



## Current U.S. Sanctions Against Russia, Venezuela and Iran

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International sanctions are a major compliance challenge for companies worldwide. The regulatory risks associated with economic sanctions, asset-freezing measures and trade embargoes are not new, but they continue to grow in scope and complexity. U.S. sanctions programs have undergone a number of significant changes in recent months, including new (and pending) sanctions on Russia, Venezuela and Iran that directly affect companies in the financial services sector. It is essential for both U.S. and non-U.S. financial services providers to monitor these changes, assess potential risks to their businesses, and take steps to comply with applicable laws.

### Changes to Russia Sanctions

Since March 2014, the United States has maintained sanctions targeting specified Russian and Ukrainian individuals and entities in response to perceived improper activities of Russia in the Crimean Peninsula and other regions of Ukraine. These measures primarily include sectoral sanctions restricting transactions in certain equity or debt instruments of designated Russian companies in the financial, energy and defense industries, as well as more traditional sanctions prohibiting any transactions with other designated Russian and Ukrainian persons. The sectoral sanctions, in particular, raise novel issues unique to the Russia/Ukraine sanctions regime, as they apply to certain debt and equity instruments of Russian entities that are traded publicly on various global exchanges. Companies engaging in business with designated Russian/Ukrainian persons, or with the Russian oil industry more broadly, should carefully assess whether U.S. or EU sanctions may restrict their activities.

On April 6, 2018, the United States imposed sanctions on a number of: Russian “oligarchs” with vast business interests and political connections; Russian government officials; officers of Russian state-owned enterprises; and related companies.<sup>1</sup> Specifically, the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) added to the Specially Designated Nationals and Blocked Persons (SDN) List seven Russian oligarchs,<sup>2</sup> 12 companies they own or control, 17 senior Russian government officials,<sup>3</sup> and a state-owned Russian weapons trading company and its subsidiary, Russian Financial Corporation Bank (RFC Bank). These sanctions had a meaningful impact on U.S. financial services providers, as many of the newly-sanctioned entities were publicly traded on global stock exchanges and instruments of these entities were widely held by global advisors.

The April 2018 sanctions measures were intended to punish Russia for allegedly engaging in “a range of malign activity around the globe,” including activities in Ukraine, Syria, and cyberspace. As a result of these new sanctions, U.S. companies now face heightened sanctions risks when doing business in Russia or with

Russian business partners anywhere in the world. Moreover, OFAC's April 6 actions used long-existing authorities in a new way, and may suggest that virtually any individual or entity operating in Russia could potentially find themselves a sanctions target. The financial sector is an especially likely target, along with the defense and energy sectors. Even transactions with sanctioned Russian persons that do not involve U.S. persons could be exposed to U.S. sanctions to the extent the transactions involve U.S. dollar financing.

As part of announcing the new actions, OFAC also reminded non-U.S. persons that they remain subject to secondary sanctions (*i.e.*, sanctions that apply to non-U.S. persons acting outside U.S. jurisdiction) for engaging in certain "significant" transactions with, or facilitating certain "significant" transactions on behalf of, sanctioned Russian persons.<sup>4</sup> Accordingly, non-U.S. persons – including foreign financial institutions – should pay heightened attention to potential sanctions implications when dealing with Russia or Russian persons.

## General Licenses

OFAC issued several general licenses (GLs) to help minimize the impact of the new sanctions on U.S. persons and allies of the United States, allowing certain limited activities involving the 12 newly sanctioned companies.

**GL 12C** (superseding previous GLs 12, 12A and 12B) authorized U.S. persons until June 5, 2018 to take actions that are related and necessary to *maintaining or winding down operations, contracts, or other agreements (including the importation of goods, services, or technology into the United States)* involving the 12 oligarch-related SDN companies and their subsidiaries<sup>5</sup> (with the exception of RUSAL and GAZ Group, which is discussed below with respect to GLs 14 and 15).

- Under GL 12C, originating and intermediary U.S. financial institutions were permitted to process funds transfers (that would otherwise be blocked) to an account held by a blocked U.S. person at a U.S. financial institution.
- U.S. financial institutions could release such funds for authorized maintenance and wind-down purposes.

**GL 13B** (superseding GLs 13 and 13A) authorizes U.S. persons until August 5, 2018 to *divest or transfer to a non-U.S. person debt, equity, or other holdings in EN+ Group, GAZ Group, and United Company RUSAL PLC* (three of the 12 entities also covered by GL 12C).

- GL 13B also authorizes U.S. persons during the same wind-down period to facilitate the transfer between non-U.S. persons of such debt, equity or other holdings.
- U.S. persons cannot purchase, sell, or facilitate the transfer of such debt or equity to or from any SDN (directly or indirectly) – including the three entities covered by GL 13B.

**GLs 14 and 15** extend the wind-down period until October 23, 2018 for RUSAL and GAZ Group, respectively, as well as their subsidiaries. Likewise, **GL 16** extends the wind-down period until October 23, 2018 for EN+ Group PLC and JSC EuroSibEnergO and their subsidiaries.

The GLs only authorize such activities for a limited duration of time, and persons seeking to act under these authorities must assess whether their contemplated activities would be covered and, if so, must execute the actions within the authorized time period. Persons conducting activities authorized under these GLs must submit a report to OFAC within ten days of the expiration of the relevant license, identifying the names and addresses of parties involved, the type and scope of activities conducted, and the dates on which the activities occurred.

OFAC has explained that GLs 12C, 14 and 15 authorize U.S. persons to receive regularly scheduled payments of principal and interest from a blocked person listed in the respective GL, so long as the loan or bond was in existence prior to April 6, 2018 and the payments are in accordance with the terms of the preexisting loan or bond contract.<sup>6</sup> As a general matter, U.S. persons are also authorized to receive accelerated payments or voluntary prepayments from a blocked person listed in the respective GL, so long as such accelerated payments or voluntary prepayments are made in accordance with the terms of the preexisting loan or bond contract and are consistent with maintenance or wind-down activities.<sup>7</sup>

As the U.S.-Russia relations remain in a state of flux, there is a real possibility that the United States will impose additional sanctions on Russia in the future. The unpredictable nature of the Russia sanctions regime is amplified by the fact that the U.S. President and Congress have not always spoken with one voice

on the matter. Accordingly, companies should be closely monitoring every new development and be prepared to respond to various contingencies.

## Changes to Venezuela Sanctions

Since the United States announced broad financial sanctions in August 2017 targeting the Venezuelan government's ability to access U.S. debt and equity markets, the Venezuelan government has been experiencing difficulty in making bond payments to its creditors. In an attempt to circumvent some of the sanctions, the Venezuelan government in February 2018 launched a cryptocurrency, the "petro," but OFAC officially clarified the following month that the petro was included in the scope of the sanctions and thus prohibited.

On May 21, 2018, the day after the contested re-election of Venezuela's President Nicolás Maduro, the United States placed additional sanctions on Venezuela in a move intended to block President Maduro from selling off certain government assets to enrich himself and his coterie. U.S. persons are now prohibited from any transaction related to:

- Purchase of any debt owed (including accounts receivable) to the Government of Venezuela, as hereinafter defined;
- Any debt owed to the Government of Venezuela that is pledged as collateral after May 21, 2018; or
- Sale, transfer, assignment or pledging as collateral by the Government of Venezuela of any equity interest in any entity in which the Government of Venezuela has a 50 percent or greater ownership interest.

Prior to the May 21 action, the United States had already prohibited U.S. persons from engaging in any transactions related to:<sup>8</sup>

- New debt of Petroleos de Venezuela, S.A. (PDVSA)<sup>9</sup> with a maturity of greater than 90 days, issued on or after August 25, 2017;
- New debt with a maturity of greater than 30 days, or new equity, of the Government of Venezuela issued on or after August 25, 2017 (other than new debt of PDVSA, which is subject to the 90-day threshold);
- Bonds issued by the Government of Venezuela prior to August 25, 2017 (though dealings involving many specified existing debt instruments of the Government of Venezuela are authorized under a general license, as described in more detail below); or
- Dividend payments or other distributions of profits to the Government of Venezuela from any entity owned or controlled, directly or indirectly, by the Government of Venezuela.

The term "Government of Venezuela" includes the Central Bank of Venezuela, PDVSA and any other entity owned or controlled by the Venezuelan government.

Whether the United States will impose additional sanctions on Venezuela is highly uncertain, as the U.S.-Venezuela relations have been growing increasingly tense since imposition of the new sanctions and Venezuela's expulsion of U.S. envoys in retaliation. The EU is also said to be preparing a new round of sanctions against the Venezuelan government.

## Changes to Iran Sanctions

On May 8, 2018, the United States announced that it would withdraw from the Joint Comprehensive Plan of Action (JCPOA) – the Iran nuclear deal implemented in January 2016 – and, following applicable wind-down periods, begin re-imposing all nuclear-related sanctions that were lifted pursuant to the JCPOA.<sup>10</sup> As a result and absent any further developments, all of the U.S. nuclear-related sanctions that had been waived under the JCPOA will be back in full effect after November 4, 2018.

The U.S. withdrawal from the JCPOA will impact primarily non-U.S. persons, as nearly all sanctions relief previously provided by the United States pertained to secondary sanctions. Even after the implementation of the JCPOA, U.S. persons remained prohibited from virtually all dealings with Iran and Iranian financial institutions. Accordingly, the impact on U.S. persons will largely be limited to foreign entities owned or controlled by U.S. persons: specifically, General License H, which authorized such foreign entities to engage in certain transactions with Iran, will be revoked following the 90-day wind-down period ending on August 6, 2018.

Depending on the applicable sanctions, non-U.S. persons have until August 6, 2018 (90-day wind-down period) or November 4, 2018 (180-day wind-down period) to wind down activities with or involving Iran that were consistent with the U.S. sanctions relief provided under the JCPOA before facing exposure to potential sanctions. For instance, after August 6, the U.S. government will re-impose the sanctions on:

- Purchase or acquisition of U.S. dollar banknotes by the Government of Iran;
- Purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Certain transactions in the Iranian rials.

Moreover, after November 4, the U.S. government will re-impose the sanctions on:

- Certain transactions by foreign financial institutions with the Central Bank of Iran and the Iranian financial institutions on the SDN List;
- Provision of certain specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions; and
- Provision of underwriting services, insurance, or reinsurance.

As a result of the May 8 announcement, corporations and financial institutions around the world face increased uncertainties, in part because the remaining parties to the JCPOA are opposing the U.S. decision and taking steps to protect their firms. The EU is planning to activate the 1996 Blocking Statute, which bans European companies from withdrawing business ties with Iran because of the U.S. sanctions, and is in the process of updating the law to include the new U.S. sanctions. The pending activation of the Blocking Statute further complicates the calculations to be made by multinational corporations that have activities – and thus exposure – in multiple jurisdictions and the financial services institutions that assist them. Moreover, the EU, Britain, France and Germany recently requested exemptions for certain key industries (including the energy, civil aviation and infrastructure sectors), as well as for transactions with the Central Bank of Iran and other Iranian banks that are not sanctioned by the EU. Given the fluctuating U.S. relations with its European allies, it is difficult to predict with any precision the U.S. response to the request.

## Conclusion

Any company or person engaging in business involving Russia, Venezuela or Iran (or other countries subject to U.S. sanctions) should be aware of the ongoing developments in the U.S. sanctions landscape and the attendant risks to transactions.

U.S. sanctions are becoming increasingly nuanced and the specific restrictions applicable under various regimes can vary widely depending on the country at issue. It therefore is important to carefully assess the potential impact of sanctions measures based on the specific activities being contemplated.

## Footnotes

1) For further information, please refer to [Dechert OnPoint, In a Major Move, US Sanctions Key Russian Oligarchs, Officials, and Related Entities](#).

2) All of the named individuals appear on the list of Russian oligarchs issued in January 2018 pursuant to Section 241 of the Countering America's Adversaries Through Sanctions Act (CAATSA).

3) Many of the named individuals are the heads of major Russian state-owned enterprises (such as VTB and Gazprom) while others hold senior positions within the Russian government.

4) OFAC generally can impose secondary sanctions on entities that are not themselves on the SDN List, for knowingly engaging in "significant transactions" involving certain Russian defense and intelligence companies, or knowingly facilitating "significant transactions" or "significant financial transactions" on behalf of any sanctioned Russian entity. Whether a given transaction or financial transaction is "significant" depends on the totality of the facts and circumstances and involves a multi-factor analysis.

5) Under OFAC's 50 percent rule, if an entity is owned, in the aggregate (directly or indirectly) 50 percent or more by one or more blocked persons, then that entity is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to an Executive Order or otherwise placed on OFAC's SDN List.

6) While the OFAC FAQ does not explicitly address whether U.S. persons may receive such payments for instruments in existence prior to April 6, 2018, it is generally assumed that such payments will be prohibited once the applicable GLs expire.

7) The OFAC guidance addressing this topic was published prior to the issuance of GL 16, and thus does not discuss GL 16.

8) For further information, please refer to [Dechert OnPoint, US Imposes Sanctions on Venezuelan Government Securities](#).

9) PDVSA is the government-owned oil company that is the parent of Citgo Petroleum Corporation.

10) For further information, please refer to [Dechert OnPoint, Iran Sanctions – President Trump’s Announcement of US Withdrawal from JCPOA](#).

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