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Russia sanctions: Remove an oligarch, return to business

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On 19 December 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) submitted a notification to Congress that it plans to terminate sanctions on three major companies originally designated for their ownership and control by Russian Oligarch Oleg Deripaska, permitting Western companies to breathe a sigh of relief.

The companies, En+ Group PLC (En+), UC Rusal PLC (Rusal), and JSC EuroSibEnergo PLC (ESE), have committed to the OFAC to undertake a number of steps to address the circumstances that led to their designation, including (i) reducing Deripaska's direct and indirect shareholding stake; (ii) overhauling the composition of the En+ and Rusal boards of directors; (iii) taking other restrictive steps related to their corporate governance; and (iv) committing to full transparency with the OFAC by undertaking extensive, ongoing auditing, certification, and reporting requirements. These three companies, two of which operate in the energy sector and one of which – Rusal – is one of the largest aluminum producers in the world, have extensive dealings with Western businesses and their designation had raised substantial questions and concerns for American and European enterprises in a range of industries since sanctions were imposed last April.

Sanctions on a Russian oligarch and his major business holdings

Oleg Deripaska was reportedly targeted by the OFAC for sanctions as a significant operator in Russia's energy sector, itself targeted for sanctions, and for his connections to the Russian government. When designated, the OFAC noted that Deripaska had been accused of a number of nefarious activities, including threatening the lives of his business rivals, illegal wiretapping, bribery, ordering the murder of a businessman, and having connections to Russian organized crime.

On 6 April 2018, pursuant to the Countering America's Adversaries Through Sanctions Act (CAATSA) and Executive Orders 13661, 13662, and 13582, the OFAC designated the Russian oligarch Deripaska and his business holdings En+, Rusal, and ESE on its Specially Designated Nationals and Blocked Persons List (SDN List). Designation on the SDN List under these authorities effectively prohibits all transactions with Deripaska and these entities, as well as entities that they own 50 percent or more, that involve a U.S. nexus, including U.S. persons, U.S.-origin items (including hardware, software, and technology), and U.S. dollars or financial institutions. Furthermore, these designations go so far as to subject non-U.S. companies to exposure for possible sanction by the U.S. government for engaging in certain business with these

SDNs even when transacting without any nexus to the United States, creating substantial risks for companies around the world.

General licenses creating space for wind down and negotiation

Recognizing the potential disruption that these designations could have for U.S., European, and other companies, the OFAC has issued a series of general licenses permitting certain activities involving the sanctioned companies. These provided U.S. companies with an opportunity to wind down their business, and offered the sanctioned companies an opportunity to address the cause of their designation and eliminate Deripaska's substantial control and shareholdings in the companies' operations. The OFAC's 19 December announcement is the highly anticipated result of months of negotiations between the sanctioned companies and the OFAC and outlines the steps these companies have agreed to take in order to effect their removal from the SDN List.

Commitments to the OFAC to reduce Deripaska's ownership and control

The OFAC's decision to terminate the sanctions against En+, Rusal, and ESE hinge on extensive corporate governance restructuring and other commitments by En+, which is directly owned by Deripaska and is the parent of Rusal and ESE, as well as the two subsidiary entities themselves. Specifically, the sanctioned entities agreed to the following terms, among others, so long as Deripaska remains on the SDN List:

- **Reduced and limited shareholding:** Deripaska will have no direct ownership stake in ESE and only a .01 percent direct ownership stake in Rusal. En+ will reduce Deripaska's interest from approximately 70 percent to 44.95 percent, effected through transfers of shares that do not lead to the direct or indirect receipt of funds by Deripaska.

- **Dividends frozen:** Deripaska may not obtain cash in return for his shares or from future dividends issued by En+, Rusal, or ESE.

- **Limited voting rights:** Deripaska will not be allowed to vote more than 35 percent of En+ shares. Any of his voting rights above the 35 percent will be assigned to a voting trust obligated to vote with the majority of non-Deripaska voting shares. En+ shareholders identified by the OFAC to have ties to Deripaska will likewise have to assign their voting rights to an independent third party for voting.

- **Independent board of directors:** En+ agreed to create a 12-person board of directors with a majority of independent directors, eight of which will be independent of Deripaska and selected through an independent executive search firm, half of which will be of U.S. or UK nationality with extensive business expertise, and only four of which will Deripaska have the right to nominate but which will not be permitted to sit on the audit or nominations committees.

- **Further extinguishment of control:** Deripaska is further required to provide En+ with a deed letter binding him to take a number of steps to sever his ability to control En+ and En+ is required to certify that it has not granted Deripaska or his relatives rights beyond those of ordinary shareholders.

- **Ongoing transparency through auditing, certification, and reporting:** En+, Rusal, and ESE have agreed to provide the OFAC with extensive transparency into their management and operations, including auditing, monthly certifications, quarterly reports, access to board meeting minutes, and a number of other commitments to notify the OFAC of certain changes in structure and operation.

- **Additional Rusal commitments:** En+ shall continue to control Rusal through a 56.88 percent stake and retain the right to nominate Rusal's CEO while any dividends from Deripaska's .01 percent permissible shareholding will be placed in a blocked account. Rusal will have a 14-member board, eight directors of which will be completely independent of Deripaska and any other SDN, and the remaining six of which must not have ties to Deripaska other than having worked for Rusal or En+. Rusal's board chairman will be replaced with an independent director and Deripaska will have no right to appoint any directors. The OFAC will also maintain oversight of board appointments.

Delisting and a resumption of normal operations for business partners

As a result of the commitments made by En+, Rusal, and ESE to reorganize their structure and eliminate significant ownership and control of their business affairs by Deripaska, the OFAC has agreed to delist these sanctioned entities from the SDN List in thirty days, enabling their U.S. and foreign business partners to resume normal business dealings.

General License No. 13I permitting divestment and certain transfers

The day after the OFAC made its announcement to Congress that it intended to remove sanctions on these entities, it issued General License No. 13I, extending the period of authorization for activities by U.S. persons that are ordinarily incident and necessary to the divestment or transfer of debt, equity, or other holdings in En+ and Rusal to a non-U.S. person or to facilitate such divestment or transfer by a non-U.S. person to another non-U.S. person. Under General License No. 13I, U.S. persons are permitted to engage in the authorized divestment and transfer activities related to En+ and Rusal until 21 January 2019. This extension continues to authorize U.S. persons to reduce their holdings in these sanctioned entities, which remain subject to U.S. sanctions until delisted by the OFAC.

We will continue to monitor this space closely and provide updates as events warrant.

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