GIBSON DUNN

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TRUMP ADMINISTRATION IMPOSES UNPRECEDENTED RUSSIA SANCTIONS

To Our Clients and Friends:

On April 6, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") significantly enhanced the impact of sanctions against Russia by blacklisting almost 40 Russian oligarchs, officials, and their affiliated companies pursuant to Obama-era sanctions, as modified by the Countering America's Adversaries Through Sanctions Act ("CAATSA") of 2017. In announcing the sanctions, Treasury Secretary Steven Mnuchin cited Russia's involvement in "a range of malign activity around the globe," including the continued occupation of Crimea, instigation of violence in Ukraine, support of the Bashal al-Assad regime in Syria, attempts to subvert Western democracies, and malicious cyber activities.[1] Russian stocks fell sharply in response to the new measures, and the ruble depreciated almost 5 percent against the dollar.[2]

Although this is not the first time that the Trump administration imposed sanctions against Russia, it is the most significant action taken to date. In June 2017, OFAC added 38 individuals and entities involved in the Ukraine conflict to OFAC's list of Specially Designated Nationals ("SDNs").[3] The April 6 sanctions added seven Russian oligarchs and 12 companies they own or control, 17 senior Russian government officials, the primary state-owned Russian weapons trading company and its subsidiary, a Russian bank, to the SDN List.[4] These designations include major, publicly-traded companies that have been listed on the London and Hong Kong exchanges and that have thousands of customers and tens of thousands of investors throughout the world.

OFAC has never designated similar companies, and the potential challenges for global companies seeking to comply with OFAC measures are substantial. An SDN designation prohibits U.S. persons—including U.S. companies, U.S. financial institutions, and their foreign branches—from engaging in any transactions with the designees or with entities in which they hold an aggregate ownership of 50 percent or more. The designation of a small company in a regional market can be devastating for the company, but rarely would it impose meaningful collateral consequences on global markets or investors. In this case, sanctions on companies such as EN+ and RUSAL (amongst others) have already impacted a substantial portion of a core global commodity (the aluminum market) while also preventing further trades in their shares, a move that could harm pension funds, mutual funds, and other investors that have long held stakes worth billions of dollars.

To minimize the immediate disruptions, OFAC issued two time-limited general licenses (regulatory exemptions) permitting companies and individuals to undertake certain transactions to "wind down" business dealings related to the designated parties.[5] However, our assessment is that disruptions are inevitable and the size of the sanctions targets in this case means that the general licenses will have potentially limited effect in reducing dislocations.

Background

OFAC's April 6 designations mark a clear change in tone from the Trump administration, which had initially resisted imposing the full force of CAATSA's sanctions. For example, as we wrote in our 2017 Year-End Sanctions Update, CAATSA required the imposition of secondary sanctions on any person the President determined to have been engaging in "a significant transaction with a person that is part, or operates for or on behalf of, the defense or intelligence sectors of the Government Russia."[6] On the day such sanctions were to be imposed, State Department representatives provided classified briefings to Congressional leaders to explain their decision *not* to impose any such sanctions under CAATSA, namely because the Trump administration felt that CAATSA was already having an deterrent effect which removed any immediate need to impose sanctions.[7]

Section 241 of CAATSA also required OFAC to publish a report on January 29, 2018 identifying "the most significant senior foreign political figures and oligarchs in the Russian Federation,"[8] (the "Section 241 List"). The Treasury Department issued the report shortly before midnight on the due date, publicly naming 114 senior Russian political figures and 96 oligarchs.[9] Although the report did not result in any sanctions or legal repercussions, the public naming of such persons did cause confusion for those who sought to engage with them in compliance with U.S. law.[10] However, most observers were highly critical of the list, claiming that it demonstrated that the Trump administration was failing to adequately address Congressional intent to punish Moscow. Interestingly, almost all of the oligarchs designated on April 6 originally appeared on the Section 241 List.[11]

Designations

Included among the list of sanctioned parties were seven Russian oligarchs designated for being a Russian government official or operating in the energy sector of the Russian Federation economy, and 12 companies they own or control. In its press release, OFAC warned that the 12 companies identified as owned or controlled by the designated Russian oligarchs "should not be viewed as exhaustive, and the regulated community remains responsible for compliance with OFAC's 50 percent rule." This rule extends U.S. sanctions prohibitions to entities owned 50 percent or more, even if those companies are not themselves listed by OFAC. The opacity of ownership in the Russian economy makes the 50 percent rule very difficult to operationalize.

In addition, OFAC designated 17 senior Russian government officials, a state-owned company and its subsidiary. The sanctioned individuals and entities, as described by OFAC, are provided in the following table.

	SDN	Description
		Designated Russian Oligarchs
1.	Vladimir Bogdanov	Bogdanov is the Director General and Vice Chairman of the Board of Directors of Surgutneftegaz, a vertically integrated oil company operating in Russia. OFAC imposed sectoral sanctions on Surgutneftegaz pursuant to Directive 4 issued under E.O. 13662 in September 2014.
2.	Oleg Deripaska	Deripaska has said that he does not separate himself from the Russian state. He has also acknowledged possessing a Russian diplomatic passport, and claims to have represented the Russian government in other countries. Deripaska has been investigated for money laundering, and has been accused of threatening the lives of business rivals, illegally wiretapping a government official, and taking part in extortion and racketeering. There are also allegations that Deripaska bribed a government official, ordered the murder of a businessman, and had links to a Russian organized crime group.
3.	Suleiman Kerimov	Kerimov is a member of the Russian Federation Council. On November 20, 2017, Kerimov was detained in France and held for two days. He is alleged to have brought hundreds of millions of euros into France – transporting as much as 20 million euros at a time in suitcases, in addition to conducting more conventional funds transfers – without reporting the money to French tax authorities. Kerimov allegedly launders the funds through the purchase of villas. Kerimov was also accused of failing to pay 400 million euros in taxes.
4.	Kirill Shamalov	Shamalov married Putin's daughter Katerina Tikhonova in February 2013 and his fortunes drastically improved following the marriage; within 18 months, he acquired a large portion of shares of Sibur, a Russia-based company involved in oil and gas exploration, production, processing, and refining. A year later, he was able to borrow more than one $1 billion through a loan from Gazprombank, a state-owned entity subject to sectoral sanctions pursuant to E.O. 13662. That same year, long-time Putin associate Gennady Timchenko, who is himself designated pursuant to E.O. 13661, sold an additional 17 percent of Sibur's shares to Shamalov. Shortly thereafter, Kirill Shamalov joined the ranks of the billionaire elite around Putin.

	SDN	Description
5.	Andrei Skoch	Skoch is a deputy of the Russian Federation's State Duma. Skoch has longstanding ties to Russian organized criminal groups, including time spent leading one such enterprise.
6.	Viktor Vekselberg	Vekselberg is the founder and Chairman of the Board of Directors of the Renova Group. The Renova Group is comprised of asset management companies and investment funds that own and manage assets in several sectors of the Russian economy, including energy. In 2016, Russian prosecutors raided Renova's offices and arrested two associates of Vekselberg, including the company's chief managing director and another top executive, for bribing officials connected to a power generation project in Russia.
	Designated Oligarch-Owned Companies	
7.	B-Finance Ltd.	British Virgin Islands company owned or controlled by, directly or indirectly, Oleg Deripaska.
8.	Basic Element Limited	Basic Element Limited is based in Jersey and is the private investment and management company for Deripaska's various business interests.
9.	EN+ Group	Owned or controlled by, directly or indirectly, Oleg Deripaska, B-Finance Ltd., and Basic Element Limited. EN+ Group is located in Jersey and is a leading international vertically integrated aluminum and power producer. This is a publicly traded company that has been listed, *inter alia*, on the London Stock Exchange.
10.	EuroSibEnergo	Owned or controlled by, directly or indirectly, Oleg Deripaska and EN+ Group. EuroSibEnergo is one of the largest independent power companies in Russia, operating power plants across Russia and producing around nine percent of Russia's total electricity.
11.	United Company RUSAL PLC	Owned or controlled by, directly or indirectly, EN+ Group. United Company RUSAL PLC is based in Jersey and is one of the world's largest aluminum producers, responsible for seven percent of global aluminum production. This is a publicly traded company that has been listed, *inter alia*¸ on the Hong Kong Stock Exchange.
12.	Russian Machines	Owned or controlled by, directly or indirectly, Oleg Deripaska and Basic Element Limited. Russian Machines was established to manage the machinery assets of Basic Element Limited.

	SDN	Description
13.	GAZ Group	Owned or controlled by, directly or indirectly, Oleg Deripaska and Russian Machines. GAZ Group is Russia's leading manufacturer of commercial vehicles.
14.	Agroholding Kuban	Owned or controlled by, directly or indirectly, Oleg Deripaska and Basic Element Limited.
15.	Gazprom Burenie, OOO	Owned or controlled by Igor Rotenberg. Gazprom Burenie, OOO provides oil and gas exploration services in Russia.
16.	NPV Engineering Open Joint Stock Company	Owned or controlled by Igor Rotenberg. NPV Engineering Open Joint Stock Company provides management and consulting services in Russia.
17.	Ladoga Menedzhment, OOO	Owned or controlled by Kirill Shamalov. Ladoga Menedzhment, OOO is located in Russia and engaged in deposit banking.
18.	Renova Group	Owned or controlled by Viktor Vekselberg. Renova Group, based in Russia, is comprised of investment funds and management companies operating in the energy sector, among others, in Russia's economy.
	Designated Russian State-Owned Firms	
19.	Rosoboroneksport	State-owned Russian weapons trading company with longstanding and ongoing ties to the Government of Syria, with billions of dollars' worth of weapons sales over more than a decade. Rosoboroneksport is being designated under E.O. 13582 for having materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of, the Government of Syria.
20.	Russian Financial Corporation Bank (RFC Bank)	Owned by Rosoboroneksport. RFC Bank incorporated is in Moscow, Russia and its operations include deposit banking activities.
	Designated Russian Government Officials	
21.	Andrey Akimov	Chairman of the Management Board of state-owned Gazprombank
22.	Mikhail Fradkov	President of the Russian Institute for Strategic Studies (RISS), a major research and analytical center established by the President of the Russian Federation, which provides information support to the

	SDN	Description
		Presidential Administration, Federation Council, State Duma, and Security Council.
23.	Sergey Fursenko	Member of the board of directors of Gazprom Neft, a subsidiary of state-owned Gazprom
24.	Oleg Govorun	Head of the Presidential Directorate for Social and Economic Cooperation with the Commonwealth of Independent States Member Countries. Govorun is being designated pursuant to E.O. 13661 for being an official of the Government of the Russian Federation.
25.	Alexey Dyumin	Governor of the Tula region of Russia. He previously headed the Special Operations Forces, which played a key role in Russia's purported annexation of Crimea.
26.	Vladimir Kolokoltsev	Minister of Internal Affairs and General Police of the Russian Federation
27.	Konstantin Kosachev	Chairperson of the Council of the Federation Committee on Foreign Affairs
28.	Andrey Kostin	President, Chairman of the Management Board, and Member of the Supervisory Council of state-owned VTB Bank
29.	Alexey Miller	Chairman of the Management Committee and Deputy Chairman of the Board of Directors of state-owned company Gazprom
30.	Nikolai Patrushev	Secretary of the Russian Federation Security Council
31.	Vladislav Reznik	Member of the Russian State Duma
32.	Evgeniy Shkolov	Aide to the President of the Russian Federation
33.	Alexander Torshin	State Secretary – Deputy Governor of the Central Bank of the Russian Federation
34.	Vladimir Ustinov	Plenipotentiary Envoy to Russia's Southern Federal District
35.	Timur Valiulin	Head of the General Administration for Combatting Extremism within Russia's Ministry of Interior
36.	Alexander Zharov	Head of Roskomnadzor (the Federal Service for the Supervision of Communications, Information Technology, and Mass Media)

	SDN	Description
37.	Viktor Zolotov	Director of the Federal Service of National Guard Troops and Commander of the National Guard Troops of the Russian Federation

All assets subject to U.S. jurisdiction of the designated individuals and entities, and of any other entities blocked by operation of law as a result of their ownership by a sanctioned party, are frozen, and U.S. persons are generally prohibited from dealings with them. OFAC's Frequently Asked Questions ("FAQs") make clear that if a blocked person owns less than 50 percent of a U.S. company, the U.S. company will not be blocked. However, the U.S. company (1) must block all property and interests in property in which the blocked person has an interest and (2) cannot make any payments, dividends, or disbursement of profits to the blocked person and must place them in a blocked account at a U.S. financial institution.[12]

Non-U.S. persons could face secondary sanctions for knowingly facilitating significant transactions for or on behalf of the designated individuals or entities. CAATSA strengthened the secondary sanctions measures that could be used to target such persons, although such measures typically carry less risk because as a matter of implementation OFAC traditionally warns those who may be transacting with parties that could subject them to secondary sanctions and provides them with an opportunity to cure. While this outreach and deterrence model of imposing secondary sanctions was developed under the Obama administration (and resulted in very few impositions of secondary sanctions), the Trump administration could theoretically change it and impose secondary sanctions without the traditional warning. However, that appears unlikely and the Trump administration has indicated that it will continue to provide warnings before imposing secondary sanctions.

Two CAATSA provisions bear particular note as they are implicated by Friday's actions: section 226, which authorizes sanctions on foreign financial institutions for facilitating a transaction on behalf of a Russian person on the SDN List, and section 228, which seeks to impose sanction on a person who "facilitates a *significant transaction*…for or on behalf of any person subject to sanctions imposed by the United States with respect to the Russian Federation."[13] OFAC has clarified that the section 228 provision extends to persons listed on *either* the SDN or the Sectoral Sanctions Identifications ("SSI") List, as well as persons they may own or control pursuant to OFAC's 50 percent rule.[14] As we noted when CAATSA was passed, despite the mandatory nature of these sections, the President appears to retain the discretion to impose restrictions based upon whether he finds certain transaction significant or for other reasons. With the increase in the SDN list to include major players in global commodities such as EN+ or RUSAL, more companies around the world that rely on these companies could find themselves at least theoretically at risk of being sanctioned themselves. Companies should also consider this risk where there is reliance on material produced by any company in the Russian military establishment and sold by the Russian state arms company such as Rosoboronexport, which was also sanctioned.

General Licenses

In an effort to minimize the immediate disruptions to U.S. persons and global markets (especially given the sanctioning of major publicly traded corporations that have thousands of clients and investors throughout the world), OFAC issued General Licenses 12 and 13, permitting companies to undertake certain transactions and activities to "wind down" certain business dealings related to certain, listed designated parties. These General Licenses only cover U.S. persons, which has led some non-U.S. companies to inquire whether their ability to wind down operations with respect to the SDN companies would place them at risk for secondary sanctions (as they would be engaging with sanctioned parties and perhaps trigger the CAATSA provisions above). OFAC has noted in its FAQs that the U.S. Government would not find a transaction "significant" if a U.S. person would not need a specific license to undertake it.[15] That is, it would seem that at least for the duration of the General Licenses a non-U.S. party can engage in similar wind down operations without risking secondary sanctions.

General License 12, which expires June 5, 2018, authorizes U.S. persons to engage in transactions and activities with the 12 oligarch-owned designated entities that are "ordinarily incident and necessary to the maintenance or wind down of operations, contracts, or other agreements" related to these 12 entities (as well as those entities impacted by operation of OFAC's 50 percent rule). This is a broader wind down provision than OFAC has issued in the past in that it allows not just "wind down" activities but also non-defined "maintenance" activities. Despite this breadth it is already uncertain how this General License will actually work in practice. Permissible transactions and activities include importation from blocked entities and broader dealings with them. However, no payments are allowed to be made to blocked entities–rather such payments can only be made to the blocked entities listed in General License 12 into blocked, interest-bearing accounts and reported to OFAC by June 18, 2018 (10 business days after the expiration of the license).[16] It is not clear why a sanctioned party would wish to deliver goods and services to parties if the sanctioned party cannot be paid. In line with the FAQ noted above, for non-U.S. companies it would seem that in order to avoid secondary sanctions implications the same restrictions would apply–that is, continued transactions are permitted on a wind down basis, but transfer of funds to the SDN companies could be viewed as "significant" or otherwise sanctionable.

Recognizing how broad the sanctions are and how far they may implicate subsidiaries of SDN companies inside the United States, OFAC's FAQs clarify that General License 12 generally permits the blocked entities listed to pay U.S. persons their salaries, pension payments, or other benefits due during the wind down period. U.S. persons employed by entities that are not explicitly listed in General License 12—principally the designated Russian state-owned entities—do not have the benefit of this wind down period. OFAC FAQs note that such U.S. persons may seek authorization from OFAC to maintain or wind down their relationships with any such blocked entity, but make clear that continued employment or board membership related to these entities is prohibited.[17] The implications of these restrictions are significant where, as is the case with the blocked entities listed in General License 12, U.S. subsidiaries exist and U.S. persons are involved throughout company operations.

General License 13, which expires May 7, 2018, similarly allows transactions and activities otherwise prohibited under the April 6 sanctions. This license allows transactions and activities necessary to "divest or transfer debt, equity, or other holdings" in three designated Russia entities: EN+ Group PLC, GAZ Group, and United Company RUSAL PLC. Permitted transactions include facilitating, clearing, and settling transactions. General License 13, however, does not permit any divestment or transfer to a blocked person, including the three entities listed in General License 13.[18] As with General License 12, transactions permitted under General License 13 must be reported to OFAC within 10 business days after the expiration of the license.

Once again, it is uncertain how the General License will work in practice. Given the designations which have depressed the share prices of the sanctions parties it is unknown who might be willing to purchase the shares even if U.S. holders are permitted to sell them.

Other Ramifications for Investors, Supply Chains, and Customers

The April 6 sanctions raise other significant questions and practical challenges for U.S. and non-U.S. companies, with particular risks for investors as well as the manufacturers, suppliers, and customers of the SDN companies.

Investors and fund managers will need to conduct significant diligence into the participants and ownership structures of their funds, including fund limited partners, to determine whether sanctioned persons or entities are involved. Moreover, for those who have seen the value of any assets tied to these companies decline significantly, they are allowed to continue to try sell their assets to non-U.S. persons. However, given the challenge in finding buyers and evidence that certain financial institutions and brokers are already refusing to engage in any trades (even during the wind down period), the investment community needs to potentially prepare for long-term holding of blocked assets (by setting up sequestered accounts).

For those within the supply chains of sanctioned companies, from suppliers of commodities to finished goods, as well as customers of sanctioned companies, the concern will be to potentially replace key commercial relationships which will become increasingly difficult (if not prohibited) to maintain. For companies that have relied on RUSAL, for example, as a source of aluminum or as a customer for their goods they will potentially need to find replacements. While aluminum is not in short supply globally, in certain jurisdictions RUSAL has a commanding position and even a monopoly. It is unclear how companies that seek to be compliant with OFAC regulations will navigate a world in which RUSAL has been a primary or secondary supplier (and there is no clear way to avoid such engagement so long as the company seeks to be active in that jurisdiction and in need of aluminum). Moreover, it is not just U.S. person counterparties that are likely to be affected by prohibitions on dealing with sanctioned parties. In line with the FAQ noted above, if non-U.S. companies were to make payments to the sanctioned companies for deliveries, these could be deemed "significant transactions" and could make the non-U.S. companies, themselves, the target of OFAC designations and/or secondary sanctions. One option—reportedly pursued by one major trading company—is to declare force majeure on contracts with Rusal.

As noted above, relief contemplated by General Licenses 12 and 13 may be operationally difficult to implement. The sanctions apply to companies 50 percent owned or controlled by blocked parties. Companies will need to undertake, under a short time line, significant due diligence to determine whether any such companies are involved in its operations. The wind down process may be further complicated by any Russian response to the U.S. sanctions.

What Happens Next?

The April 6 sanctions are likely not the end of the story. The next steps to watch include:

1.) Potential Russian Retaliation: During an address to the State Duma on April 11, Prime Minister Dmitry Medvedev said, for example, that Russia should consider targeting U.S. goods or goods produced in Russia by U.S. companies when considering a possible response.[19] Any such measures could implicate further U.S. business dealings with Russian entities, including the blocked entities.

2.) Changing Ownership and Structure of Sanctioned Parties: Given that the sanctioned companies were listed due to their ownership/control by sanctioned persons (pursuant to the 50 percent rule) there have already been moves to dilute their ownership and thus potentially have the companies de-listed. While possible, it is important to note that because the companies were explicitly listed by OFAC (and now appear on the SDN list), any reduction in ownership or control will not result in an automatic de-listing. Rather, OFAC will need to process these changes and formally de-list the entities before they can be treated as non-sanctioned. OFAC could opt not to de-list, or could decide to list the companies on other bases. Regardless the process will undoubtedly take some time. We note that at least one engineering firm whose stock was held by a designated entity has already obtained a license to complete the transfer of these shares; this is helpful precedent for any company impacted but only tangentially related to the designated entities. Sanctioned entities have also changed their board membership in response to the U.S. sanctions. On Monday, April 11, for example, the entire board at Renova Management AG, the Swiss subsidiary of the Renova Group, was dismissed after Renova Group's designation.[20]

3.) European Follow On Restrictions: The shock of many of Europe's major powers following the poisoning of Sergei and Yulia Skripal in Salisbury in early March and the resulting mass expulsion of Russian diplomats from European capitals suggests that sanctions may be next. Core European U.S. allies were likely notified in advance of the April 6 measures. In the run up to sanctions in 2014, Washington and Brussels worked very closely to institute parallel measures against Moscow. While that unity has broken down under the Trump administration, especially since CAATSA was passed in August, it would appear as though some European sanctions are liking in the offing.

4.) OFAC FAQs/Licenses and Potentially New Measures: Due to the complexity of the April 6 measures, we expect that OFAC will issue additional FAQs and potentially revisions to General Licenses 12 and 13 (or new General Licenses) in the near term to clear up questions and further calibrate response. Depending upon next steps from Russia and Europe we may see additional sanctions as well. Secretary of State-designate Mike Pompeo's statement that the United States "soft" policy toward Russia is over suggests as much.[21]

Unfortunately, there is no clear path towards a de-escalation in Washington-Moscow tensions. When the U.S. first issued sanctions against Russia in response to the Crimea incursion in 2014 the sanctions "off-ramp" was very clearly defined: if Russia altered its behavior in Crimea/Ukraine there was a way that sanctions could be removed. Since 2014, as Secretary Mnuchin noted, Russia's activities have exacerbated in scope and territory to include support for the Bashar regime in Syria, election meddling, cyber-attacks, and the nerve agent attack in the United Kingdom. The breadth and boldness of this activity makes it even more unlikely that Russia will comply with the West's wishes and thus even less likely that the sanctions would be removed or even reduced at any point in the near term. For its part, bipartisan Congressional leadership expressed broad support for the Trump administration's actions—however, Congress will likely demand more from the President in the near term. Perhaps eager to placate Congress and dispel any notion that he is "soft" on Russia and buffeted by external circumstances ranging from any potential attack in Syria to the investigation by Robert Mueller, the President may impose still harsher measures on Moscow.

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[1] Press Release, U.S. Department of the Treasury, *Treasury Designates Russian Oligarchs, Officials, and Entities in Response to Worldwide Malign Activity* (Apr. 6, 2018), *available at* https://home.treasury.gov/news/featured-stories/treasury-designates-russian-oligarchs-officials-and-entities-in-response-to.

[2] Natasha Turak, *US sanctions are finally proving a 'major game changer' for Russia*, CNBC, (Apr. 10, 2018) *available at* https://www.cnbc.com/2018/04/10/us-moscow-sanctions-finally-proving-a-major-game-changer-for-russia.html.

[3] Press Release, U.S. Dep't of the Treasury, *Treasury Designates Individuals and Entities Involved in the Ongoing Conflict in Ukraine* (June 20, 2017), *available at* https://www.treasury.gov/press-center/press-releases/Pages/sm0114.aspx. Designated persons and entities included separatists and their supporters; entities operating in and connected to the Russian annexation of Crimea; entities owned or controlled by, or which have provided support to, persons operating in the Russian arms or materiel sector; and Russian government officials.

[4] U.S. Department of the Treasury, *supra*, n. 1.

[5] *Id*.

[6] CAATSA, Title II, § 231 (a). Specifically, CAATSA Section 231(a) specified that the President shall impose five or more of the secondary sanctions described in Section 235 with respect to a person the President determines knowingly "engages in a significant transaction with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation." The measures that could be imposed under Section 231 are discretionary in nature. The language of the legislation is somewhat misleading in this regard. Section 231 is written as a mandatory requirement—providing that the President "shall impose" various restrictions. However, the legislation itself—and the October 27, 2017 guidance provided by the State Department—makes clear that secondary sanctions are only imposed after the President makes a determination that a party "knowingly" engaged in "significant" transactions with a listed party. The terms "knowingly" and "significant" have imprecise meanings, even under the

State Department guidance. OFAC Ukraine-/Russia-related Sanctions FAQs ("OFAC FAQs"), OFAQ No. 545, *available at* https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#567.

[7] Press Release, U.S. Dep't of State, *Background Briefing on the Countering America's Adversaries Through Sanctions Act (CAATSA) Section 231* (Jan. 30, 2018), *available at* https://www.state.gov/r/pa/prs/ps/2018/01/277775.htm.

[8] CAATSA, Title II, § 241.

[9] *See* U.S. Dep't of the Treasury, *Report to Congress Pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities (Unclassified)* (Jan. 29, 2018), *available at* https://www.scribd.com/document/370313106/2018-01-29-Treasury-Caatsa-241-Final.

[10] *See, e.g.*, Press Release, U.S. Dep't of the Treasury, *Treasury Releases CAATSA Reports, Including on Senior Foreign Political Figures and Oligarchs in the Russian Federation* (Jan. 29, 2018), *available at* https://home.treasury.gov/news/press-releases/sm0271.

[11] The one exception is Igor Rotenberg. Although Igor Rotenberg did not appear on the Section 241 List, his father and uncle were included. According to the April 6 OFAC announcement, Igor Rotenberg acquired significant assets from his father, Arkady Rotenberg, after OFAC designated the latter in March 2014. Specifically Arkady Rotenberg sold Igor Rotenberg 79 percent of the Russian oil and gas drilling company Gazprom Burenie. Igor Rotenberg's uncle, Boris Rotenberg, owns 16 percent of the company. Like his brother Arkady Rotenberg, Boris Rotenberg was designated in March 2014.

[12] OFAC FAQ No. 573.

[13] CAATSA, Title II, §228.

[14] OFAC FAQ No. 546. In its implementing guidance, OFAC confirmed that Section 228 extends to SDNs and SSI entities but clarified that it would not deem a transaction "significant" if U.S. persons could engage in the transaction without the need for a specific license from OFAC. In other words, only transactions prohibited by OFAC—specifically, transactions with SDNs and/or transactions with SSI entities that are prohibited by the sectoral sanctions—will "count" as significant for purposes of Section 228. OFAC also noted that even a transaction with an SSI that involves prohibited debt or equity would not automatically be deemed "significant"—it would need to also involve "deceptive practices" and OFAC would assess this criteria on a "totality of the circumstances" basis.

[15] OFAC FAQ No. 574.

[16] General License 12; OFAC FAQ No. 569.

[17] *See also* OFAC FAQ Nos. 567-568.

[18] *See also* OFAC FAQ Nos. 570-571.

[19] *Russia's Renova says board at its Swiss subsidiary dismissed due to sanctions*, Reuters (Apr. 11, 2018), *available at* https://uk.reuters.com/article/usa-russia-sanctions-renova/russias-renova-says-board-at-its-swiss-subsidiary-dismissed-due-to-sanctions-idUKR4N1NE02P.

[20] *Russia ready to prop Up Deripaska's Rusal as US sanctions bite*, Financial Times (Apr. 11, 2018), *available at* https://www.ft.com/content/4904f6d4-3d97-11e8-b7e0-52972418fec4.

[21] Patricia Zengerle, Lesley Wroughton, *As Pompeo signals hard Russia line, lawmakers want him to stand on his own*, Reuters (Apr. 12, 2018), *available at* https://www.reuters.com/article/us-usa-trump-pompeo/as-pompeo-signals-hard-russia-line-lawmakers-want-him-to-stand-on-his-own-idUSKBN1HJ0HO.

The following Gibson Dunn lawyers assisted in preparing this client update: Adam Smith, Judith Alison Lee, Christopher Timura, Stephanie Connor, and Courtney Brown.

Gibson Dunn's lawyers are available to assist in addressing any questions you may have regarding the above developments. Please contact the Gibson Dunn lawyer with whom you usually work, the authors, or any of the following leaders and members of the firm's International Trade Group:

United States:
Judith Alison Lee - Co-Chair, International Trade Practice, Washington, D.C. (+1 202-887-3591, jalee@gibsondunn.com)
Ronald Kirk - Co-Chair, International Trade Practice, Dallas (+1 214-698-3295, rkirk@gibsondunn.com)
Jose W. Fernandez - New York (+1 212-351-2376, jfernandez@gibsondunn.com)
Marcellus A. McRae - Los Angeles (+1 213-229-7675, mmcrae@gibsondunn.com)
Daniel P. Chung - Washington, D.C. (+1 202-887-3729, dchung@gibsondunn.com)
Adam M. Smith - Washington, D.C. (+1 202-887-3547, asmith@gibsondunn.com)
Christopher T. Timura - Washington, D.C. (+1 202-887-3690, ctimura@gibsondunn.com)
Stephanie L. Connor - Washington, D.C. (+1 202-955-8586, sconnor@gibsondunn.com)
Kamola Kobildjanova - Palo Alto (+1 650-849-5291, kkobildjanova@gibsondunn.com)
Courtney M. Brown - Washington, D.C. (+1 202-955-8685, cmbrown@gibsondunn.com)
Laura R. Cole - Washington, D.C. (+1 202-887-3787, lcole@gibsondunn.com)

GIBSON DUNN

Europe:
Peter Alexiadis - Brussels (+32 2 554 72 00, palexiadis@gibsondunn.com)
Attila Borsos - Brussels (+32 2 554 72 10, aborsos@gibsondunn.com)
Patrick Doris - London (+44 (0)207 071 4276, pdoris@gibsondunn.com)
Penny Madden - London (+44 (0)20 7071 4226, pmadden@gibsondunn.com)
Mark Handley - London (+44 (0)207 071 4277, mhandley@gibsondunn.com)
Benno Schwarz - Munich (+49 89 189 33 110, bschwarz@gibsondunn.com)
Richard Roeder - Munich (+49 89 189 33-160, rroeder@gibsondunn.com)