

# Win some, lose some: U.S. Russia sanctions developments

25 September 2018

The past two weeks have entailed a flurry of sanctions developments related to Russia, including the issuance of a new executive order (EO), and the designation of a number of entities by the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC), the U.S. Department of State, and the U.S. Department of Commerce's Bureau of Industry and Security (BIS). It was not all bad news for business, however, as OFAC extended several general licenses (GLs) authorizing certain activities with sanctioned companies, and also published guidance further clarifying the scope of these GLs with certain favorable interpretations.

## Executive order

On Thursday, 20 September, President Trump issued EO 13849 authorizing the implementation of certain sanctions against Russia as contemplated in the Countering America's Adversaries Through Sanctions Act (CAATSA), which was enacted on 2 August 2017.

EO 13849 is procedural in nature and does not itself impose new sanctions. Rather, the EO provides authority for the Secretary of the Treasury and other U.S. Government officials to implement certain sanctions on Russia as set forth in CAATSA. The EO does not relate to Section 228 of CAATSA but it does, among other things

- delegate the implementation of the sanctions "menu items" in Section 235 of CAATSA or Section 4(c) of the Ukraine Freedom Support Act (UFSA), as applicable; and
- authorize the Secretary of the Treasury to employ all powers granted to the president by the International Emergency Economic Powers Act (IEEPA) and relevant provisions of UFSA and CAATSA to carry out the purposes of the EO.

## Designations

Two other Russia-related developments occurred on 20 September. First, the State Department added 33 entities and individuals to the CAATSA Section 231 List of Specified Persons (LSP) for being affiliated with the Russian defense or intelligence sectors. Any person who knowingly engages in a transaction with any of these persons is subject to mandatory sanctions under CAATSA Section 231, which can include designation as a Specially Designated National (SDN) after the State Department makes the requisite finding that the transaction is "significant." Specifically, Section 231 requires the imposition of at least five of the twelve sanctions described in CAATSA Section 235 on such a person who knowingly engages in a significant transaction with a person on the LSP. Also on 20 September, the State Department published a new FAQ related

to the LSP, which clarifies that sanctions under CAATSA Section 231 for dealings with parties on the LSP do not extend to dealings with subsidiaries of listed companies. In other words, the State Department does not apply the same "50 percent rule" that OFAC applies when analyzing SDN dealings, and requires a company to be expressly designated on the LSP in order for activities involving that entity to be potentially sanctionable by the State Department under CAATSA Section 231.

Second, also on 20 September, the U.S. Government imposed sanctions on the Chinese entity Equipment Development Department (EDD) and its director, Li Shangfu, for engaging in significant transactions with persons previously designated on the LSP. These transactions involved the transfer of combat aircraft and surface-to-air missile system-related equipment. The Secretary of State **imposed sanctions** on EDD pursuant to Section 231 of CAATSA, including a denial of export licenses. Additionally, OFAC **designated** both EDD and Li Shangfu as SDNs pursuant to CAATSA.

Additionally, on 25 September, BIS **added twelve Russian entities** to the Entity List (effective 26 September) for acting contrary to the national security or foreign policy interests of the U.S. Most of these entities are linked to the Russian military and some are associated with malicious Russian cyber actors. As a result of designation, an export license is required for the export, re-export, and transfer (in-country) of all items subject to the Export Administration Regulations (EAR) to these entities. There is a presumption of denial with respect to the license requirement.

### General license extensions

In another development, on 21 September OFAC extended the expiration date of the following Ukraine-related GLs to 12 November 2018 (we note that a similar extension has not been issued for dealings with GAZ Group under GL 15, which remains in effect):

- GL 13D (Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons), which extends the authorization for transactions involving EN+ Group PLC or United Company RUSAL PLC to 12 November 2018.
- GL 14A (Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with United Company RUSAL PLC), which extends the authorization for wind down and maintenance activities with United Company RUSAL PLC (including entities owned by it at 50 percent or greater level, directly or indirectly) to 12 November 2018.
- GL 16A (Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts with EN+ Group PLC or JSC EuroSibEnerg), which extends the authorization for wind down and maintenance activities with EN+ Group or EuroSibEnerg (including entities owned by them at 50 percent or greater level, directly or indirectly) to 12 November 2018.

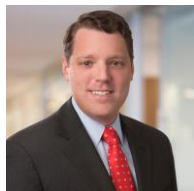
### Clarifying guidance

Finally, OFAC recently issued guidance relating to GLs 14A, 15, and 16A under the Ukraine/Russia sanctions program. The GLs temporarily authorize certain activities necessary to the maintenance or wind down of operations or existing contracts in effect prior to 6 April 2018 with particular SDN entities – United Company RUSAL PLC (GL 14A), GAZ Group (GL 15), and EN+ Group PLC or JSC EuroSibEnerg (GL 16A). These authorizations are valid until 12 November 2018 (except for activities with GAZ Group pursuant to GL 15, which remains valid until 23 October 2018).

OFAC **published two new FAQs** on 14 September regarding the meaning of "maintenance" under these GLs. According to the FAQs, the authorization for maintenance under these GLs generally "includes all transactions and activities ordinarily incident to performing under a contract or

agreement in effect prior to 6 April 2018, provided that the level of performance is consistent with the terms of the general license and consistent with past practices that existed between the party and the blocked entity prior to 6 April 2018." Additionally, in the absence of a contract or agreement in place prior to 6 April 2018, the maintenance authorization may also include transactions and activities ordinarily incident to the exchange of goods or services, provided the activity is consistent with practice between the parties prior to 6 April 2018. OFAC notes that stockpiling inventory is not permitted under the GLs unless the transaction history indicates that the scope and extent of maintaining inventory is consistent with past practice between the parties. We also note that OFAC's guidance in FAQ 625 clarifies that entry into contingent contracts is permissible for transactions after the expiration of the relevant GLs but any performance effectively must be conditioned on either the de-listing of the sanctioned party or continued extension of a GL period for temporary wind-down of activities. Therefore, the guidance does not allow entry into new (unconditional) contracts to engage in activities with these SDNs after the expiration of the wind-down period.

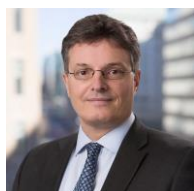
## Contacts



**Anthony Capobianco**  
Partner, Washington, D.C.  
T +1 202 637 2568  
[anthony.capobianco@hoganlovells.com](mailto:anthony.capobianco@hoganlovells.com)



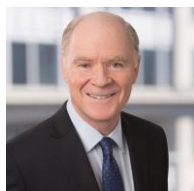
**Brian Curran**  
Partner, Washington, D.C.  
T +1 202 637 4886  
[brian.curran@hoganlovells.com](mailto:brian.curran@hoganlovells.com)



**Aleksandar Dukic**  
Partner, Washington, D.C.  
T +1 202 637 5466  
[aleksandar.dukic@hoganlovells.com](mailto:aleksandar.dukic@hoganlovells.com)



**Ajay Kuntamukkala**  
Partner, Washington, D.C.  
T +1 202 637 5552  
[ajay.kuntamukkala@hoganlovells.com](mailto:ajay.kuntamukkala@hoganlovells.com)



**Robert Kyle**  
Partner, Washington, D.C.  
T +1 202 637 5494  
[robert.kyle@hoganlovells.com](mailto:robert.kyle@hoganlovells.com)



**Beth Peters**  
Partner, Washington, D.C.  
T +1 202 637 5837  
[beth.peters@hoganlovells.com](mailto:beth.peters@hoganlovells.com)



**Stephen Propst**  
Partner, Washington, D.C.  
T +1 202 637 5894  
[stephen.propst@hoganlovells.com](mailto:stephen.propst@hoganlovells.com)



**Roy Liu**  
Counsel, Washington, D.C.  
T +1 202 637 4837  
[roy.liu@hoganlovells.com](mailto:roy.liu@hoganlovells.com)



**Adam Berry**  
Associate, Washington, D.C.  
T +1 202 637 2871  
[adam.berry@hoganlovells.com](mailto:adam.berry@hoganlovells.com)



**Jordan Movinski**  
Associate, Washington, D.C.  
T +1 202 637 6513  
[jordan.movinski@hoganlovells.com](mailto:jordan.movinski@hoganlovells.com)

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