



U.S. SANCTIONS ON RUSSIA

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U.S. SANCTIONS ON RUSSIA

Current Business Challenges

Designated parties

- OFAC Specially Designated Nationals
- BIS Entity List

Sector Sanctions

- OFAC – targets energy firms, banks and entities in the defense sector
- BIS – targets energy (oil and gas) activities in Russia

Military End-User/User Restrictions

- BIS restrictions on military end-use/user for certain list-based items

Crimea Sanctions

- U.S. person involvement in most transactions with Crimea region are prohibited, including imports from/exports to Crimea and new investment in Crimea region

Russian Defense/Intelligence Sector

- Sanctions on persons determined to be engaged in “significant transactions” with certain identified Russian defense/intelligence entities



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Future Outlook and Potential Challenges

Investigation into Russia's influence in the 2016 presidential election continues

Countering America's Adversaries through Sanctions Act (CAATSA) introduced new sanctions



Sector Sanctions

- Identifying projects, anywhere in the world, where a designated Russian energy firm holds a controlling interest or a substantial non-controlling interest (i.e., ≥ 33 percent) in the DAOSO project

Secondary Sanctions

- Determining what constitutes a "significant transaction" with person in defense/intelligence sector of Russian government
- Monitoring thresholds on certain activities (e.g., export pipelines)

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Back-up Slides

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Designations

Sanctions primarily target Russian officials, Ukrainian separatists and certain Russian industry sectors in response to Russia's military intervention in and annexation of Crimea

OFAC designated individuals and entities as SDNs

- Assets must be blocked/frozen
- U.S. persons prohibited from engaging in all transactions with SDNs
- UTC policy extends prohibitions to non-U.S. subsidiaries

BIS added entities to the Entity List

- Presumption of denial for export, reexport and in-country transfer of all items subject to the EAR
- No license exceptions available

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OFAC Sectoral Sanctions

Sectoral Sanctions Identifications List (SSIL) identifies certain Russian energy firms, banks and entities in the defense sector

Three directives targets access to U.S. debt and/or equity markets by designated entities.

- Debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.
- Equity includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership.

U.S. persons cannot be involved, in any capacity, in new debt and/or equity financing for these entities (e.g., Bank of Moscow, Gazprombank, Gazprom, Rosneft, Rostec), their transactions or projects.

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OFAC Sectoral Sanctions

Fourth directive targets activities “in support of exploration or production for deepwater (greater than 500 feet), Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation” (DAOSO) or in Russian territorial waters.

U.S. persons cannot be involved, in any capacity, in export or reexport of goods, services (*excluding* financial services), or technology to SSIL entities identified pursuant to this directive (e.g., Gazprom, Gazprom Neft, Lukoil, Rosneft)

SSIL prohibitions extend to any entity in which the SSIL-designated company holds 50% or more ownership. OFAC’s rule on aggregation will apply if more than one SSIL company involved.

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BIS Sector Sanctions

Russian energy firms added to the Entity List (parallel OFAC Directive 4 designations)



Licensing requirement, with a presumption of denial, for the export, reexport, or in-country transfer to these entities of any item subject to the EAR when the person knows the item is to be used directly or indirectly in the “exploration for, or production of, oil or gas in DAOSO projects in Russia, or is unable to determine whether the item will be used in such projects.”

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BIS Sector Sanctions

EAR Section 746.5 imposes controls on the export, reexport and in-country transfer of:

- (a) Items specified in ECCNs 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992 and 8D999, and
- (b) Items listed by Schedule B number in Supplement No. 2 to Part 746,

when the exporter/reexporter/transferor knows or is informed that the item will be used directly or indirectly in Russia's energy sector for exploration or production from DAOSO projects in Russia that have the potential to produce oil or gas, OR is unable to determine whether the item will be used in such projects.

License review policy is presumption of denial.

No license exceptions are available except GOV.

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Military End-Use and End-User

EAR Section 744.21 imposes a licensing requirement for certain categories of items subject to the EAR if, at the time of export, reexport or transfer (in-country), one knows, has reason to know, or is informed by BIS that the item is intended, entirely or in part, for a "military end-use" or "military end-user" in Russia.

- "Military end-use" means incorporation into a military item or for the "use," "development," or "production" of military items.
- "Military end-user" means the national armed services (army, navy, marine, air force, or coast guard), national guard and national police, government intelligence or reconnaissance units.

Licensing Policy – applications will be denied if the item would make a material contribution to the military capabilities of Russia, and would result in advancing Russia's military activities contrary to U.S. national security interests.

No license exceptions are available (except GOV).

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Crimea Sanctions

Sanctions on Crimea region prohibit:

- New investment in Crimea by U.S. persons, wherever located;
- Importation into the U.S., directly or indirectly, of any goods, services or technology from Crimea;
- Export/reexport, sale, or supply, directly or indirectly, from the U.S. or by a U.S. person, wherever located, of any goods, services, or technology to Crimea; and
- Approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a non-U.S. person where the transaction would be prohibited if performed by a U.S. person or within the United States.

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Crimea Sanctions

OFAC published Crimea Sanctions Advisory to highlight the practices that have been used to circumvent or evade U.S. sanctions involving the Crimea region

In the ITC context, references to Crimea and locations within Crimea have been obscured in documentation for transactions involving U.S. persons or the United States

OFAC recommends that U.S. persons and entities:

- (i) screen for places in Crimea and not just the term "Crimea;"
- (ii) request additional information from parties that have previously violated or attempted to violate the U.S. sanctions on Crimea; and
- (iii) communicate U.S. sanctions obligations to international partners.

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Licensing Policy

DDTC

- Denial policy for high-technology defense articles and services to Russia or occupied Crimea that contribute to Russia's military capabilities, and revocation of existing licensing

BIS

- Approval of license applications for exports/reexports of items that are determined to be for civilian use and would otherwise not contribute to Russia's military capability

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CAATSA Impact

CAATSA codifies and expands existing sectoral sanctions against Russia

CAATSA introduces secondary sanctions for certain activities involving Russia

- Target the activities of non-U.S. persons beyond the reach of U.S. jurisdiction
- Take the form of a denial of U.S. benefits
- To the extent that a U.S. person's activities are not already prohibited, secondary sanctions could apply to U.S.-person activity and subject such persons to sanction

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CAATSA Impact – Expansion of Sectoral Sanctions

Directive 1: new debt prohibition for designated banks tightened to 14 days

Directive 2: new debt prohibition for designated energy

- Changes will take effect under Directives 1 and 2 for new debt issued on or after November 28, 2017

Directive 4: expands prohibition on providing goods, software, technology or services for DAOSO projects in Russia or Russian territorial waters, to include such “new” projects anywhere in the world where a designated Russian energy firm holds a controlling interest or a substantial non-controlling interest (i.e., ≥ 33 percent) in the project.

CAATSA authorizes sectoral sanctions against state-owned entities operating in the Russian rail, metals and mining sectors.

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CAATSA Impact – Secondary Sanctions

Energy Export Pipelines. CAATSA authorizes secondary sanctions on persons that knowingly (i) make an investment of \$1 million or more (or \$5 million or more over 12 months) that directly and significantly contributes to Russia’s ability to construct energy export pipelines, or (ii) sell, lease or provide Russia goods, technology or services valued at \$1 million or more (or \$5 million or more over 12 months) that directly and significantly facilitate the maintenance, expansion or repair of such pipelines.

Defense & Intelligence Sectors. CAATSA requires secondary sanctions on persons determined to have knowingly engaged in a “significant” transaction with “a person that is a part of, or operates for or on behalf of, the defense or intelligence sectors of the Russian Government.”

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CAATSA Impact – Secondary Sanctions

Cybersecurity, Privatization of State-Owned Assets, Foreign Sanctions Evasion, Human Rights Abuses, Military Support for Syria. CAATSA requires secondary sanctions on persons determined to have knowingly engaged in certain conduct that is contrary to U.S. interests, including undermining cybersecurity, unjustly enriching Russian government officials through privatization of state-owned assets, evading U.S. sanctions, contributing to human rights abuses, or materially contributing to Syrian military activities.

Crude Oil Projects and Corruption. CAATSA requires secondary sanctions on persons that make or support a significant investment or transaction in Russian crude oil projects, and on Russian government officials involved in an act of significant corruption in Russia or elsewhere.

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CAATSA Impact – Secondary Sanctions

Generally, upon making a determination that a person has engaged in activities subject to secondary sanctions, the President must (or in some cases may) select up to five measures from a menu of secondary sanctions, such as:

- Denial of U.S. export licensing
- Loss of access to the U.S. financial system
- Full blocking of property or property interests within U.S. jurisdiction

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