SHEARMAN & STERLING LLP

# Sanctions Roundup

January 8, 2018

# Fourth Quarter 2017

**Headlines from the final months of 2017 included the signing of a new executive order with global anti-corruption implications; new guidance on the Trump Administration's approach to Russia sanctions under CAATSA; tightening of international sanctions against North Korea; and continued uncertainty surrounding the future of the US's Iran policy. Enforcement ebbed this quarter, as OFAC announced just three actions against smaller entities for Cuba and Iran violations.**

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# Global Magnitsky Act

## New Executive Order Implements Global Magnitsky Act

On December 21, the Trump Administration announced a new executive order implementing the Global Magnitsky Human Rights Accountability Act ("Global Magnitsky Act," Public Law 114-328, Subtitle F), which was signed into law on December 23, 2016. The Act, which is distinct from the Sergei Magnitsky Rule of Law Accountability Act of 2012 (applying only to Russia), was enacted to target serious human rights abusers and corrupt actors across the globe. Accordingly, the new executive order allows for the imposition of asset freezes and visa bans against foreign persons determined to be engaged in serious human rights abuses or corruption anywhere in the world.

Interestingly, this order could present US authorities with an expansive new tool to supplement enforcement of the Foreign Corrupt Practices Act. The US ostensibly may utilize the order to designate foreign nationals involved in corruption and block their US assets (including a prohibition on USD transactions) even in cases where US authorities do not have the jurisdiction to charge them under the FCPA. Although the authority to designate is vested in the Treasury Secretary in consultation with the Secretary of State, one can easily imagine the Department of Justice proposing designations of foreign officials implicated in FCPA investigations or foreign nationals that may fall outside their jurisdictional scope.

In an Annex to the executive order, the President imposed sanctions on an inaugural class of thirteen serious human rights abusers and corrupt actors all over the world, from Latin America to Africa and Eastern Europe, several of whom are designated for conduct at the center of a number of recent corporate FCPA enforcement actions. The Treasury Department simultaneously designated thirty-nine related individuals and entities. The designated persons include:

- ***Yahya Jammeh*** - former President of The Gambia who allegedly ordered extrajudicial killings and who also allegedly ordered terror squads to suppress political dissidents and "plunder The Gambia's state coffers . . . for his personal gain." OFAC also designated twelve entities alleged to be related to former President Jammeh's corrupt acts: **Africada Airways, Kanilai Group International, Kanilai Worni Family Farms Ltd, Royal Africa Capital Holding Ltd, Africada Financial Service & Bureau de Change Ltd, Africada Micro-Finance Ltd, Africada Insurance Company, Kora Media Corporation Ltd, Atlantic Pelican Company Ltd, Palm Grove Africa Dev't Corp. Ltd, Patriot Insurance Brokers Co. Ltd, and Royal Africa Securities Brokerage Co Ltd.**
- ***Roberto Jose Rivas Reyes*** - President of Nicaragua's Supreme Electoral Council, designated for alleged corrupt activities in Nicaragua, as well as for undermining Nicaragua's electoral institutions.
- ***Dan Gertler*** - Israeli billionaire and owner of numerous mining and oil operations in the Democratic Republic of the Congo. Gertler allegedly used his influence with DRC President Joseph Kabila to foster the corrupt sale of Congolese mining assets and other corrupt transactions. Last year, Och-Ziff (a New York hedge fund) entered into a deferred prosecution agreement and one of its subsidiaries pleaded guilty to FCPA violations relating to Congolese mining investments, which allegedly helped to finance bribes paid through Gertler. OFAC designated 20 additional individuals and entities associated with Gertler: **Pieter Albert Deboutte, Fleurette Properties Limited, FleuretteHoldings Netherlands B.V., Gertler Family Foundation, Oil of DR Congo SPRL, Jarvis Congo SARL, International Diamond Industries, D.G.D. Investments Ltd., D.G.I. Israel Ltd, Proglan Capital Ltd, Emaxon Finance International Inc., Africa Horizons Investment Limited, Caprikat Limited, Foxwhelp Limited, Caprikat and Foxwhelp SARL, Lora Enterprises Limited, Zuppa Holdings Limited, Orama Properties Ltd, DGI Mining Ltd, and Rozaro Development Limited.**
- ***Slobodan Tesic*** - arms dealer in the Balkans who allegedly obtained government contracts through corrupt payments. OFAC also designated four associated entities:

**Preduzece Za Trgovinu Na Veliko I Malo Partizan Tech DOO Beograd-Savski Venac, Charso Limited, Grawit Limited, and Technoglobal Systems DOO Beograd.**

- ***Maung Maung Soe*** - Myanmar military leader accused of organizing widespread human rights abuses against Myanmar's Rohingya population, which culminated in the US State Department's declaration on November 22, 2017 that the situation in the northern Rakhine state constituted ethnic cleansing.
- ***Benjamin Bole Mel*** - President of **ABMC Thai-South Sudan Construction Company Limited** (ABMC), which has allegedly received millions in South Sudanese Government contracts through corrupt means. OFAC additionally designated ABMC and **Home and Away LTD**.
- ***Mukhtar Hamid Shah*** - Pakistani surgeon alleged to be involved in illegal trafficking of human organs.
- ***Gulnara Karimova*** - alleged head of an organized crime syndicate in Uzbekistan that allegedly leveraged state officials to expropriate businesses, monopolize the Uzbek telecom market, solicit bribes, and administer extortion rackets. Karimova is understood to have been the recipient of the bribes at the heart of the Vimpelcom and Telia international corruption cases brought by US, Dutch, and Swedish authorities in 2016 and 2017.
- ***Angel Rondon Rijo*** - businessman and lobbyist in Dominican Republic who allegedly used corrupt means to facilitate the awarding of government contracts to Odebrecht, the Brazilian construction company that pled guilty to FCPA violations in 2016.
- ***Artem Chayka*** - Russian businessman who allegedly used his father's influence as Prosecutor General of the Russian Federation to unfairly win government contracts and thwart business competitors.
- ***Gao Yan*** - former Beijing Public Security Bureau Chaoyang Branch director, who allegedly oversaw the detaining and abuse of human rights activist Cao Shunli in 2014, which ultimately led to her death.
- ***Sergey Kusiuk*** - former commander of a Ukrainian police unit that allegedly attacked and murdered demonstrators in Ukraine during the 2013 political demonstrations.
- ***Julio Antonio Juarez Ramirez*** - Guatemalan Congressman accused of ordering an attack in which two journalists were killed and another injured.
- ***Yankuba Badjie*** - former director of The Gambia's National Intelligence Agency, which allegedly committed various human rights abuses against political opponents during his tenure.

# Russia

## Trump Administration Issues Guidance on CAATSA Provisions

In late October, OFAC and the US Department of State released expansive new guidance implementing certain measures required by the Countering America's Adversaries Through Sanctions Act ("CAATSA"), and provided information on the Administration's anticipated enforcement approach to the new legislative sanctions. Relevant aspects of this guidance are recapped below.

### *Guidance on Russia Sectoral Sanctions under E.O. 13662*

- *Directives 1 & 2* - OFAC clarified that Directives 1 and 2 do not require US persons to block the property or interests in property of the entities identified in the Directives. Instead, OFAC stated that US persons should reject transactions or dealings that are specifically prohibited by Directives 1 or 2, and report to OFAC the rejected transactions within 10 business days.
- *Directive 4* - OFAC released Amended Directive 4, which, pursuant to CAATSA, expands the scope of the initial Directive to prohibit the assistance of US persons in the exploration and production of deep-water, Arctic offshore, or shale oil projects involving entities listed under the Directive. Specifically, the amended Directive 4 has an additional forward looking element: it still applies to existing Russian oil development projects, but it will also apply to the provision of goods, services and technologies to projects initiated on or after January 29, 2018 that (1) have the potential to produce oil anywhere in the world, and that (2) are 33% owned by designated entities, or in which designated entities control at least 50% of the voting interests. OFAC noted that Directive 4's prohibitions on the exportation of services include drilling, geophysical, geological, logistical, and management services, as well as modeling and mapping technologies. Notably, the prohibition does not apply to the provision of financial services.

### *New Tenor Restrictions Effective November 28, 2017*

On November 28, OFAC updated its guidance to account for the fact that certain CAATSA-related prohibitions amending the tenor restrictions on new debt and equity in Directives 1 and 2 are now in effect. According to the CAATSA legislation, the new tenor restrictions under each Directive were postponed until November 28, 2017. For Directive 1, the maturity date for prohibited debt issued on or after November 28, 2017 decreased from thirty days to

fourteen days. For Directive 2, the maturity date for prohibited debt issued on or after November 28, 2017 decreased from 90 days to 60 days.

OFAC simultaneously issued General License No. 1B related to Directives 1, 2, and 3. General License 1B authorizes all transactions by US persons, and transactions within the United States, involving derivative products whose value is linked to an underlying asset that constitutes prohibited debt issued by a person subject to Directives 1, 2, or 3 of the Russia sectoral sanctions program.

### *Guidance on Enforcement of other CAATSA Provisions*

- **Section 223(a)** states that OFAC may apply sanctions against "state-owned entit[ies] operating in the railway or metals and mining sectors of the economy of the Russian Federation." OFAC clarified that Section 223(a) merely permits, but does not require, the imposition of sanctions on persons operating in the railway or mining sector. As of now, OFAC has opted not to impose such measures.

- **Section 225** mandates the imposition of secondary sanctions with respect to non-US persons making "a significant investment in a special Russian crude oil project," defined as "a project intended to extract crude oil from (A) the exclusive economic zone of the Russian Federation in waters more than 500 feet deep; (B) Russian Arctic offshore locations; or (C) shale formations located in the Russian Federation."

  The State Department clarified that any sanctions under Section 225 shall only be imposed for investments made on or after 1 September 2017. The State Department further explained that in determining whether an investment is "significant," it will consider the totality of the facts and circumstances surrounding the investment and weigh various factors on a case-by-case basis, including (1) the significance of the transactions to US national security and foreign policy interests; (2) the nature and magnitude of the investment, including the size of the investment relative to the project's overall capitalization; and (3) the relation and significance of the investment to the Russian energy sector. Finally, the State Department explained that an "investment" under Section 225 could include arrangements where goods or services are provided in exchange for equity in an enterprise or rights to a share of revenue or profits.

- **Section 226** mandates the imposition of secondary sanctions (i.e., terminating or restricting access to US correspondent and payable-through accounts) with respect to Foreign Financial Institutions ("FFIs") that knowingly engage in significant financial transactions (1) on behalf of Russian persons designated on OFAC's SDN list under the Ukraine-related authorities or certain other sanctioned persons, or (2) in connection with significant investments in a Russian deep-water, Arctic offshore, or shale oil project. OFAC clarified that FFIs will not be subject to sanctions under the amended Section 226 merely for facilitating transactions on behalf of persons listed on OFAC's Sectoral Sanctions Identification List pursuant to Directives 1-4.

  OFAC explained that it will consider the totality of the circumstances when determining whether a transaction is "significant" for purposes of implementing Section 226. As with other sanctions programs, OFAC will consider the following list of seven broad factors: (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.

  As is also typical, OFAC will interpret the term "financial transaction" broadly to encompass "any transfer of value involving a financial institution," including wire transfers, the acceptance of commercial paper, ATM transactions, the provision of trade finance or letter of credit services, and investment products.

  The term "facilitated" will likewise be interpreted broadly. OFAC provided the following definition: "the provision of assistance for certain efforts, activities, or transactions, including the provision of currency, financial instruments, securities, or any other transmission of value; purchasing; selling; transporting; swapping; brokering; financing; approving; guaranteeing; the provision of other services of any kind; the provision of personnel; or the provision of software, technology, or goods of any kind."

- **Section 228** imposes mandatory sanctions with respect to "Certain Transactions with Foreign Sanctions Evaders and Serious Human Rights Abusers in the Russian Federation." OFAC provided the following definitions for key terms for implementing Section 228 of CAATSA:
  - "**Foreign person**" means any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.
  - "**knowingly**" means that "a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result."
  - "**materially violate**" - OFAC will interpret the term "materially violate" to refer to an "egregious" violation. A determination about whether a violation is egregious will be based on an analysis of the applicable General Factors as described in OFAC's Economic Sanctions Enforcement Guidelines, located in subsection (B)(1), section V of Appendix A to 31 C.F.R. Part 501.
  - "**facilitation . . . for or on behalf of**" - OFAC will interpret facilitating a significant transaction for or on behalf of a person to mean providing assistance for a transaction from which the person in question derives a particular benefit of any kind (as opposed to a generalized benefit conferred upon undifferentiated persons in aggregate). Assistance may include the provision or transmission of currency, financial instruments, securities, or any other value; purchasing, selling, transporting, swapping, brokering, financing, approving, or guaranteeing; the provision of other services of any kind; the provision of personnel; or the provision of software, technology, or goods of any kind.
  - "**significant transaction**" - OFAC will consider the same totality of the facts and circumstances when determining whether transactions are "significant" as those noted above for Section 226.
  - "**deceptive or structured transaction**" - Structured transactions are a type of deceptive transaction. A "deceptive transaction" is one that involves deceptive practices. "Deceptive practices" are attempts to obscure or conceal the actual parties or true nature of a transaction, or to evade sanctions.
- **Section 231** mandates the imposition of secondary sanctions with respect to any person who knowingly engages in a significant transaction with a person that is a part of, or operates for or on behalf of, Russia's defense or intelligence sectors. As required by CAATSA, the State Department published a list identifying such persons involved in the defense and intelligence sectors:
  - *List of Persons Involved in the Defense Sector of the Government of the Russian Federation*:

| | | |
|---|---|---|
| Admiralty Shipyard JSC | Mytishchinski Mashinostroitelny Zavod | Russian Helicopters JSC |
| Almaz-Antey Air and Space Defense Corporation JSC | Novator Experimental Design Bureau | Sozvezdie Concern JSC |
| Dolgoprudny Research Production JSC | NPO High Precision Systems JSC | State Research and Production Enterprise Bazalt JSC |
| Federal Research and Production Center Titan Barrikady JSC (Titan Design Bureau) | NPO Splav JSC | Sukhoi Aviation JSC |

| | | |
|---|---|---|
| Izhevsk Mechanical Plant (Baikal) | Oboronprom OJSC | Tactical Missiles Corporation JSC |
| Izhmash Concern JSC | Radio-Electronic Technologies (KRET) | Tikhomirov Scientific Research Institute JSC |
| Kalashnikov Concern JSC | Radiotechnical and Information Systems (RTI) Concern | Tupolev JSC |
| Kalinin Machine Building Plant JSC (KMZ) | Research and Production Corporation Uralvagonzavod JSC | United Aircraft Corporation |
| KBP Instrument Design Bureau | Rosoboronexport OJSC (ROE) | United Engine Corporation |
| MIC NPO Mashinostroyenia | Rostec (Russian Technologies State Corporation) | United Instrument Manufacturing Corporation |
| Molot Oruzhie | Russian Aircraft Corporation MiG | United Shipbuilding Corporation |

  - *List of Persons Involved in the Intelligence Sector of the Government of the Russian Federation*:
    - Autonomous Noncommercial Professional Organization/Professional Association of Designers of Data Processing (ANO PO KSI)
    - Federal Security Service (FSB)
    - Foreign Intelligence Service (SVR)
    - Main Intelligence Directorate of the General Staff of the Russian Armed Forces (GRU)
    - Special Technology Center
    - Zorsecurity
- **Section 232** grants the President discretion to impose a variety of secondary sanctions against persons investing in, and providing goods or services in support of, Russian energy export pipelines. The State Department released guidance arguably narrowing the scope of the statute by stating the Administration's policy that Section 232 only applies to investments in "energy export pipeline projects *initiated on or after August 2, 2017*" and on the provision of goods and services in support of them. Additionally, the guidance states that a project is considered to have been initiated when a contract for the project is signed. The State Department specifically noted that investments and loan agreements made prior to August 2, 2017 will be exempt from sanctions.

The guidance noted above fulfills several of the initial regulatory requirements imposed on the Trump Administration by CAATSA. However, we note that several significant provisions have yet to be implemented, including the submission by the Treasury Department of two reports required by February 2018 identifying "oligarchs and parastatal entities of the Russian Federation" and "describing in detail the potential effects" of expanding existing US financial sanctions to include Russian sovereign debt. We further note that the Administration has not yet imposed any restrictive measures under the Act's purportedly "mandatory" sanctions provisions described above, many of which have been effective since August 2.

# Magnitsky Act Designations

On December 20, OFAC designated five individuals as SDNs under the 2012 Magnistky Act, which targets individuals alleged to be responsible for human rights abuses committed against persons seeking to expose illegal activity by Russian government officials. The most recently designated individuals include:

- *Ramzan Kadyrov* – designated for allegedly using his office as head of the Chechen Republic to commit extrajudicial killings, torture, and other gross human rights violations against persons attempting to expose illegal activity carried out by officials of the Russian Federation. Specifically, Kadyrov is alleged to have orchestrated the torture and murder of political opponents in Chechnya.
- *Ayub Kataev* – designated for allegedly using his position as a law enforcement official in the Chechen Republic to commit extrajudicial killings, torture, and other gross human rights violations against persons seeking to exercise internationally recognized rights in Russia. Specifically, Kataev is alleged to have been involved in abuses against gay men in Chechnya during the first half of 2017.
- *Yulia Mayorova* – designated for alleged involvement in the criminal conspiracy uncovered by Sergei Magnitsky. Specifically, Mayorova represented two Hermitage Fund subsidiaries in lawsuits, the judgment of which served as the basis for an illegal tax refund in 2007.
- *Andrei Pavlov* – designated for alleged involvement in the criminal conspiracy uncovered by Sergei Magnitsky. Specifically, Pavlov represented two Hermitage Fund subsidiaries in lawsuits, the judgment of which served as the basis for an illegal tax refund in 2007.
- *Alexei Sheshenya* – designated for alleged involvement in the criminal conspiracy uncovered by Sergei Magnitsky. Specifically, Sheshenya was the shareholder of the plaintiff entity that brought a lawsuit against the Hermitage Fund subsidiaries, the judgement of which served as the basis for an illegal tax refund in 2007.

# Iran

## Future of US Participation in JCPOA Remains Uncertain

On October 13, President Trump made headlines when he officially refused to re-certify that the 2015 Joint Comprehensive Plan of Action ("JCPOA") is appropriate and proportionate to US national security interests, as required every 90 days by the US legislation implementing the JCPOA (the "Iran Nuclear Review Act"). The failure to re-certify triggered a 60-day window during which time Congress could opt to "snap back" currently-suspended nuclear sanctions by a simple majority vote. The 60-day deadline expired in December without the introduction of legislation to re-impose sanctions, signaling an apparent lack of interest to upend the nuclear agreement through the legislature for now.

A second, and perhaps more consequential, deadline will occur on January 12, when President Trump must again renew the temporary waiver of US secondary sanctions on Iran currently suspended under the terms of the nuclear deal. A repeal of the waivers, which were last renewed on September 14, would likely constitute a de facto withdrawal from the JCPOA by the United States. Foreign ministers of the European Union in November criticized President Trump's threats to pull US support for the Iranian nuclear agreement, and each said that their governments will continue to support the agreement and the suspension of sanctions that were lifted pursuant to the JCPOA.

## Turkish Banker Convicted of Evading Iran Sanctions

On January 3, 2018, following a high-profile criminal trial, a federal jury in Manhattan convicted Mehmet Hakan Atilla of helping Iran evade US sanctions related to Iran's pursuit of its nuclear weapons program. Mr. Atilla, a Turkish banker at the state-run bank Turkiye Halk Bankasi AS (Halkbank), was arrested when he visited the US in March 2017 and charged with six criminal counts, including conspiracy, bank fraud, money laundering, and sanctions violations. Though nine defendants were charged, Mr. Atilla was the only defendant to stand trial and was acquitted only of the money laundering charge. The charges stem from allegations that he and associates, with the assistance of top Turkish government officials, sought to assist Iran in transmitting nearly $1 billion worth of Iranian oil and gas revenues through Halkbank and into the global financial system to the benefit of Iran in violation of US sanctions.

Reza Zarrab, a well-known Turkish gold trader, provided crucial testimony for the prosecution. After pleading guilty to sanctions violations and other charges, Mr. Zarrab implicated Mr. Atilla and testified that Turkish President Erdogan and top Turkish government officials were aware of and supported the evasion scheme.

The verdict creates a potential strain on the United States' relationship with Turkey, a key regional ally. The case has drawn repeated denunciation from President Erdogan, who requested that the investigation be closed, and who accused the US of trying to damage Turkey's national reputation. Following Mr. Atilla's conviction, President Erdogan remarked that the "bilateral ties and the bilateral agreements" between the US and Turkey "are losing their validity," and further telling reporters that, "If this is the US understanding of justice, then the world is doomed." The successful prosecution of Mr. Atilla also has important legal implications, as it signals a willingness on the part of US authorities to pursue criminal charges, as opposed to civil or administrative penalties, against individuals outside of the United States who violate sanctions regimes.

## Iran-Related Designations

On October 13, OFAC designated **Iran's Islamic Revolutionary Guard Corps (IRGC)** pursuant to E.O. 13224 (applying sanctions for global terrorism) for its alleged support of terrorist groups, including Hizballah and Hamas. In section 105 of CAATSA, Congress mandated that the President designate IRGC by October 30. Although the IRGC was already a designated entity under previous sanctions programs, designating it under E.O. 13224 carries additional consequences. Specifically, certain exemptions relating to personal communications, humanitarian donations, information or informational materials, and travel no longer apply.

In addition to the IRGC, OFAC designated three Iran-based entities under Executive Order 13382 (freezing the assets of proliferators of weapons of mass destruction and their supporters):

- ***Shahid Alamolhoda Industries*** *(SAI)* was designated for being owned or controlled by Iran's Naval Defense Missile Industry Group (SAIG). SAIG, which is involved in cruise and naval missile development, was designated pursuant to E.O. 13382 in June 2010.
- ***Rastafann Ertebat Engineering Company*** *(Rastafann)* was designated for its support for SAIG and the IRGC. Rastafann provided electronic systems support to the IRGC and SAIG, including radar systems and other communications equipment.
- ***Fanamoj***, the parent company of Rastafann, was designated for having provided support for the IRGC. Fanamoj designed components for the Iranian military's missile systems.

Also pursuant to E.O. 13382, OFAC designated a China-based entity for its activity in connection with the proliferation activities of a supporter of Iran's military:

- ***Wuhan Sanjiang*** allegedly provided financial, material, or technological support for Iran's Shiraz Electronics Industries (SEI), which is owned or controlled by Iran's Ministry of Defense and Armed Forces Logistics. SEI, which engaged in the production of electronics equipment for the Iranian military, was previously designated pursuant to E.O. 13382 in September 2008. Wuhan Sanjiang has allegedly sold or has entered into contracts to sell SEI electronics equipment valued at over one million dollars, and has also taken actions to hide those transactions.

On January 4, OFAC designated five Iranian entities, which are owned by the previouslydesignated Shahid Bakeri Industrial Group (SBIG), and which are alleged to be involved in the research and production of component parts that are critical to Iran's ballistic missile program. Specifically, OFAC designated the following five subordinates of SBIG:

- ***Shahid Kharrazi Industries*** – alleged to be responsible for the development and production of guidance and control systems for solid-propellant ballistic missiles.
- ***Shahid Sanikhani Industries*** – alleged to be responsible for casting and curing solid-propellant for Iran's solidpropellant ballistic missiles.
- ***Shahid Moghaddam Industries*** – alleged to be responsible for the development and production of solid-propellant missile motor cases, ballistic missile launchers, and ground support equipment.

- ***Shahid Eslami Research Center*** – allegedly serves as the research and development organization within SBIG.
- ***Shahid Shustari Industries*** – allegedly created for the development of fiber materials for SBIG.

## OFAC Issues Reminder about Humanitarian Aid

In response to the November 12, 2017 earthquake in Iran, OFAC issued guidance emphasizing that US individuals may (through non-governmental organizations) provide humanitarian assistance to Iranians while still complying with US sanctions. Specifically, OFAC General License E allows nongovernmental organizations to provide services to Iran that support activities related to humanitarian projects aimed at meeting basic human needs, including for natural disaster relief services, donations of food, clothing and medicine, and general health-related services, so long as these donations are not sent directly to the Government of Iran, or to an individual or entity on the SDN List.

# Cuba

On November 9, OFAC amended the Cuban Assets Control Regulations, 31 C.F.R. part 515 (the "CACR") to implement changes to the Cuba sanctions program announced by President Trump in June of this year, which aim to reinforce certain policies that had been relaxed by the Obama Administration. Most significantly, President Trump directed OFAC to impose new travel restrictions and curtail transactions with businesses controlled by the Cuban military, intelligence, and security sectors – a prohibition many companies feared would heavily impact the tourism industry.

According to OFAC, the changes are "intended to channel economic activities away from the Cuban military, intelligence, and security services, while maintaining opportunities for Americans to engage in authorized travel to Cuba and support the private, small business sector in Cuba." The new regulations impose new travel restrictions on Americans and prohibit direct financial dealings with more than 80 hotels and dozens of other companies considered to be tied to Cuba's military, intelligence, or security services. The new restrictions, which became effective November 9, include:

- *Prohibited Financial Transactions* – the new regulations prohibit US persons (or persons subject to US jurisdiction) from engaging in most direct financial transactions with entities identified by the State Department on the Cuba Restricted List (available at www.state.gov/e/eb/tfs/spi/cuba/cubarestrictedlist/index.htm), published simultaneously with the amended regulations. Notably, commercial engagements in place prior to the State Department's listing of any entity will continue to be authorized, as will most previously arranged travel. Additionally, the prohibition does not apply to indirect financial transactions, such as bank transfers, where the person does not act as the originator or beneficiary on a transfer of funds.
- *Trade and Commerce* – relatedly, the Department of Commerce announced it is establishing a general policy of denial for license applications to export items for use by entities identified in the Cuba Restricted List.
- *New Travel Restrictions for Americans*
  - *People-to-People & Educational Travel* – the new regulations de-authorize individual people-to-people nonacademic educational travel, as well as individual academic educational travel, to Cuba by US persons. Instead, all such travel must be conducted under the auspices of a US government-approved organization that sponsors such exchanges to promote people-to-people contact, and travelers must be accompanied by a US representative of the sponsoring organization.
  - *Support for Cuban People Travel* – similarly, Americans engaging in travel under this category must engage a full-time schedule of activities which documents meaningful interaction with, and support for, individuals in Cuba, as defined in the CACR.

# North Korea

As North Korea continued its missile testing, the U.N. this quarter again ratcheted up international sanctions in an effort to persuade the country to curb its nuclear ambitions – the fourth such resolution in 2017. On December 22, the U.N. Security Council unanimously voted to pass Resolution 2397, which imposes additional, stricter sanctions against North Korea, including:

- Reducing exports of refined petroleum fuel products to North Korea by almost 90 percent, imposing a cap of 500,000 barrels per year starting January 1, 2018.
- Capping crude oil supplies to North Korea at 4 million barrels a year and commits the Council to further reductions if North Korea continues its testing program.
- Banning North Korea's export of food and agricultural products, machinery, electrical equipment, earth and stone including magnesite and magnesia, wood, and vessels.
- Banning the supply, sale, or transfer to North Korea of all industrial machinery, transportation vehicles, iron, steel, and other metals with limited exceptions.
- Broadening maritime inspection rights of member states to curb illicit ship-to-ship transfers or prohibited exports and imports.
- Imposing a 24-month deadline for expatriate North Korean workers to be sent home.

Following the adoption of Resolution 2397, US reconnaissance satellites reportedly spotted Chinese and North Korean ships illegally transferring oil in the Yellow Sea between China and the Korean peninsula. In interviews and on Twitter, President Trump again threatened aggressive trade sanctions against China if President Xi Jinping's government does not do more to reign in North Korea's nuclear ambitions. Chinese officials denied the reports. South Korea announced at the end of the month that it had seized two vessels (one from Hong Kong and one from Panama), both of which are alleged to have been caught engaging in prohibited ship-to-ship transfers.

The Trump Administration additionally announced on November 20 that the US government re-designated North Korea as a state sponsor of terrorism, further subjecting the country to restrictions on US foreign assistance, a ban on defense exports and sales, and certain controls over exports of dual use items. North Korea was previously listed as a state sponsor of terrorism in 1988, until being removed from the list by President George W. Bush in 2008.

## US Takes Aim at Chinese Entities and Individuals in Effort to Bolster North Korea Sanctions

On November 2, the US Treasury Department formally issued an order prohibiting US financial institutions from opening or maintaining accounts for, or on behalf of, China's **Bank of Dandong**. The order follows the Treasury Department's June 2017 announcement stating that it considers Bank of Dandong of "primary money laundering concern" and alleging that

Bank of Dandong helped North Korea evade sanctions to launder money and access financial systems in the US and across the world. Pursuant to the new rule, financial institutions are required to apply special due diligence procedures to prevent their accounts from being used to process transactions involving Bank of Dandong. Notably, the order was issued pursuant to Section 311 of the USA PATRIOT Act, rather than any sanctions authority.

In September, President Trump issued E.O. 13810, which authorized sanctions on non-US persons engaged in certain trading activities with North Korea. This quarter, OFAC utilized this authority for the first time when it targeted several Chinese entities and one individual with alleged significant commercial ties to the North Korean regime. Specifically, on November 21, OFAC designated three Chinese trading companies pursuant to E.O. 13810. OFAC alleges that from 2013-2017, the companies exported approximately $750 million dollars' worth of goods to and from North Korea, including notebook computers and minerals used for industrial development, such as iron, coal, zinc, and lead:

- ***Dandong Kehua Economy & Trade Co., Ltd.***
- ***Dandong Xianghe Trading Co., Ltd.***
- ***Dandong Hongda Trade Co. Ltd.***

Also pursuant to E.O. 13810, OFAC designated Chinese national **Sun Sidong** and his company **Dandong Dongyuan Industrial Co., Ltd.** for allegedly exporting over $28 million worth of goods to North Korea, including motor vehicles, electrical machinery, radio navigational items, aluminum, iron, pipes, and items associated with nuclear reactors.

## US Continues Targeting Individuals and Entities in North Korea

On October 26, 2017, OFAC sanctioned seven individuals and three entities of the North Korean regime pursuant to Executive Order 13687 and Executive Order 13722.

### *Designated Entities:*

- ***Military Security Command***, also known as the Military Security Bureau or the Korean People's Army Security Bureau, was designated pursuant to Executive Order 13722 (targeting the property of the Government of North Korea or the Workers' Party of Korea). Military Security Command was designated for being an agency, instrumentality, or a controlled entity of the Government of North Korea or the Workers' Party of Korea. Military Security Command acts as an internal monitor for anti-regime activity within the North Korean Military. It also investigates political crimes within the military.
- ***External Construction Bureau*** was designated pursuant to E.O. 13722 as an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea.
- ***Ch'olhyo'n Overseas Construction Company*** was designated pursuant to E.O. 13722 as an agency, instrumentality, or controlled entity of the Government of North Korea or the Workers' Party of Korea. The Ch'olhyo'n Overseas Construction Company allegedly earns foreign currency through forced labor, which it then uses to support the North Korean regime. According to the US State Department, employees of Ch'olhyo'n are kept in "slave-like conditions" and provided poor food rations.

### *Designated North Korean Individuals:*

- ***Jo Kyong-Chol***, the Director of the Military Security Command was designated pursuant to E.O. 13687 for being an official of the Government of North Korea.
- ***Sin Yong Il***, Deputy Director of the Military Security Command, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea.
- ***Kim Kang Jin***, the Director of the External Construction Bureau, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea or the Workers' Party of Korea.

- ***Ri Thae Chol***, the Democratic People's Republic of Korea (DPRK) First Vice Minister of the Ministry of People's Security, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea or the Workers' Party of Korea.
- ***Ku Sung Sop***, Consul General in Shenyang, China, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea or the Workers' Party of Korea. Ku Sung Sop is associated with the Ministry of State Security and is alleged to have participated in the forced return of North Korean asylum seekers. The Ministry of State Security itself was designated under E.O. 13722 (targeting North Korean persons and entities responsible for human rights abuses).
- ***Kim Min Chol***, a diplomat at the North Korean Embassy in Vietnam, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea or the Workers' Party of Korea. Kim Min Chol is also associated with the Ministry of State Security and is alleged to have participated in the forced return of North Korean asylum seekers.
- ***Jong Yong Su***, the DPRK Minister of Labor, was designated pursuant to E.O. 13687 for being an official of the Government of North Korea or the Workers' Party of Korea. The Ministry of Labor was designated pursuant to E.O. 13722. According to the State Department, the Ministry of Labor enforces the regime's economic system based on forced labor.

On November 21, OFAC designated various transportation networks as part of the US effort to disrupt North Korea's supply of materials relating to its nuclear and ballistic missile programs:

## *Designated Shipping and Trading Companies*

Six North Korean shipping and trading companies were designated pursuant to E.O. 13810 for operating in the transportation industry in North Korea. OFAC also blocked 20 vessels of the newly designated companies, all of which are DPRK-flagged.

- ***Korea Rungrado Shipping Company*** and its vessels Pu Hung 1, Rung Ra Do, and Yang Gak Do.
- ***Korea Rungrado Ryongak Trading*** and its vessels Rung Ra 1 and Rung Ra 2.
- ***Yusong Shipping Company*** and its vessels Won San 2, Za Ryok 2, Za Ryok 7-28, Yui Song 12, and Yu Song 7.
- ***Dawn Marine Management Co. Ltd*** and its vessels Jang Gyong, Kum Song 3, Kum Song 5, Kum Song 7, and Kum Un San 3.
- ***Korea Daebong Shipping Company*** and its vessel Rak Rang.
- ***Korea Kumbyol Trading Company*** and its vessels Kang Song 1, Ku Bong Ryong, So Baek San, and Rye Song Gang 1.

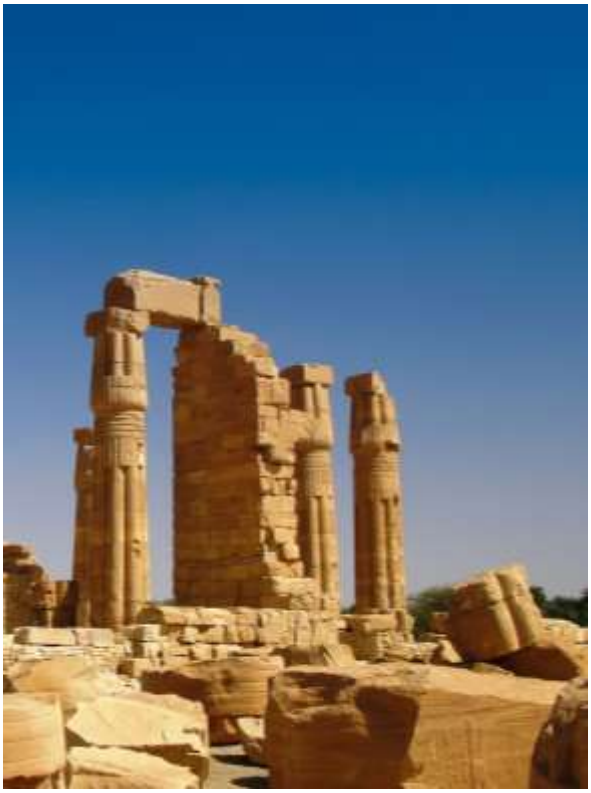
## *Designated Agencies and Controlled Entities*

Pursuant to E.O. 13722, which targets persons involved in the exportation of workers from North Korea, OFAC designated the following as agencies, instrumentalities, or controlled entities of the Government of North Korea:

- ***Maritime Administration of the DPRK***
- ***Ministry of Land and Maritime Transportation of the DPRK***
- ***Korea South-South Cooperation Corporation***

Finally, on December 26, OFAC designated two DPRK individuals as SDNs under E.O. 13687 for their support of the country's nuclear program. **Kim Jong Sik** and **Ri Pyong Chol** were described as "key leaders of North Korea's unlawful weapons programs" and said to be senior officials in North Korea's Munitions Industry Department.

# Sudan



As previously reported, during the third quarter of this year, the Treasury Department announced the permanent lifting of trade sanctions against Sudan. Accordingly, on October 12, 2017, OFAC removed a number of Sudanese entities from the SDN list. This removal was made pursuant to the revocation of sanctions against Sudan established in E.O. 13067 and E.O. 13412, which had generally prohibited US persons from engaging in transactions with Sudan and the Government of Sudan.

Despite the removal of a large number of Sudanese entities from the SDN list, many remain, including SDN designations established with respect to Darfur sanctions and South Sudan. Since the lifting of trade sanctions, Sudan has seen an increase in investor interest in the country. Sudan's government has reportedly entered into discussions with companies such as Halliburton Co. and Lukoil PJSC of Russia about investing in the Sudanese oil and gas industry.

# Venezuela

On November 9, OFAC issued new guidance by publishing two Frequently Asked Questions that relate to the treatment of subsidiaries of Petroleos de Venezuela, S.A. (PDVSA) under Executive Order 13808, which restricts the government of Venezuela's access to US financial markets:

- *FAQ 547* clarifies that US persons may participate in meetings about restructuring pre-existing Venezuelan and PDVSA debt (i.e., debt specified in the Annex to General License 3), as long as there is no involvement of an entity or person on the SDN list. General License 3 authorizes US persons to engage in all transactions related to certain specified bonds, including participating in negotiations regarding such bonds.
- *FAQ 548* confirms that, for purposes of E.O. 13808, the prohibition from dealing in new debt of PDVSA with a maturity of greater than 90 days in Subsection 1(a)(i) applies to all PDVSA subsidiaries.

## US Continues Targeting of Venezuela Government Officials

Also on November 9, OFAC designated ten current or former Venezuelan government officials pursuant to Executive Order 13692. E.O. 13692, originally signed in March 2015, authorizes sanctions against individuals engaged in undermining democracy in Venezuela. According to OFAC, the designated individuals below engaged in activities that undermined electoral processes, assisted media censorship, or were involved in corruption schemes in Venezuela's government-administered food programs.

- ***Sandra Oblitas Ruzza***, the Vice President and a Rector of Venezuela's National Electoral Council (CNE) and the President of the Civil and Electoral Registry Commission maintained by the CNE.
- ***Socorro Elizabeth Hernandez De Hernandez***, a CNE Rector and a member of Venezuela's National Electoral Board.
- ***Carlos Enrique Quintero Cuevas***, an Alternate Rector of the CNE and a member of Venezuela's National Electoral Board.
- ***Elvis Eduardo Hidrobo Amoroso***, Second Vice President of Venezuela's Constituent Assembly (AC).
- ***Julian Isaias Rodriguez Diaz***, the Venezuelan Ambassador to Italy.

- ***Ernesto Emilio Villegas Poljak***, Venezuela's Minister of Culture and the former Minister of Communication and Information.
- ***Jorge Elieser Marquez Monsalve***, Venezuela's newly appointed Minister of the Office of the Presidency and the former Director General of the National Telecommunications Commission (CONATEL).
- ***Manuel Angel Fernandez Melendez***, the President of Venezuela's National Telephone Company (CANTV).
- ***Carlos Alberto Osorio Zambrano***, the President of Venezuela's Superior Organ of the Transport Mission.
- ***Freddy Alirio Bernal Rosales***, Venezuela's Minister of Urban Agriculture who heads Venezuela's government-run food distribution program.

# Enforcement Actions

## OFAC Pursues Smaller Enforcement Actions against Financial and Non-Financial Entities

On November 17, OFAC announced that **BCC Corporate SA (BCCC)** reached an agreement with OFAC to settle apparent violations of the Cuban Assets Control Regulations (CACR) for $204,277. BCCC, a Belgium-based credit card issuer and corporate service company, is a whollyowned subsidiary of Alpha Card Group, which in turn is 50% owned by the US financial institution American Express Company. OFAC alleged that, between 2009-2013, credit cards issued by BCCC were used to make credit card purchases in Cuba in violation of CACR. During the relevant period, BCCC processed over 1,800 credit card transactions totaling $583,649.43. According to the settlement agreement, BCCC had policies and procedures in place to review transactions for matches to OFAC's list of SDNs and Blocked Persons; however, Alpha Card and BCCC failed to implement internal controls to prevent the BCCC-issued cards from being used in Cuba in violation of CACR sanctions. The base fine for the violations was $291,825. OFAC noted that both BCCC and Alpha Card are sophisticated institutions, had reason to know of the conduct that led to the violations, and that they provided inaccurate and incomplete information during the course of OFAC's investigation. Nevertheless, BCCC received a penalty reduction for its lack of past misconduct, remedial measures taken, and the voluntary self-disclosure of the conduct.

On November 28, OFAC announced a Finding of Violation to Massachusetts-based **Dominica Maritime Registry, Inc. (DMRI)** for violation of the Iranian Transactions and Sanctions Regulations (ITSR). OFAC determined that DMRI violated the sanctions regime by "dealing in the property or interests in property" of the National Iranian Tanker Company (NITC), which is identified by OFAC as meeting the definition of the Government of Iran, dealings with which are prohibited by US sanctions. The specific conduct included the execution of a contract with NITC. DMRI did not face a financial penalty, and OFAC said that a Finding of Violation was the appropriate penalty given DMRI's small size, the limited scope of the underlying activity, and the fact that DMRI has engaged trade counsel to assist with its obligations under US sanctions laws and has updated its compliance procedures.

On December 6, OFAC announced a settlement with **Dentsply Sirona Inc**., a Pennsylvania-based manufacturer of dental equipment whose subsidiaries allegedly exported 37 shipments of dental supplies to third-party distributors in foreign countries with knowledge or reason to know that those shipments would ultimately reach Iran. Dentsply agreed to pay $1,220,400 to settle its potential civil liability. OFAC noted that Dentsply employees allegedly

continued to conduct business with the third-party distributors after learning that previous shipments of the dental supplies reached Iran. Although Dentsply did not voluntarily disclose the apparent violations, OFAC cited as a mitigating factor Dentsply's remedial measures—including a company-wide inquiry—and its cooperation with OFAC.

## Exxon Alleges Discovery Shortcomings in Suit Challenging OFAC Penalty

As we previously reported, ExxonMobil Corp. filed suit in July challenging OFAC's assessment of a $2 million penalty against the company for violating E.O. 13661 and the Ukraine-Related Sanctions Regulations in May 2014 when it entered into agreements with Rosneft OAO, which were executed by Rosneft's President, Igor Sechin, who had been designated as an SDN in late April 2014. In Exxon's lawsuit, the company notes that the contracted projects with Rosneft OAO were not themselves prohibited, and insists it relied in good faith on multiple statements from the Obama Administration that it was not precluded from dealing with Sechin in his professional capacity as representative for Rosneft. As such, the company argues that OFAC's imposition of a penalty was arbitrary and capricious and violates the so-called fair notice doctrine, which prohibits agencies from penalizing a person for misinterpreting an ambiguous regulation absent notice of a clear preferred interpretation by the agency.

The parties were scheduled to complete discovery this Spring, but a recent discovery dispute will likely delay that deadline. On December 21, Exxon filed a motion to compel OFAC to "complete" the administrative record, telling the court it is inconceivable that the five documents produced by OFAC could comprise the entire record relating to OFAC's imposition of the penalty, particularly given the multiple instances of varying guidance purportedly provided by the White House and Treasury. In particular, Exxon noted that OFAC has withheld materials deemed "deliberative" and otherwise-privileged documents, but has refused to provide a log describing those materials. Exxon further complained that the purported record provided by OFAC merely consisted of "sanitized final memoranda," and excluded internal correspondence and analyses which would be vital to discerning the agency's decision-making process.

Exxon's challenge is significant as it provides a rare opportunity for a court to weigh in on the legal sufficiency of OFAC guidance and on the degree of access to which future litigants may have to OFAC's internal deliberative processes. The case is Exxon Mobil Corporation et al. v. Mnuchin et al., No. 3:17-cv-01930, in the US District Court for the Northern District of Texas.

# Counter-Terrorism Designations

On October 25, OFAC designated eight individuals and one entity associated with the Islamic State in Iraq and Syria in Yemen ("ISIS-Y") and al-Qa'ida in the Arabian Peninsula ("AQAP"). The action was taken in partnership with the Kingdom of Saudi Arabia, the co-chair of the Terrorist Financing Targeting Center ("TFTC"), and the other TFTC member states (the Kingdom of Bahrain, the State of Kuwait, the Sultanate of Oman, the State of Qatar, and the United Arab Emirates). Among the designated individuals are **Adil Abduh Fari Uthman al Dhubhani**, a prominent AQAP military instructor who in early 2017 commanded an armed group of 2,000 fighters, and Khalid al-Marfadi, an ISIS-Y leader in charge of the movements of ISIS-Y militants. Al-Marfadi reportedly commands 50 ISIS-Y fighters and was responsible for—or had advanced knowledge of—the majority of ISIS-Y attacks in Yemen. OFAC also designated **Al Khayr Supermarket**, which is owned by designated AQAP militant **Sayf Abdulrab Salem al-Hayashi** and operates in cities throughout Yemen.

On November 20, OFAC designated two individuals, **Reza Heidari** and **Mahmoud Seif**, and four entities, **ForEnt Technik**, **Printing Trade Center**, **Tejarat Almas Mobin**, and **Pardazesh Tasvir Rayan Co**. ("Rayan Printing"), all of which were involved in a scheme to help Iran's Islamic Revolutionary Guard Corps-Qods Force ("IRGC-QF") produce counterfeit currency. As managing director of Rayan Printing, Heidari helped procure printing equipment used to produce hundreds of millions of dollars' worth of counterfeit Yemeni rial bank notes. Heidari used two German-based front companies, ForEnt Technik and Printing Trade Center, to deceive European suppliers and circumvent export restrictions, thus allowing Rayan Printing to obtain raw materials and equipment to produce the counterfeit currency. Moreover, Seif, in his capacity as managing director of Tejarat Almas Mobin, assisted with the procurement of raw supplies and equipment that further enabled IRGC-QF's counterfeiting capacity.

On December 5, OFAC designated **Abdullah Ibrahim al-Faisal** as a SDGT for his support of ISIS. Faisal, a Jamaica-based Islamic cleric, connected ISIS recruits to other members of the terrorist organization, who subsequently helped those recruits travel to ISIS-controlled territory. Faisal has directly or indirectly influenced numerous terrorists, including the Ohio State University student who attacked the campus in November 2016; Faisal Shazad, the attempted Times Square bomber; Umar Farouk Abdulmutallab, the underwear bomber who attempted to destroy an airliner over Detroit, Michigan, in 2009; and Richard Reid, the 2001 shoe bomber.

# OFAC Targets Narcotics Traffickers & Criminal Organizations

On November 29, OFAC designated Colombian national **Tito Aldemar Ruano Yandun** and the **Ruano Yandun Drug Trafficking Organization** as Specially Designated Narcotics Traffickers ("SDNTs") pursuant to the Foreign Narcotics Kingpin Designation Act ("Kingpin Act"). OFAC also designated Colombian national **Onofre Junior Aguiño Arboleda** for acting on behalf of Ruano Yandun. As the leader of an international drug trafficking organization, Ruano Yandun is alleged to be responsible for the production, transportation, and trafficking of multi-ton quantities of cocaine from Colombia and Ecuador through Central America and Mexico. His organization uses speedboats, fishing vessels, and self-propelled semi-submersible vessels to transport the narcotics, which are ultimately bound for the United States.

On December 22, OFAC designated Eurasian criminal entity, the **Thieves-in-Law**, as a transnational criminal organization. OFAC also designated ten individuals and two entities—a hotel and a media company—that are linked to Thieves-in-Law. Operating throughout the former Soviet Union, as well as parts of Europe and the United States, the Thieves-in-Law organization engages in a variety of crimes, including money laundering, extortion, bribery, and robbery. The organization originated in Stalinist prison camps, and its members are initiated after demonstrating a sufficiently criminal biography; members take an oath to uphold a code that includes living exclusively off of their criminal profits and supporting other members of the Thieves-in-Law.

Shearman & Sterling has long advised financial institutions and commercial businesses on the most complex sanctions issues. If you have any questions, please feel free to contact one of our partners or counsel.

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