibiting U.S. Person from engaging in transactions with designated parties (discussed in Section IV.B).
- Sectoral Sanctions, prohibiting U.S. Persons from specific types of transactions with designated parties (discussed in Section IV.C).

B. Non-U.S. Persons

9. Ukraine-Related Sanctions also apply to non-U.S. persons in two respects:

- First, under the International Emergency Economic Powers Act (50 USC § 1705), non-U.S. Persons can be penalized if they “cause a violation” of U.S. sanctions. For example, a shipowner or Club that conducts business in the U.S. could be penalized if it makes or receives payment in U.S. dollars for a transaction involving a Russian SDN while concealing the involvement of the SDN in the payment instructions. Such concealment unlawfully “causes” a U.S. bank to violate U.S. sanctions when it processes the payment. Accordingly, it is important that non-U.S. entities ensure their US employees, contractors, vendors, banks, and other third parties with whom they deal, do not participate in transactions from which U.S. Persons are prohibited.
- Second, so-called “secondary sanctions” are restrictions that apply to non-U.S. companies even when there is no U.S. nexus. In the context of Ukraine-Related Sanctions, these include:
 - Special Russian Crude Oil Projects, requiring sanctions on non-U.S. Persons that make significant investments in a certain Russian crude oil projects (discussed in Section IV.D).
 - Energy Pipelines, authorizing sanctions against non-U.S. Persons who invest in Russian energy export pipelines (discussed in Section IV.E).

- Blocking Provisions, authorizing OFAC to block non-U.S. Persons if they engage in certain activities and/or meet certain criteria (discussed in Section B).

4. Overview of U.S. Sanctions against Russia/Crimea

A. Crimea Embargo

10. A major element of the Russia sanctions program is an embargo on Crimea that was established in 2014. This aspect of U.S. sanctions has not been modified by the Act. Pursuant to Executive Order 13685, the U.S. imposed comprehensive sanctions on the Crimea region of Ukraine, which includes the land territory in that region as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.
11. U.S. Persons are prohibited from engaging in nearly all commercial transactions with the Crimea including: new investment; importation into the U.S. of goods, services or technology from Crimea; exporting or reexporting, directly or indirectly, any goods, services or technology to Crimea; facilitating any transaction with Crimea; and donating humanitarian goods to Crimea. In addition, EO 13685 adds several new entities to the SDN list.

B. Blocking Provisions/Asset Freeze

- (i) What is prohibited?
12. By Executive Orders 1360, 1361, 1362, and 13685, OFAC has designated a number of non-U.S. Persons and entities in and connected to Ukraine and Russia as SDNs. U.S. Persons cannot engage in any transactions or dealings with SDNs and property and interests in property of SDNs that are in the possession or control of U.S. Persons or in the U.S. must be blocked or frozen (that is to say may not be transferred, paid, exported, withdrawn or otherwise dealt in) and reported to OFAC.
13. The President has the power, acting through OFAC, to block and freeze the assets of non-U.S. Persons meeting the following criteria:
 - Cybersecurity: Individuals who knowingly undermine cybersecurity against a person, democratic institution, or government (such as hacking) on behalf of the Russian Government.
 - Human Rights Abuses: Individuals who are responsible for commissioning serious human rights abuses in any territory “forcibly occupied” or controlled by the Russian Government.
 - Abuses in Ukraine: Parties responsible or complicit in undermining democratic processes, threatening the peace, misappropriating state assets, and other abuses of power in Ukraine.

- Arms: Parties operating in the arms or related material sector in the Russian Federation.
- Crimea: Parties who “operate in the Crimea region of Ukraine” or are “a leader of an entity operating in the Crimea region of Ukraine.”
- Russian Industries: Parties who operate in such sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defence and related materiel.

14. In addition to the blocking criteria listed above, OFAC is authorized to block and designate a non-U.S. person when it has been determined that the person:

- Has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services for any person blocked pursuant to an executive order.
- Has knowingly “facilitate[d] a significant transaction . . . , including deceptive or structured transactions, for on behalf of . . . any person subject to the sanctions imposed by the United States with respect to the Russian Federation.” This includes entities owned 50 percent or more, individually or collectively, by an SDN. See Section 226 of CAATSA.
 - OFAC has explained that “facilitating” a transaction refers to the provision of “assistance for a transaction from which the person in question derives a particular benefit of any kind” See FAQ 545.
 - OFAC will consider a totality of circumstances when determining whether a specific transaction is “significant”, while also providing seven factors to be considered when making that analysis. Those factors include (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis. See FAQ 545. A transaction is not “significant,” however, if a U.S. person would not require a specific license from OFAC to execute the transaction.

15. OFAC is required to impose secondary sanctions on non-U.S. financial institutions that have knowingly facilitated “significant financial transactions” for any Russian person who has been designated pursuant to Ukraine-related authorities. See CAATSA 226.
 - (ii) What penalties can be imposed on non-U.S. persons?
16. Non-U.S. Persons who engage in transactions with SDNs that OFAC finds to be "significant" and thus sanctionable under Section 231 of CAATSA are subjected to five or more of the sanctions described in Section 235 of CAATSA. These secondary sanctions include: prohibitions on Export-Import Bank assistance, export licenses for exports to sanctioned persons, prohibitions on loans to sanctioned persons of more than \$10 million over a 12-month period from any U.S. financial institution, prohibition of any transactions in foreign exchange by the sanctioned person within the jurisdiction of the United States, and asset blocking, as well as various additional sanctions directed at financial institutions and transactions and measures against corporate executives. These measures are designed to use U.S. economic leverage to dissuade non-U.S. persons from engaging in transactions with any of the entities subject to secondary sanctions.
 - (iii) How is the shipping industry affected by the blocking provisions/asset freeze?
17. If a shipping industry participant is blocked, this would prevent U.S. Persons from engaging in any transactions or dealings with the SDN concerned. They would also oblige U.S. Persons to block or freeze all property and interests in property of the SDN concerned in their possession. Non-U.S. Persons should also avoid dealings with SDNs, given that the provision of goods, services and other forms of material assistance to an SDN expose the non-U.S. Person to being blocked under the executive orders listed above.
 - (iv) How can I find out which parties are designated?
18. The full SDN List may be found at the OFAC website at SDN Human Readable Lists. It is also possible to search the list, using the OFAC search engine at Sanctions List Search Tool.

C. Sectoral Sanctions: The Directives

19. Since 2014, the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”) has maintained four “Directives” that impose targeted sanctions upon key elements of the Russian economy, all of which were promulgated under Executive Order 13662. The primary purpose of Executive Order 13662 was to focus on entities in such sectors of the Russian economy, such as “financial services, energy, metals and mining, engineering, and defense and related materiel.”

20. Each Directive governs activities between U.S. persons and those persons listed on the Sectoral Sanctions Identifications (“SSI”) List. The SSI List is organized according to the four Directives. The SSIL may be search on the OFAC website at Sectoral Sanctions Identifications (SSI) List.
21. Unlike the Specially Designated Nationals (“SDN”) List, which includes blocked persons and prohibits virtually all activity with so-called SDNs, the SSI List designations result in narrow prohibitions that are limited to those activities in the identified sectors targeted by the Directives. Note that, with all the Directives, sanctions that apply to entities on the SSI List also apply to any entities that are owned 50 percent or more by one or more persons on the SSI List, see [50% Rule](#). Therefore, the contribution of funds to a non-listed entity that is owned (50% or more) by a listed entity is considered a prohibited provision of funds to the listed entity.
 - (i) Directive 1 (as amended on September 29, 2017) Under Executive Order 13662 (13-Day New Debt/No Equity) targeting Russia’s financial services sector
22. Directive 1 (see, as amended Directive 1) was established in 2014 to target the financial services sector of the Russian economy. This directive originally prohibited U.S. persons (or within the United States) from engaging in transactions in, providing financing for, or otherwise dealing in new debt with a maturity of longer than 90 days maturity (July 16, 2014 version) and then 30 days (September 12, 2014 version), or equity for persons identified on the SSI List under Directive 1.
23. However, under the Act, OFAC was to modify Directive 1 to reduce the “new” debt prohibition to 14 days. This was done on September 29, 2017 and the reduction came into effect in respect of new debt or new equity issued on or after November 28, 2017.
 - (ii) Directive 2 (as amended on September 29, 2017) Under Executive Order 13662 (60-Day New Debt) targeting Russia’s energy sector
24. Directive 2 (see, as amended Directive 2) targets Russia’s energy sector of the Russian economy by prohibiting transactions in, provision of financing for, and other dealings in new debt with a maturity of longer than 60 days for persons identified on the SSI List under Directive 2. Originally, Directive 2 covered new debt with a maturity of longer than 90 days but, as with Directive 1, the Act required OFAC to reduce the period to 60 days. This was done on 29 September 2017 and the reduction came into effect in respect of new debt issued on or after November 28, 2017.
 - (iii) Directive 3 (30-Day Debt) Under Executive Order 13362 targeting Russia’s defense and related material sector

25. Directive 3 (see Directive 3) targets the Russian defense and related material sector by prohibiting all transactions in, provision of financing for, and other dealings in new debt of longer than 30 days for persons identified on the SSI List under Directive 3. The Act did not amend Directive 3.
 - (iv) Directive 4 (as amended on October 31, 2017) under Executive Order 13662 (Energy Industry Prohibitions) further targeting Russia's energy sector
26. Directive 4 (see Directive 4) expands on the sanctions targeting the Russian energy sector. The original version of Directive 4 prohibited U.S. persons from: (1) "the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology"; (2) "in support of exploration or production for deepwater [underwater activities at depths of more than 500 feet], Arctic offshore, or shale projects" (hereafter "Covered Projects"); (3) "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"; (4) that involve any person identified on the SSI List under Directive 4, including that person's property, or its interests in property.
27. OFAC modified Directive 4 to prohibit U.S. persons not only from providing goods, services and technology for Covered Projects in Russia, but to such projects anywhere in the world, if they involved persons designated under Directive 4. Notably, the expansion of Directive 4 to reach Covered Projects beyond Russia applied only to "new" Covered Projects where the Directive 4 target "has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest." The amendment was made on October 31, 2017 and covers such projects that are initiated on or after January 29, 2018.
28. Entities will want to make sure that their due diligence now accounts for understanding when Directive 4 listed entities are involved in a projects, and their controlling interest in such projects.

D. Special Russian Crude Oil Projects

29. The President is required, unless he determines it is not in U.S. national security interests, to impose sanctions on any person that "knowingly makes a significant investment" in a "special Russian crude oil project," defined as "a project intended to extract crude oil from (i) the exclusive economic zone of the Russian Federation in waters more than 500 feet deep; (ii) Russian Arctic offshore locations; or (iii) shale formations located in the Russian Federation."
30. As the term "significant investment" is undefined, entities and their advisors should discuss any proposed transaction that may involve special Russian crude oil projects.

E. Energy Pipeline Secondary Sanctions

31. The Act gives the President the power to impose (but does not require) secondary sanctions on non-U.S. persons that knowingly: (1) make an investment of USD 1 million or more (or USD 5 million or more over a 12-month period) that directly and significantly contributes to enhancing Russia's ability to construct energy export pipelines or (ii) sell, lease, or provide to the Russian Federation, goods, services, technology, information, or support (valued at USD 1 million or more, or during a 12-month period with an aggregate value of USD 5 million or more) that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipeline.
32. The Act requires the President to impose the above sanctions "in coordination with allies of the United States." This provision was added to the Act to address concerns raised by European allies, in light of such projects as the proposed Nord Stream 2 natural gas pipeline from Russia to Germany. Because of the President's reluctance to impose more sanctions on Russia, and because of our allies' strenuous objections to this particular provision, it seems unlikely that the President will sanction projects involving natural gas.

5. Export Controls

A. Commercial & Dual-Use Export Controls

33. In coordination with the sanctions programs administered by OFAC, the U.S. Department of Commerce, Bureau of Industry and Security ("BIS") administers export controls that impact trade with Russia. On August 6, 2014, BIS amended the Export Administration Regulations ("EAR") to include the "Russian Industry Sector Sanctions" at section 746.5. These sanctions impose a license requirement for the export to Russia of certain items if the exporter, reexporter, or transferor knows that the item "will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or are unable to determine whether the item will be used in such projects." The items subject to this license requirement include items classified under the following Commerce Control List ECCNs: 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, 8D999, as well as EAR99 items identified in Supplement No. 2 to Part 746. BIS also established a policy of denial for such license applications. BIS further imposed a license requirement (subject to a policy of denial) for all exports, reexports, or transfers to Russia of items subject to the EAR if intended, in whole or in part, for a military end- use or military end-user in Russia.

B. Military/Defense Export Controls (ITAR)

34. On March 27, 2014, DDTC placed a hold on the issuance of International Traffic in Arms Regulations (“ITAR”) licenses for the export of defense articles and defense services to Russia. Subsequently, on April 28, 2014, DDTC changed its hold on licenses to a policy of denial for defense articles or defense services to Russia or occupied Crimea. DDTC also began the process of revoking existing licenses for defense articles and services. DDTC is currently reviewing defense article export licenses on a case-by-case basis to determine the export’s contribution to Russia’s military.