

U.S. releases public guidance on entities tied to Russian Defense and Intelligence sectors

30 October 2017

On 27 October, the U.S. Department of State published [guidance](#) with respect to Russia's Defense and Intelligence sectors under section 231 of the Countering America's Adversaries Through Sanctions Act (CAATSA). Section 231 requires the imposition of certain sanctions on persons determined to have knowingly engaged in a "significant transaction," on or after 2 August, the date that CAATSA was enacted, with a person that is part of or operating for or on behalf of the defense or intelligence sectors of the Russian government. The guidance was published after the statutory deadline and after congressional and media criticism over the delay.

As is required under section 231(d) of the statute, the guidance names individuals and entities that are part of, or operating for or on behalf of, the defense or intelligence sectors of the Russian Government. The full list of entities—there are no individuals—appears [here](#).

The guidance itself does not constitute a sanction against the listed companies, several of which are currently sanctioned by the United States. Rather, the guidance serves to define, in part, the scope of section 231, which targets persons engaged in certain transactions with listed companies for sanctions and not the listed companies themselves.

Several of the entities named are *already* subject to U.S. sanctions imposed under other authorities, although some of those were not as broad as the authority under section 231. The following entities are new, meaning that they have not previously been designated by the U.S. Government but that companies now need to closely scrutinize any transactions with them:

1. Admiralty Shipyard JSC
2. Federal Research and Production Center Titan Barrikady JSC (Titan Design Bureau)
3. Molot Oruzhie
4. Novator Experimental Design Bureau
5. Radiotechnical and Information Systems (RTI) Concern
6. Russian Aircraft Corporation MiG
7. Sukhoi Aviation JSC
8. Tactical Missiles Corporation JSC
9. Tupolev JSC
10. United Aircraft Corporation
11. Foreign Intelligence Service (SVR)

Per CAATSA, the State Department cannot begin to impose sanctions under section 231 until 29 January, 2018, but the 27 October guidance provides the first public indication of how they plan to implement the provision. In determining what constitutes a "significant transaction," the State

Department said that it will “consider the totality of the facts and circumstances surrounding the transaction and weigh various factors on a case-by-case basis.” For example, the “significance of the transaction to U.S. national security and foreign policy interests, in particular whether it has a significant adverse impact on such interests; the nature and magnitude of the transaction; and the relation and significance of the transaction to the defense or intelligence sector of the Russian government.”

Further, the State Department explained that, at the “initial implementation stage,” its focus will be on “significant transactions of a defense or intelligence nature” with entities named in the Guidance. This is to say that where “transactions for goods or services” have “purely civilian end-uses and/or civilian end-users,” and do not “involve entities in the intelligence sector, these factors will generally weigh heavily against a determination that such a transaction” constitutes a “significant transaction.” Additionally, if a transaction is “necessary to comply with rules and regulations administered by the Federal Security Service, or law enforcement or administrative actions or investigations involving the Federal Security Service,” then these factors, too, will “weigh heavily against a determination that that such transaction is significant for purposes” of section 231.

The law requires the imposition of five or more sanctions of the twelve listed in section 235 with respect to U.S. and foreign persons—meaning individuals and entities—determined to have engaged in “significant transactions” since the date of enactment. The sanctions described in Section 235 include, among others, 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. The law allows for sanctions on persons that engage in covered transactions as well as on the principal executive officer or officers of the sanctioned person (or a person performing similar functions and with similar authorities as such officer or officers).

We anticipate the next public step in CAATSA implementation will be the Treasury Department’s Office of Foreign Assets Control’s issuance of an amended version of Directive 4 (concerning deep-water, Arctic offshore, or shale projects) as required by section 223 of the statute. We also understand that the Administration will be issuing guidance on other CAATSA provisions over the coming weeks and months. We will continue to watch this space closely and provide updates on significant developments.

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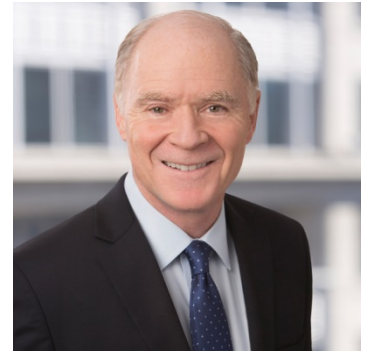


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