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# The Chaotic World of U.S. Economic Sanctions in 2018: A Summary of the Main Changes and Key Takeaways

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## Overview

Economic sanctions turbulence continued virtually unabated in 2018 and into early 2019, making work for the sanctions experts both in and out of the U.S. government. During its second year, the Trump administration:

- made good on key campaign threats on Iran by withdrawing the United States from the Joint Comprehensive Plan of Action (JCPOA), also commonly known as the "Iran Nuclear Deal";

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- implemented key elements of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)[1] and Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act)[2] sanctions on Russia and CAATSA sanctions on North Korea (notwithstanding the June summit in Singapore between President Trump and North Korean leader Kim Jong-un);
- expanded sanctions on Venezuela to capture the petro (the recently launched cryptocurrency developed by the government of Venezuela, discussed in more detail below), make the Venezuelan First Lady a "Specially Designated National" (SDN), and target rampant corruption, including the designation of Venezuela's state-owned oil company;
- issued a new executive order (EO) targeting the regime of Nicaragua's president and its supporters;
- continued to expand sanctions in the areas of cybersecurity, election meddling, and Global Magnitsky sanctions; and
- targeted Syria and the Iran-Russia oil network.

Each of these developments is discussed in the sections that follow.

Sanctions on major Russian companies such as aluminum producer United Company RUSAL PLC (RUSAL) and EN+ Group plc (EN+)—both owned by Oleg Deripaska—and vehicle manufacturer GAZ Group (GAZ) produced widespread market chaos, causing OFAC to issue wind-down and "maintenance" general licenses. After the U.S. exit from the JCPOA, some European companies announced they would exit the Iran market notwithstanding the EU blocking statute and regulation and a special payment mechanism to avoid USD payments and U.S. jurisdiction.

In short, the *Sturm und Drang* of 2017 only intensified in 2018 as the Trump administration, like the Obama administration before it, perceived economic sanctions to be an effective alternative pressure point to military action. This article summarizes the main economic sanctions of 2018 and early 2019 and provides key takeaways for each category of sanctions.

## Iran

Following through on his campaign promise to scrap what he dubbed "the worst deal ever," President Trump announced on May 8, 2018, the U.S. withdrawal from the JCPOA.[3] On the same day, OFAC published several FAQs explaining how the re-imposition (or "snapback") of sanctions would go into effect.[4] Since then, OFAC has followed through on those FAQs by revoking licenses and protections from secondary sanctions created by the JCPOA under a two phase wind-down:

### Wind-Down Periods for Activities Authorized During JCPOA

The U.S. government provided ninety- and 180-day periods for persons to wind down operations previously authorized under the JCPOA and related U.S. waivers and general licenses for contracts or agreements entered into prior to May 8, 2018. Some sanctions were re-imposed after a ninety-day wind-down period (by August 6, 2018) and other sanctions were re-imposed after a 180-day wind-down period (by November 4, 2018).

**Wind-Down Ending August 6, 2018.** Following the end of the ninety-day wind-down period on August 6, 2018, the U.S. government revoked the below JCPOA-related authorizations for U.S. persons under U.S. primary sanctions regarding Iran:

- the importation into the United States of Iranian-origin carpets and foodstuffs, and certain related financial transactions pursuant to general licenses under the Iranian Transactions and Sanctions Regulations (31 C.F.R. part 560);
- activities undertaken pursuant to specific licenses issued in connection with the Statement of Licensing Policy for Activities Related to the Export or Re-export to Iran of Commercial Passenger Aircraft and Related Parts and Services (JCPOA SLP);[5] and
- activities undertaken pursuant to OFAC's General License 1[6] relating to contingent contracts for activities eligible for authorization under the JCPOA SLP—OFAC has rescinded the JCPOA SLP and will no longer consider applications.

August 6, 2018, also marked the end of the ninety-day wind-down period for a number of secondary sanctions. As of August 7, 2018, the U.S. government could re-impose secondary sanctions that had been suspended under the Iran Nuclear Deal on persons who engage in specified transactions involving any of the following sectors/activities:

- the purchase or acquisition of U.S. dollar banknotes by the government of Iran;
- Iran's trade in gold or precious metals;
- the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes;
- significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial;
- the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and
- Iran's automotive sector.

**Wind-Down Ending November 4, 2018.** U.S.-owned or -controlled foreign entities had a 180-day wind-down period—up and until midnight November 4, 2018—for transactions under General License H (replaced on June 29, 2018, by a wind-down general license in 31 C.F.R. § 560.537).[7] Effective November 5, 2018, U.S.-owned or -controlled foreign entities were no longer authorized to wind down certain activities involving Iran that were previously authorized under General License H.

In addition to the termination of the General License H wind-down period for subsidiaries of U.S. companies, as of November 5, 2018, the United States can re-impose the remaining secondary sanctions previously suspended under the JCPOA on persons who engage in specified transactions involving any of the following sectors/activities:

- Iran's port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines, South Shipping Line Iran, or their affiliates;

- petroleum-related transactions with, among others, the National Iranian Oil Co., Naftiran Intertrade Co., and National Iranian Tanker Co., including the purchase of petroleum, petroleum products, or petrochemical products from Iran;
- transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under section 1245 of the National Defense Authorization Act for Fiscal Year 2012;[8]
- the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010;[9]
- the provision of underwriting services, insurance, or reinsurance; and
- Iran's energy sector, including a variety of separate specific activities related to the petroleum and petrochemical industries under the Iran Sanctions Act as amended.[10]

## Retroactivity of Newly Re-Imposed Sanctions

Sanctions should not be applied retroactively to authorized transactions entered into before May 8, 2018, or to authorized transactions that took place during a wind-down period, but transactions conducted after these periods could be subject to penalties (if subject to U.S. laws) or secondary sanctions to the extent those transactions involve conduct for which sanctions have been re-imposed. Contracts entered into prior to the snapback are not grandfathered past the applicable ninety- or 180-day wind-down period. However, if a non-U.S., non-Iranian person is owed payment at the time of the end of the wind-down period for goods or services (as well as owed repayment for loans or credits extended) fully provided or delivered to an Iranian counterparty prior to the end of the wind-down period pursuant to contracts entered into prior to May 8, 2018, the U.S. government has indicated that it will not impose sanctions on the non-U.S., non-Iranian person for receiving payment for those goods and services. Any payments need to be consistent with U.S. sanctions, including that payments cannot involve U.S. persons or the U.S. financial system. This safe harbor for late payments does not however apply to U.S. persons or to non-U.S. companies owned or controlled by U.S. persons.

## Other General Licenses (e.g., Ag/Med and D-1) Remain in Place

The JCPOA pullout revoked only those actions taken by the Obama administration on January 16, 2016, when the JCPOA went into effect. Neither President Trump nor OFAC has changed the general licenses that predated the JCPOA, such as the general license for agricultural commodities (food), medicine, and medical devices[11] (known as the Ag/Med general license), or General License D-1, the General License with Respect to Certain Services, Software, and Hardware Incident to Personal Communications. These non-JCPOA general licenses have not been revoked or revised. However, the movement of a large number of Iranian banks and other entities back to the SDN list on November 5, 2018, has made payment for transactions licensed under the Ag/Med and D-1 and other general licenses more difficult.

## Moving Iranian Government-Owned Entities Back to SDN List

On November 5, 2018, the U.S. government re-imposed sanctions on persons that had been removed from the SDN list as part of the JCPOA on January 16, 2016. OFAC moved persons from the EO 13599 list (*i.e.*, persons meeting the definition of "Government of Iran" or "Iranian financial institution") back to the SDN list.[12]

There are two principal types of designations, which mean different things to non-U.S. companies that are *not* U.S.-owned or -controlled:

- Financial institutions whose only designation is [IRAN] with no mention of "Additional Sanctions Information—Subject to Secondary Sanctions." These financial institutions are not subject to secondary sanctions. Thus, non-U.S. companies that are *not* U.S.-owned or -controlled can do business with [IRAN] entities without risking secondary sanctions, *provided* the business does not involve other secondary sanctions areas (such as petroleum, petrochemical, gold or other independent grounds for secondary sanctions). For example, a European company can sell food to Iran using an Iranian bank only designated as [IRAN], provided no other party is an SDN. U.S. companies and non-U.S. persons, however, that are U.S.-owned and -controlled violate U.S. law by doing business with the Iranian bank and must block its property absent an OFAC license (which, in the case of Ag/Med exports from the United States to Iran, might be available).

- Entities and persons with "Additional Sanctions Information—Subject to Secondary Sanctions" [IRAN], and in many cases additional designations [SDGT, NPWMD, IRAN-HR etc.]. These entities are SDNs. Therefore, non-U.S. companies that are *not* U.S.-owned or -controlled doing business with them risk secondary sanctions. U.S. companies and non-U.S. persons that are U.S.-owned and -controlled violate U.S. law by doing business with them and must block their property.

## New Presidential Executive Order 13846 on Iran

On August 6, 2018, the Trump administration followed through on the May 2018 announcement and issued Executive Order 13846, "Reimposing Certain Sanctions with Respect to Iran," which re-imposed the relevant provisions of four Iran sanctions EOs (EOs 13574, 13590, 13622, and 13645).[13] Additionally, EO 13846 implemented provisions in two former EOs (13716 and 13628) and revoked those EOs. EO 13846 broadened the scope of sanctions that were in effect prior to January 16, 2016 (implementation day of the JCPOA), and provided for greater consistency in the administration of Iran-related sanctions provisions. According to OFAC, EO 13846:

- provided new authority for:
  - (i) blocking sanctions on persons who provide material support for, or goods and services in support of, persons blocked for various already-existing sanction activities, such as being part of the energy, shipping, or shipbuilding sectors of Iran;
  - (ii) correspondent and payable-through account sanctions on foreign financial institutions determined to have knowingly conducted or facilitated any significant financial transaction on behalf of the persons blocked under the new authorities;
- expanded the menu of sanctions available to impose on persons determined to have engaged in certain significant transactions relating to petroleum, petroleum products, or petrochemicals from Iran by authorizing the imposition of:
  - visa restrictions on corporate officers, principals, or controlling shareholders of a sanctioned person;

  - additional sanctions on principal executive officers of a sanctioned person; and
  - prohibitions on U.S. persons investing in or purchasing significant amounts of equity or debt instruments of a sanctioned person.
- expanded the prohibition on U.S.-owned or -controlled foreign entities by prohibiting transactions with persons blocked for:
  - providing material support for, or goods and services in support of, Iranian persons on the SDN list and certain other designated persons; or
  - being part of the energy, shipping, or shipbuilding sectors of Iran or a port operator in Iran or knowingly providing significant support to certain other persons blocked or on the SDN list.

Since these last activities were already prohibited under section 218 of the Iran Threat Reduction and Syria Human Rights Act of 2012[14] and OFAC's implementing regulations, it is unclear whether in fact this is a true expansion or an adjustment of authority.

## The EU Blocking Regulation

The U.S. action to withdraw from the JCPOA threatened to put European (and other non-U.S.) companies in a bind. As anticipated, the EU reacted by publishing, and thereby bringing into effect, an amendment to the Annex to Council Regulation No. 2271/96 (the Blocking Regulation) protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom.[15]

The revised Annex increased the number of laws subject to the Blocking Regulation, including, notably:

- the energy sanctions contained in the Iran Sanctions Act of 1996, as amended;
- the Iran Freedom and Counter-Proliferation Act of 2012;[16]
- the National Defense Authorization Act for Fiscal Year 2012;
- the Iran Threat Reduction and Syria Human Rights Act of 2012; and
- the Iranian Transactions and Sanctions Regulations.

According to the guidance published by the EU, the Blocking Regulation:

- prohibits EU operators from complying with the listed extraterritorial legislation, or any decision, ruling or award based thereon, given that the EU does not recognize its applicability to/effects towards EU operators (article 5, paragraph 1);
- requires EU operators to inform the European Commission within thirty days of any events arising from listed extraterritorial legislation or actions based thereon or resulting thereof, that affect, directly or indirectly, their economic or financial interests;
- nullifies the effect in the EU of any foreign decision, including court rulings or arbitration awards, based on the listed extraterritorial legislation or the acts and provisions adopted pursuant to them (article 4);
- allows EU operators to recover damages arising from the application of the listed extraterritorial legislation from the natural or legal persons or entities causing them (article 6). Damages are defined as "any damages, including legal costs, caused by the application of the laws specified in its Annex or by actions based thereon or resulting therefrom"; and
- allows EU operators to request an authorization to comply with the listed extraterritorial legislation, if not doing so would cause serious harm to their interests or the interests of the EU (article 5, paragraph 2).

The Blocking Regulation applies to the EU subsidiaries of U.S. companies, thereby placing them in a potentially difficult position. Moreover, the EU guidance specifically states that EU operators cannot, consistent with the EU Blocking Regulations, request licenses from the United States unless they request the European Commission to authorize them to apply for such a license. At the same time, the EU guidance specifically notes that EU companies remain free to do or not to do business with Cuba and Iran, provided such business decisions are not forced on the EU companies by the listed U.S. legislation.

### Key Takeaways from the U.S. Pullout from Iran Nuclear Deal

Effects of the U.S. pullout from the Iran Nuclear Deal appear in large part what the U.S. administration wanted in the short term—namely, the pull-out of both non-U.S. subsidiaries of U.S. companies and many substantial non-U.S. companies from Iran, exerting pressure on the Iranian government and economy and causing the Iranian rial to lose value against the U.S. dollar and euro. Other potential side effects were less welcome to the U.S. administration, including the EU revised blocking regulation and the EU's consideration of a "special purpose vehicle"[17] to allow payments to flow for transactions with Iran. Whether the U.S. administration will have any success in its longer-term strategy of applying renewed sanctions to bring Iran back to the bargaining table to expand the nuclear deal to other areas remains to be seen. However, both non-U.S. and U.S. companies alike should be prepared for a new wave of U.S. government investigations, enforcement, and secondary sanctions against transactions with Iran during the remainder of the current administration—that is, over the next two years.

## North Korea

President Trump and North Korean leader Kim Jong-un held a summit in Singapore in June 2018 in an attempt to diffuse nuclear tensions between North Korea and the United States.[18] While the summit may have pulled the two nations back from the nuclear brink, according to reports, to date there has not been concrete progress towards a denuclearized Korean Peninsula.

Instead, in a continuation of sanctions measures imposed through the passage of CAATSA[19] and EO 13849[20] in 2018, the U.S. government continued to roll out sanctions on North Korea both before and after the Singapore summit in June 2018.

## OFAC Shipping Advisory

Pre–Singapore summit, on February 23, 2018, OFAC rolled out a number of designations and published a North Korea vessel advisory. The designations targeted fifty-six trading and shipping companies operating globally.

OFAC issued a global shipping advisory in conjunction with the designations. The primary audience of the advisory was parties involved in the marine industry, including insurers and financial institutions; but any party engaged in the international shipment of goods should also take note. The purpose of the advisory was to alert the international business community to the deceptive shipping practices used by North Korea to evade sanctions by concealing the identity of vessels, the goods being shipped, and the origin or destination of such goods by:

(1) physically altering vessel identification;

(2) making ship-to-ship transfers at sea rather than at ports;

(3) falsifying cargo and vessel documents; and

(4) disabling their automatic identification systems to avoid commercial ship tracking.

## Goods Made with North Korean Labor

CAATSA section 321(b) prohibits the importation of merchandise produced by North Korean nationals or citizens. Section 321(b) creates a rebuttable presumption that significant goods mined, produced, or manufactured by North Koreans are products of forced labor and barred from entry into the United States. This rebuttable presumption is not limited to goods produced inside North Korea, but rather extends to all goods produced by North Koreans in any location.

Post–Singapore summit, on July 23, 2018, OFAC issued another guidance document regarding North Korea sanctions for businesses with supply chains in Asia, Middle East, and Africa that provides businesses a helping hand.[21] The guidance document:

- provides a list of industries and countries in which North Korean laborers working on behalf of the North Korean government were present in

2017–18. While the list of countries is long, it at least narrows somewhat the supply chain sourcing concerns to certain parts of Asia, Africa, and the Middle East;

- provides in Annex 3 a sectoral breakdown of where North Korean laborers are working on behalf of the North Korean government overseas by sector. While Annex 3 states that it is *not* a comprehensive list of all countries, jurisdictions, and industries, it is helpful in highlighting some higher-risk jurisdictions by sector. For example, the information technology sector is warned about the possibility of North Korean labor in Angola, Bangladesh, China, Laos, Nigeria, Uganda, and Vietnam; and
- provides in Annex 2 a list of joint ventures that have operated or are currently operating in North Korea established prior to 2016, organized by industry sector. Again, this is not a comprehensive list, nor is it an SDN or blocked-parties list, but it is a list that companies evaluating suppliers in Asia and China in particular may wish to check as they evaluate potential suppliers.

## Continued Designations of Non-U.S. Entities Doing Business in North Korea

The Trump administration has consistently rolled out additional North Korea sanctions designations since the summit as well. Consider the following examples:

- On August 3, 2018, OFAC designated a Russian bank and other facilitators for knowingly facilitating a significant transaction for an individual designated for WMD activities related to North Korea and facilitating North Korea's financial activity;[22]
- On August 15, 2018, OFAC designated an individual and three entities, based in Russia and China, for facilitating shipments on behalf of North Korea;[23]
- On September 6, 2018, OFAC designated a North Korean computer programmer (and the entity for which he worked) for cyberattacks outside North Korea on behalf of the government of North Korea. The U.S. Department of Justice also brought criminal charges against the individual;[24]

- On September 13, 2018, OFAC designated Russia- and China-based entities, targeting "the revenue North Korea earns from overseas information technology (IT) workers";[25]
- On October 4, 2018, OFAC designated an entity based in Turkey and three individuals for trading weapons and luxury goods with North Korea;[26] and
- On November 19, 2018, OFAC designated a Russia-born South African national for advising SDN entities involved in North Korean oil purchases on how to evade sanctions.[27]

### Key Takeaways from the U.S. Rapprochement with North Korea

The Trump-Kim summit provided photos but no relaxation of U.S. economic sanctions. U.S. and multi-national corporations may shrug off North Korea sanctions on the premise that they do not do business directly with North Korea. However, U.S. economic sanctions can reach companies' supply chains, and companies selling products in the United States would be well advised to take action, such as new policies and procedures, to reduce the risk of sourcing products from businesses located outside North Korea that may use North Korean overseas workers or subcontract to North Korean companies.

## Russia

On August 2, 2017, the president signed CAATSA into law. In late 2017 and early 2018, the Trump administration took additional steps to implement the mandatory sanctions required by CAATSA:

- publishing and amending a CAATSA section 231 list of Russian defense and intelligence sector entities, and sanctioning a Chinese company for significant transactions with section 231 entity Rosoboronexport;
- publishing a CAATSA section 241 list of "oligarchs" and creating havoc in the global aluminum market by sanctioning Russian oligarch Oleg

Deripaska and Russian aluminum producer RUSAL, then—possibly in light of the economic impact of those designations and given overtures by Oleg Deripaska to divest his interests in RUSAL and other companies—issuing a series of general licenses to ease the situation;

- providing guidance on how to evaluate the risk of secondary sanctions under section 228 when transacting business with Russian SDNs and SSI entities;
- taking the first steps to implement chemical and biological weapons sanctions in light of the nerve gas poisoning of former Russian officer and U.K. double agent Sergei Skripal and his daughter Yulia on U.K. soil purportedly carried out by Russian operatives;[28] and
- issuing a new executive order delegating his authority to implement CAATSA provisions.

These are each discussed in the subsections that follow.

## Implementing CAATSA Section 231 Russian Defense/Intelligence Sanctions

On October 27, 2017, the Trump administration published its section 231 list of thirty-nine entities that are part of, or operate for or on behalf of, the Russian defense or intelligence sectors.[29] On September 20, 2018, the U.S. Department of State added thirty-three more entries to the list. The State Department added an additional twelve individuals and entities to the list on December 19, 2018.[30] There are currently eighty-four entities and individuals on the CAATSA section 231 list.

The publication and subsequent amendment of the CAATSA section 231 list did not itself trigger sanctions; it merely set the stage for the administration to impose sanctions on persons who knowingly engage in "significant transactions" with entities appearing on the section 231 list. Although the U.S. administration could have imposed these secondary sanctions as early as January 29, 2018, it did not, but instead explained that its actions in persuading third countries not to do business with Russian defense or intelligence sectors had made imposing sanctions unnecessary at the time. In statements, the State Department confirmed that it has been using CAATSA to deter arms transfers for many months and asserted

that it has "had some good results in probably preventing the occurrence of several billion dollars' worth of transfers simply by having the availability of this sanctions tool in our pocket."[31]

However, in fall 2018, the State Department announced its first section 231 sanctions in what a senior administration official described as a hope to signal the administration's "seriousness and perhaps encourage others to think twice about their own engagement with the Russian defense and intelligence sectors."[32] On October 5, 2018, the secretary of state, in consultation with the secretary of the Treasury, determined that the Chinese entity Equipment Development Department of the Central Military Commission (EDD), formerly known as the General Armaments Department (GAD), knowingly engaged in significant transactions with Rosoboronexport, an entity that is a part of, or operates for or on behalf of, the Russian defense sector.[33] Rosoboronexport is Russia's main arms export entity and appears on the section 231 list. EDD took delivery from Rosoboronexport of ten Su-35 combat aircraft in December 2017 and an initial batch of S-400 (a/k/a SA-21) surface-to-air missile defense systems and related equipment in 2018.[34] Both transactions resulted from deals negotiated between the parties prior to August 2, 2017.

The following sanctions[35] were imposed on EDD:

- no licenses for exports or re-exports to EDD;
- ban on foreign exchange transactions in which EDD has an interest subject to U.S. jurisdiction;
- ban on transfers of credit or payments through any financial institution in which EDD has an interest subject to U.S. jurisdiction;
- blocking of property or interests in property in which EDD has an interest subject to U.S. jurisdiction.

Similar sanctions were imposed against EDD's director, Li Shangfu, plus denial of entry into the United States and denial of U.S. visa.

The State Department has provided guidance for companies seeking to understand whether their transactions with section 231–listed entities put them at risk of sanctions similar to those imposed on EDD and its director:

- In contrast to OFAC's SDN sanctions, which automatically apply to subsidiaries owned 50% or more by one or more SDNs, transactions with *subsidiaries* of persons subject to CAATSA section 231 sanctions are not currently the focus of its section 231 implementation efforts.[36]
- In determining whether a transaction is "significant" for purposes of CAATSA section 231, the State Department will consider the totality of the facts and circumstances surrounding the transaction and weigh various factors on a case-by-case basis. The factors considered in the determination may include, but are not limited to:
  - the significance of the transaction to U.S. national security and foreign policy interests, in particular whether it has a significant adverse impact on such interests;
  - the nature and magnitude of the transaction; and
  - the relation and significance of the transaction to the defense or intelligence sector of the Russian government.[37]
- The State Department expects to focus on significant transactions of a defense or intelligence nature with section 231 persons. If a transaction for goods or services has purely civilian end-uses and/or civilian end-users and does not involve entities in the intelligence sector, these factors will generally weigh heavily against a determination that such a transaction is "significant" for purposes of section 231.[38]
- State Department officials have advised that U.S. entities that have certain parts/products of a listed entity in their supply chain are not currently the targets. The U.S. government is rather targeting the "bigger-ticket items," in particular transactions capable of making "significant qualitative changes in the nature of military equipment." In sum, the State Department discourages transactions with entities on section 231 list that may involve high-value, major transactions for sophisticated weapons systems.[39]

## Publishing CAATSA Section 241 "Oligarchs List" and Imposing Related Sanctions

On January 30, 2018, the Trump administration published a list of Russian senior political figures and oligarchs (the Russian Oligarchs List) to the U.S. Congress as required by CAATSA section 241.[40] The list of people provided in the report is not a sanctions list, so its publication did not impose any sanctions

(although as a practical matter, a number of the individuals in the report are already subject to sanctions under other OFAC sanctions programs). The list identifies persons falling under one of the following three categories:

- Senior political figures including senior members of Putin's administration; Russian cabinet members; and other senior political leaders;
- Oligarchs, Russian individuals with an estimated net worth of $1 billion or more; and
- Parastatals, entities that are at least 25% owned by the Russian government and that had $2 billion or more in revenues in 2016.

Although merely being on the list does not render a person subject to sanctions, there can be no doubt that this is not a good list to be on from a sanctions perspective, as those named are certainly more visible and can be sanctioned under other sanctions provisions. This is precisely what happened when, in April 2018, the administration imposed sanctions on seven Russian oligarchs, twelve companies they own or control, as well as seventeen senior Russian government officials because, it said, they were profiting from a Russian state engaged in "malign activities." One of these oligarchs named was Oleg Deripaska, and he became an SDN. Due to his holdings, RUSAL aluminum and energy-related company EN+ also became SDNs.[41]

The administration's designation of a major aluminum producer as an SDN at the same time it was conducting a section 232 investigation on aluminum imports under another statutory authority caused consternation on global markets and an increase in prices. The administration issued wind-down and "maintenance" general licenses to allow trade with RUSAL continue while Oleg Deripaska investigated possibly divesting his interests in RUSAL, EN+, and GAZ.

On December 19, 2018, after several extensions of the wind-down and "maintenance" general licenses, OFAC notified Congress that it intended to de-list in thirty days RUSAL, EN+ Group, and JSC EuroSibEnergo,[42] as Deripaska was in an OFAC-monitored process of divesting his holdings in those entities.[43] The announcement came after earlier statements from the Treasury Department that RUSAL and EN+ had "approached the U.S. Government about substantial corporate governance changes that could potentially result in significant changes in control."[44] In addition to reducing Derispaska's shareholdings below 50%, as part of the process, the entities to be de-listed have agreed to overhaul the composition

of their boards of directors, implementing certain restrictive corporate governance measures, and have agreed to unprecedented transparency to include ongoing auditing, certification, and reporting requirements. Further, Derispaska will not have access to divestment proceeds, which must be paid into a blocked account. Absent a joint resolution of disapproval by Congress to block OFAC's action pursuant to its CAATSA section 216 congressional review rights, the de-listings took place on or after January 27, 2019.

## Assessing the Risk of Secondary Sanctions for Facilitating a Significant Transaction for a SDN or SSI Entity CAATSA Section 228

CAATSA section 228 requires the imposition of sanctions on non-U.S. persons determined to (a) knowingly materially violate, attempt to violate, or conspire to violate any prohibition contained in any covered EO (namely, EO 13660, EO 13661, EO 13662, EO 13685, EO 13694, and EO 13757), CAATSA itself, or the Ukraine Freedom Support Act of 2014 (UFSA),[45] or (b) facilitate a significant transaction or transactions for, or on behalf of, any person subject to Russia-related sanctions.

On March 15, 2018, OFAC issued FAQ No. 546, which provides that for purposes of implementing CAATSA section 228, OFAC will interpret the phrase "subject to sanctions imposed by the United States with respect to the Russian Federation" to include persons listed on either the SDN or SSI list, as well as persons subject to sanctions pursuant to OFAC's 50% rule as applied to either the SDN or SSI lists. In other words, non-U.S. companies need to be concerned with secondary sanctions when they engage in "significant transactions" with Russian SDNs, Russia SSI entities, and their subsidiaries, *even when the transaction is not subject to U.S. jurisdiction*.

OFAC FAQ No. 545 provides that for CAATSA section 228 purposes, OFAC will consider the totality of the facts and circumstances when determining whether transactions are "significant." OFAC will consider the following list of seven broad factors to assist in that determination:

(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) is/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(s) deceptive practices; and

(7) such other factors that the secretary of the Treasury deems relevant on a case-by-case basis.

OFAC has also explained that a transaction is not "significant" if U.S. persons would not require specific licenses from OFAC to participate in it. A transaction in which the person(s) subject to sanctions is/are only identified on OFAC's Sectoral Sanctions Identifications (SSI) List must also involve deceptive practices (*i.e.*, attempts to obscure or conceal the actual parties or true nature of the transaction(s), or to evade sanctions) to potentially be considered "significant."

## United States Imposes Export and Other Sanctions on Russian Government over Nerve Gas Attack

On August 8, 2018, the Trump administration announced that it would be imposing sanctions on the Russian government under the CBW Act over the use of a "Novichok" nerve agent in an attempt to assassinate U.K. citizen Sergei Skripal and his daughter Yulia Skripal. After a fifteen-day congressional notification period, the sanctions will take effect when published in the *Federal Register*.[46] The State Department issued the sanctions effective August 27, 2018.[47]

On December 19, 2018, OFAC designated two officers of the Main Directorate of the General Staff of the Armed Forces of the Russian Federation (GRU) under CAATSA section 224 for acting or purporting to act for or on behalf of the GRU for their involvement in the Skirpal assassination attempts.[48] CAATSA section 224 authorizes the imposition of sanctions on persons for knowingly engaging in significant activities undermining cybersecurity against any person, including a democratic institution or government, on behalf of the government of the Russian Federation, or if they are owned or controlled by, or act for or on behalf of, a designated person.

The CBW Act requires the implementation of the five initial sanctions described below. However, the State Department has waived the application of some of these sanctions in the interests of national security. The sanctions allow export licensing under the pre-sanction licensing policy for wholly owned U.S. subsidiaries, deemed exports and re-exports, flight safety, space flight, and

commercial end-uses, and is allowing the use of EAR license exemptions that were already available for use with shipments to Russia before the CBW Act sanctions were imposed. A summary of the State Department CBW Act sanctions and waivers follows:

(1) Foreign Assistance: Termination of assistance to Russia under the Foreign Assistance Act of 1961,[49] except for urgent humanitarian assistance and food or other agricultural commodities or products.

- The State Department has waived this restriction.

(2) Arms Sales: Termination of (a) sales to Russia under the Arms Export Control Act[50] of any defense articles, defense services, or design and construction services, and (b) licenses for the export to Russia of any item on the United States Munitions List.[51]

- The State Department has waived this sanction with respect to the issuance of licenses in support of government space cooperation and commercial space launches. Licenses will be issued on a case-by-case basis and consistent with export licensing policy for Russia prior to the enactment of these sanctions.

(3) Arms Sales Financing: Termination of all foreign military financing for Russia under the Arms Export Control Act.

- No waiver.

(4) Denial of U.S. Government Credit or Other Financial Assistance: Denial to Russia of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the U.S. government, including the Export-Import Bank of the United States.

- No waiver.

(5) Exports of National Security-Sensitive Goods and Technology: Prohibition on the export to Russia of any goods or technology on that part of the control list established under section 2404(c)(1) of the appendix to title 50 of the U.S. Code.

- Several waivers are enacted with regards to this sanction.
    - License exceptions GOV, ENC, RPL, BAG, TMP, TSU, APR, CIV, and AVS will still be available for exports of national security sensitive goods and technology to Russia.

- Lessening this blow, however, State Department officials indicated there will be carve-outs from the export control sanctions permitting case-by-case licensing of items for export to the Russian government. New license applications for goods related to the following will be considered on a case-by-case basis under the export licensing policy for Russia prior to the enactment of these sanctions:
  - wholly owned U.S. subsidiaries;
  - safety of flight of civil fixed-wing passenger aviation;
  - deemed exports/re-exports to Russian nationals;
  - space flight (*i.e.*, government space cooperation and commercial space launches); and
  - commercial end-users and civil end-uses.
- New license applications for state-owned and state-funded enterprises will be reviewed on a case-by-case basis, subject to a presumption of denial.

Of these five sanctions, the fifth—the prohibition on the export of national security controlled items to the Russian government—is likely the most significant. State Department officials indicated that these export control sanctions will be applied to exports to all Russian state-owned or state-funded enterprises, estimated to be on the order of 70% of the Russian economy and 40% of the Russian workforce. As of this writing, the Bureau of Industry and Security (BIS) has not yet issued regulations implementing these controls. However, because national security controlled items already required a license to Russia, BIS could implement the heart of the control simply by not granting licenses for national security controlled items to Russian government and state-owned companies.

The CBW Act requires ratcheting up of sanctions against the Russian government, unless by November 2018 the president determines and certifies in writing to the Congress that:

- the Russian government is no longer using chemical or biological weapons in violation of international law or using lethal chemical or biological weapons against its own nationals;

- the Russian government has provided reliable assurances that it will not in the future engage in any such activities; and
- the Russian government is willing to allow on-site inspections by United Nations observers or other internationally recognized, impartial observers, or other reliable means exist, to ensure that that government is not using chemical or biological weapons in violation of international law and is not using lethal chemical or biological weapons against its own nationals.[52]

On November 6, 2018, the State Department informed Congress it could not certify that the Russian Federation met the conditions.[53] According to U.S. State Department spokeswoman Heather Nauert, the U.S. administration "intend[s] to proceed in accordance with the terms of the CBW Act, which directs the implementation of additional sanctions."[54] The administration has declined, however, to state when these additional sanctions will be imposed or what they will be. The additional sanctions are required to include at least three of the following:

- Multilateral Development Bank Assistance. The U.S. government shall oppose the extension of any loan or financial or technical assistance to that country by international financial institutions.
- Bank Loans. The U.S. government shall prohibit any U.S. bank from making any loan or providing any credit to the government of that country, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products.
- Further Export Restrictions. The authorities of section 6 of the Export Administration Act of 1979[55] shall be used to prohibit exports to that country of all other goods and technology (excluding food and other agricultural commodities and products). This means that all items subject to the Export Administration Regulations (EAR)[56] could be prohibited for export to the Russian government.
- Import Restrictions. Restrictions shall be imposed on the importation into the United States of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of that country.
- Diplomatic Relations. The president shall use his constitutional authorities to downgrade or suspend diplomatic relations between the United States and the government of that country.

- Presidential Action Regarding Aviation. The president is also authorized (but not required) to suspend the authority of foreign air carriers owned or controlled by the government of that country to engage in foreign air transportation to or from the United States.[57]

The president can also waive the application of the second round of sanctions if he determines and certifies to the Congress that such waiver is essential to the national security interests of the United States.[58]

## President Trump Issues Executive Order Delegating Russia-Related CAATSA Authority to Agencies

On September 20, 2018, President Trump issued Executive Order 13849, "Authorizing the Implementation of Certain Sanctions Set Forth in the Countering Americas Adversaries Through Sanctions Act" to further the implementation of certain sanctions in CAATSA with respect to Russia.[59] A true snoozer of an executive order, EO 13849 does not impose any new sanctions or expand existing sanctions, but delegates the president's authority to implement certain CAATSA provisions. In particular, it establishes that the Departments of State and Treasury must select from the menu of sanctions in CAATSA section 235 when imposing certain secondary sanctions under CAATSA.[60] These secondary sanctions will apply to persons designated under:

- CAATSA section 224 on cybersecurity (certain entities that had already been designated under E.O. 13694, "Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities" such as the Russian Federal Security Service (FSB), were re-designated in 2018 under section 224);
- CAATSA section 231 on Russian defense and intelligence sectors;
- CAATSA section 232 on development of energy pipelines in Russia; and
- CAATSA section 233 on investment in or facilitation of privatization of state-owned assets in Russia.

In addition, EO 13849 authorizes the imposition of sanctions under Ukraine Freedom Support Act section 4(c),[61] which contains a menu list of nine sanctions to be imposed against targeted persons in Russia's defense, intelligence, and energy sectors.

### Key Takeaways from the U.S. Administration's Implementation of CAATSA Sanctions and CBW Sanctions on Russia

The CAATSA and CBW Act sanctions overlay an already complex web of U.S. sanctions and export controls on Russia. Companies doing business in Russia—be they U.S. or non-U.S.—need to take heed of the risk of primary and secondary sanctions under CAATSA in undertaking business activities. With the advent of secondary sanctions under sections 231 (for defense and intelligence transactions) and 238 (for transactions with SDNs and SSIs and their 50%-or-more-owned companies), non-U.S. companies need to check the lists—including the section 241 Oligarchs List)—to assess whether their transactions place them at risk *even for transactions with no U.S. nexus*. This puts at premium the due diligence work and corporate compliance policies and procedures for those company who do business in Russia

(1) to identify Russian companies owned by listed entities;

(2) to assess properly the risks associated with the business; and

(3) to document and record the decision whether it be to proceed or to withdraw from the transaction in question.

## Venezuela

The Trump administration responded to the increasing instability in Venezuela with two executive orders in 2018 and one in 2019, building on the significant sectoral style sanctions implemented under EO 13808 in 2017.

### Sanctions on the Petro and Executive Order 13827

During a weekly address in December 2017, Venezuela's president, Nicolas Maduro, announced an initiative to launch a cryptocurrency in Venezuela named the petro. In addition to addressing Venezuela's hyperinflation and general economic collapse, President Maduro and his supporters reportedly hoped to use

the petro to circumvent the economic sanctions OFAC has imposed on financial dealings with the government of Venezuela in response to EO 13808, issued by President Trump in 2017.[62]

President Maduro's political opponents in Venezuela have questioned the legality of the petro, which is backed by Venezuela's natural resources—primarily oil, but including commodities such as gas, gold, and diamonds as well. Maduro's political opponents, who hold a majority in the Venezuelan congress, point out that it is unconstitutional to use the country's oil reserves to issue government debt.[63]

In a January 2018 letter to the U.S. Treasury Department two U.S. senators—Bob Menendez and Marco Rubio, a Democrat and Republican, respectively—came together in an increasingly elusive bipartisan fashion to press upon the department the need to address the launch of the petro.[64] OFAC wasted no time in announcing that U.S. persons would be prohibited from dealing in purchase of the petro. On January 19, 2018, OFAC published an FAQ confirming that it would treat the purchase of the Venezuelan petro as a dealing in debt of the government of Venezuela. OFAC explained that the cryptocurrency has the characteristics of an extension of credit to the government of Venezuela and, as such, would be treated as an issuance of "debt" for U.S. sanctions purposes.[65]

On March 19, 2018, President Trump issued EO 13827, which prohibits U.S. persons from transactions related to the provision of financing for, and other dealings in, any digital currency, digital coin, or digital token that was issued by, for, or on behalf of the government of Venezuela on or after January 9, 2018.[66]

## Prohibition of Transferring Equity of the Government of Venezuela and Executive Order 13835

On May 21, 2018, President Trump issued EO 13835, which prohibits U.S. persons from being involved in the transfer by the government of Venezuela of any equity interest in any entity majority-owned by the government of Venezuela. The new order acts as an extension of EO 13808 issued in August 2017 and is intended to inhibit President Maduro's regime from disposing of interests in Venezuelan state-owned entities at terms unfavorable to the Venezuelan people.[67]

> The executive order prohibits U.S. persons from participating in all transactions relating to, providing financing for or having other dealings in: (1) the purchase or pledging as collateral of any debt owed to the Government of Venezuela, including accounts receivable and (2) the sale, transfer, assignment or pledging as collateral by the Government of Venezuela of any equity interest in any entity owned 50% or more by the Government of Venezuela.[68]

OFAC has however issued General License 5[69] to authorize bondholders to enforce rights related to a certain bonds to prevent the Venezuelan government from using the executive order to default on its bond obligations without consequence. Accordingly, those bondholders remain authorized to gain access to the collateral by which the bond is secured. It is in this vein, that—subject to certain conditions—U.S. persons are also authorized to attach and execute against government of Venezuela assets if they have a legal judgment in their favor.[70]

## Additional Sanctions on Persons Contributing to the Situation in Venezuela

On November 1, 2018, President Trump issued Executive Order 13850, which prohibits U.S. persons from dealing with any person designated under the EO, including the blocking of property of any such person. The purpose of the EO is to target rampant corruption within the Venezuelan government, which according to the U.S. government has exacerbated "the economic and humanitarian crises afflicting the Venezuelan people."[71] The EO targets transactions involving the gold sector in particular, by potentially imposing sanctions on persons identified as having unjustly benefited from fraudulent conduct and activity in gold and other identified sectors (such as oil), or other Venezuelan government projects. OFAC does not intend to target persons who are legitimately operating in such sectors.

However, with the escalating political turmoil in Venezuela over the first few weeks of 2019, the Trump administration responded—at least in part—with the imposition of additional Venezuela sanctions.

On January 23, 2019, Juan Guaidó, the President of Venezuela's legislative body, the National Assembly, and for whom the Trump administration has declared its support, took the oath to serve as Venezuela's interim president in opposition to what he and his allies view as the illegitimate presidency of Nicolás

Maduro.[72] While many nations, including the United States, have recognized and expressed support for Guaidó's temporary ascension to power, some nations such as Russia and China have rejected it.[73]

In a strike at Maduro and his closest supporters, the Trump administration announced a new executive order on January 28, 2019, broadening the scope and definition of "the government of Venezuela" to include persons who have acted, or have purported to act, on behalf of the government of Venezuela, including members of the Maduro regime.[74] This action was likely taken with the hope of spurring defections or at least to deter support for the regime among key officials and other persons within and potentially outside Venezuela.

Although it was quite clear that the imposition of additional sanctions targeting the Maduro regime would form part of the U.S. response, there was much speculation about what those sanctions would look like and how far the Trump administration would go. On January 28, 2019, OFAC also announced the designation of Petróleos de Venezuela, S.A. (PDVSA), Venezuela's state-owned oil company, pursuant to EO 13850, for operating in Venezuela's oil sector.[75]

As a result, U.S. persons are now broadly prohibited from engaging in transactions with PDVSA, including its majority-owned subsidiaries. Previously, PDVSA was only subject to limited sanctions imposing restrictions on certain debt and equity transactions.

In light of the impact the blacklisting of an entity such as PDVSA would have on the United States and beyond, OFAC rolled out a slew of general licenses (summarized below) authorizing U.S. persons to engage in certain transactions involving PDVSA and its majority-owned subsidiaries, two of which—PDV Holding, Inc. (PDVH) and CITGO Holding, Inc. (CITGO)—are U.S. entities. The general licenses are particularly important, as Venezuela is the third largest source of oil imports for the United States.[76] The authorizations provided in the general licenses cross-reference one another, so it is essential to closely evaluate potential transactions to determine which authorization applies to a specific transaction.

## General Licenses

**General License 3A.** Authorizes all transactions related to the provision of financing for, and other dealings in, certain bonds prohibited by EO 13808 and listed in the annex to General License 3A, and all transactions related to the

provision of financing for, and other dealings in, bonds issued prior to August 25, 2017, by U.S. person or entities owned or controlled by the government of Venezuela other than Nynas AB, PDVH, CITGO, and any of their subsidiaries. General Licenses 7, 9, and 13 (described below) authorize, at least on a temporary basis, certain transactions with Nynas AB, PDVH, CITGO, and their subsidiaries.[77]

**General License 7.** Subsection (a) authorizes all transactions prohibited by EO 13850 related to PDVH and CITGO (including their subsidiaries) where the only PDVSA entities involved are PDVH and CITGO. This particular authorization expires on July 27, 2019. Subsection (b) further authorizes PDVH and CITGO (including their subsidiaries) to engage in all transactions prohibited by EO 13850 that are ordinarily incident and necessary to the purchase and importation of petroleum and petroleum products from PDVSA and its majority-owned subsidiaries. This particular authorization expires on April 28, 2019. Any related payments for the direct or indirect benefit of a blocked person other than PDVH and CITGO (including their subsidiaries) must be paid into a blocked, interest-bearing account in the United States.[78]

**General License 8.** Authorizes all transactions and activities ordinarily incident and necessary to the operations of the following U.S. companies in Venezuela involving PDVSA: Chevron Corp.; Halliburton; Schlumberger Limited; Baker Hughes (a GE company); and Weatherford International. However, it does not however authorize the exportation or reexportation of diluents from the United States to Venezuela. This general license expires on July 27, 2019.[79]

**General License 9.** Authorizes all transactions prohibited by section 1(a)(iii) of EO 13808 and EO 13850 that are ordinarily incident and necessary to dealings in any PDVSA debt (including its majority-owned subsidiaries and certain bonds in the annex to General License 9) issued prior to August 25, 2017, provided that any divestment or transfer of any holdings in such debt must be to a non-U.S. person. General License 9 also authorizes all transactions prohibited by section 1(a)(iii) of EO 13808 that are ordinarily incident and necessary to dealings in any bonds issued by PDVH, CITGO, or Nynas AB prior to August 25, 2017. General License 9 does not authorize U.S. persons to sell PDVSA-related debt to, to purchase or invest in debt of, or to facilitate such transactions with, directly or indirectly, entities blocked by EO 13850, including PDVSA and its majority-owned

subsidiaries, other than that ordinarily incident and necessary to the divestment or transfer of PDVSA-related debt.[80]

**General License 10.** Authorizes U.S. persons in Venezuela to purchase refined petroleum products for personal, commercial, or humanitarian uses from PDVSA and its majority-owned subsidiaries. It does not authorize any commercial resale, transfer, exportation, or reexportation of refined petroleum products.[81]

**General License 11.** Authorizes a wind-down period for U.S. person employees and contractors of non-U.S. entities located in a country other than the United States or Venezuela to engage in transactions prohibited by EO 13850 that are ordinarily incident and necessary to the maintenance or wind-down of operations, contracts, or other agreements involving PDVSA and its majority-owned subsidiaries. U.S. financial institutions are authorized to reject, rather than block, funds transfers involving PDVSA and non-U.S. entities located outside the United States and Venezuela, provided that the funds originate and terminate outside the United States and that the originator and/or beneficiary are not U.S. persons, and the funds are not destined for a blocked account held by a U.S. financial institution. This general license does not extend to transactions involving Nicaragua-based PDVSA subsidiary ALBA de Nicaragua (ALBANISA) or its majority-owned subsidiaries. General License 11 expires on March 29, 2019.[82]

**General License 12.** Authorizes a wind-down period until April 28, 2019, for all transactions prohibited by EO 13850 that are ordinarily incident and necessary to the purchase and importation into the United States of petroleum and petroleum products from PDVSA and its majority-owned subsidiaries. Any related payments for the direct or indirect benefit of a blocked person must be paid into a blocked, interest-bearing account in the United States. General License 12 also more broadly authorizes all transactions ordinarily incident and necessary to the wind-down of operations, contracts, or other agreements, in effect prior to January 28, 2019, including the importation into the United States of goods, services, or technology (beyond petroleum and petroleum products) until February 27, 2019. Note that this general license does not authorize exportation or reexportation of any diluents from the United States to Venezuela, PDVSA or its subsidiaries or any transactions with ALBANISA.[83]

**General License 13.** Authorizes all transactions prohibited by EO 13850 where the only PDVSA entities involved are Nynas AB (a Swedish PDVSA subsidiary) and its subsidiaries. General License 13 expires on July 27, 2019. Except

as authorized by General License 11 (above), any payments for the direct or indirect benefit of a blocked person other than Nynas AB or its subsidiaries that are ordinarily incident and necessary to give effect to authorized Nynas AB-related transactions and that come into the possession of a U.S. person must be paid into a blocked, interest-bearing account in the United States.[84]

**General License 14.** Authorizes all transactions that are for the conduct of the official business of the U.S. government.

### Key Takeaways: Venezuela

Most companies reading this article are unlikely to contemplate using the petro quite apart from the sanctions and are unlikely to be buying shares of Venezuelan state-owned entities. But these sanctions underline those imposed under EO 13808 in 2017. It is now essential for companies doing business in Venezuela—or outside Venezuela—to know if they are doing business with a Venezuelan state-owned company. These companies are not restricted geographically to Venezuela; so, for example, a U.S. company owned indirectly by Petróleos de Venezuela, S.A. (PDVSA) is still a PDVSA subsidiary and now subject to blocking, unless the transaction is covered by a general license.

## Nicaragua

The Trump administration responded to similar political instability in Nicaragua with an executive order ushering in an entirely new OFAC sanctions program.

On November 27, 2018, President Trump issued Executive Order 13851, Blocking Property of Certain Persons Contributing to the Situation in Nicaragua,[85] which targets the regime of Nicaragua's president, Daniel Ortega, and its supporters, "who continue to engage in rampant corruption, dismantling of democratic institutions, serious human rights abuse, and exploitation of the people and public resources of Nicaragua for private gain."[86] OFAC simultane-

ously announced the designation of two Nicaraguan government officials under the new EO—Rosario Maria Murillo de Ortega, who is Vice President and First Lady of Nicaragua, and Nestor Moncada Lau, national security advisor to the President and Vice President.[87]

## Sanctions for Foreign Interference in U.S. Elections

On September 12, 2018, President Trump issued Executive Order 13848, Imposing Certain Sanctions in the Event of Foreign Interference in a United States Election.[88] The EO was issued to address the determination that:

> the ability of persons located, in whole or in substantial part, outside the United States to interfere in or undermine public confidence in U.S. elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation, constitutes an unusual and extraordinary threat to the national security and foreign policy of the United States.[89]

While it appears that the executive order may have been issued partly in response to concerns about Russian meddling in the 2016 U.S. presidential election, the order states "[a]lthough there has been no evidence of a foreign power altering the outcome or vote tabulation in any United States election, foreign powers have historically sought to exploit America's free and open political system."[90] Regardless of one's perception of the impact of Russian interference in the 2016 U.S. presidential election, the executive order is clearly aimed at the possibility of future election interference and recognition that such conduct may be launched from foreign governments and their agents.

However, this sanctions program appears to be aimed at imposing sanctions after an election has occurred, rather during or prior to electoral campaigns. The order calls for the Director of National Intelligence, in consultation with other appropriate departments and agencies, to conduct an assessment of any information indicating that a foreign government, or any person acting as an agent of or on behalf of a foreign government, has acted with the intent or purpose of interfering in that election, not later than forty-five days after the conclusion of a U.S. election.

EO 13848 adds to the sanctions arsenal for sanctioning persons engaging in malicious cyber-enabled activities under EO 13694, Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities,[91] and CAATSA section 224. OFAC sanctioned five entities and nineteen individuals under those provisions in March 2018[92] and an additional five Russian entities and three Russian individuals in June 2018.[93]

On December 19, 2018, OFAC designated under EO 13694 several entities and individuals related to Project Lakhta, a global Russian effort to interfere in political and electoral systems.[94] The project was allegedly operated through the use of fictitious online personas that posed, for example, as U.S. persons in an effort to interfere in U.S. elections, and involved the concealment of its activities by operating through news media entities.[95]

OFAC also designated under CAATSA section 224 individuals associated with Russia's GRU who were involved in cyberattacks resulting in the theft and staged releases and publication of stolen documentation. The GRU officers had already been criminally indicted in the United States on July 13, 2018. The GRU deployed similar methods in cyberattacks launched against the World Anti-Doping Agency, which had exposed Russia's state-sponsored doping program, and the Organization for the Prohibition of Chemical Weapons, which operates under a United Nations mandate to eradicate chemical weapons.[96]

### Key Takeaways: Foreign Interference in U.S. Elections

U.S. (and non-U.S.) companies in the social media, digital, Internet, and computing space that do business in Russia need to take special precautions to vet their Russian partners for indications that they might be designated under EO 13848, EO 13694, or CAATSA. Even when the Russian partners are cleared as not being currently subject to sanctions, it would be prudent to include provisions in contracts with those partners that nullify the contract and authorize non-performance in the event the Russian partner is sanctioned.

## Syria and the Russia-Iran Oil Network

On November 20, 2018, OFAC designated nine individuals and entities for their involvement in an international network used by Iran, along with Russian companies, to smuggle millions of barrels of oil to the Assad regime in Syria.[97] Much like the North Korean vessel advisory, OFAC issued another advisory for the maritime community highlighting the methods of vessel sanctions evasion and associated compliance risks, however, now in the context of shipping oil to the government of Syria.[98]

These designations were made under executive orders for OFAC sanctions on Syria and global terrorism, although the conduct also involved actors in Russia and Iran. Executive Order 13582 prohibits material support to the government of Syria, including shipments of oil to ports that are controlled by the government of Syria.[99] EO 13224 prohibits material support to designated terrorist groups.[100]

One of the principal facilitators designated for the elaborate scheme was Mohammad Amer Alchwiki, a Syrian national, who used his Russian company Global Vision Group to facilitate oil deliveries from Iran to Syria, and to transfer funds to the IRGC-Quds Force, Hizballah, and HAMAS. More specifically, Global Vision Group allegedly worked with Promsyrioimport, a subsidiary of the Russian Ministry of Energy designated under the Syria sanctions program, to facilitate shipments from NIOC, the National Iranian Oil Company, to Syria. Global Vision Group used a number of vessels, many of which have been insured by European companies and which have been identified in OFAC's advisory, to make the deliveries—deploying methods such as disabling their tracking devices to do so undetected.

The Central Bank of Iran (CBI) is also reported to have played a critical role in facilitating the payments and transfer of funds under the scheme, and OFAC designated two senior CBI officials as a result. Although the scheme involved Iranian-origin oil, Russia appears to have primarily financed the purchases. However, the CBI allegedly assisted Syria in paying for the oil by sending funds to an account of Alchwiki at a wholly owned subsidiary of Iran's Bank Melli based in Russia, Mir Business Bank.[101] Many of the transfers were disguised to appear as humanitarian transactions involving medicine and pharmaceuticals.

## Global Magnitsky Order Sanctions

On December 20, 2017, President Trump signed EO 13818, which declared that the prevalence and severity of human rights abuse and corruption threaten the stability of international political and economic systems.[102] Since then, OFAC has consistently rolled out designations under this new authority. EO 13818 has blocked the assets of 101 persons, showing a wide range of misconduct in many countries. In addition to adding many names to the OFAC SDN list, EO 13818 authorizes OFAC to sanction foreign persons:

(1) who are responsible for or complicit in, or have directly or indirectly engaged in, serious human rights abuse;

(2) who are current or former government officials, or persons acting for or on behalf of such an official, who are responsible for or complicit in, or have directly or indirectly engaged in

  (i) corruption, including the misappropriation of state assets, the expropriation of private assets for personal gain, corruption related to government contracts or the extraction of natural resources, or bribery; or

  (ii) the transfer or the facilitation of the transfer of the proceeds of corruption.

The executive order reaches beyond those who are "responsible for," "complicit in," or "directly or indirectly engaged" in the targeted activities.

Executive Order 13818 also authorizes OFAC to sanction: (1) foreign persons who are part of the same government that conducted the targeted activities, and foreign persons who have attempted to commit the targeted activities; and (2) any person, U.S. or foreign, who materially assists, sponsors, or provides financial, material, or technological support for, or goods or services to, the targeted activities or designated persons. Additionally, non-U.S. persons who engage in transactions with a [GLOMAG] SDN, as SDNs under this program are identified, risk also being designated as an SDN.

Examples of [GLOMAG] designations include:

- seventeen Saudi government officials for their roles in the killing of Jamal Khashoggi, a journalist resident in the United States;[103]

- Dan Gertler, an international businessman, and fourteen affiliated entities, involving corrupt mining and oil deals in the Democratic Republic of Congo;[104]
- Turkey's Minister of Justice and Minister of Interior for their roles in serious human rights abuses, including the arrest and detention of American pastor Andrew Brunson;[105]
- A senator from the Dominican Republic involved in money laundering, embezzlement, and corruption related to public works projects in Haiti;[106] and
- a commander and units of the Burmese Security Forces for serious human rights abuses.[107]

On June 29, 2018, OFAC published the Global Magnitsky Sanctions Regulations (31 C.F.R. part 583), implementing the Global Magnitsky Human Rights Accountability Act and EO 13818.

### Key Takeaways: Global Magnitsky

Global Magnitsky sanctions, as their name implies, are global and have been applied to companies and persons around the world. So how do you protect against doing business with someone at risk of being sanctioned? Luckily, the same due diligence that global companies should be applying to third parties under their anti-corruption programs should ferret out Global Magnitsky red flags for bribery and human rights abuses. So now your anti-corruption program and sanctions screening programs have taken one step closer together.

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