

FURTHER IMPLEMENTATION OF SANCTIONS LEGISLATION

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U.S. International Trade Alert

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As reported in our prior alert, the Countering America's Adversaries Through Sanctions Act ("CAATSA"), which was signed into law on August 2, 2017, materially expanded U.S. sanctions against Russia. Notably, the law requires the president to impose certain additional measures targeting the Russian defense, financial, and energy sectors; codifies into law certain Russia sanctions measures already in place through executive action; and imposes a mechanism to allow Congress to monitor developments regarding the implementation of sanctions. [1] However, not all of the sanctions provisions were immediately effective, and implementation continues to occur.

The next significant date for CAATSA is January 29, 2018. First, beginning on that date, secondary sanctions are required to be imposed on persons and entities engaging in "significant" transactions with persons in the Russian defense and intelligence sectors. Second, effective that date, Directive 4 of Executive Order 13622 is expanded, considerably broadening the geographic scope of restrictions on Russian deepwater, Arctic offshore, and shale oil projects. Third, January 29 is the deadline by which the president must submit a report to Congress identifying Russian oligarchs, senior political figures, and parastatal entities for the purpose of possible imposition of sanctions on such persons.

These changes are further discussed below. As the Trump administration continues to develop and refine its policy toward Russia, companies with interests involving Russian entities and in key sectors should continue to monitor the implementation of CAATSA and other actions the administration undertakes.

ADDITIONAL SECONDARY SANCTIONS ON RUSSIA'S DEFENSE AND INTELLIGENCE SECTORS

Section 231 of CAATSA requires the president to impose "secondary" sanctions on persons (including foreign persons) determined to be engaging in "significant" transactions with persons in the Russian defense and intelligence sectors. This covers any transaction regardless of whether there is a nexus to the United States or U.S. persons. CAATSA requires the president to select from a list of potential secondary sanctions ranging from relatively limited measures (e.g., denial of Export-Import Bank assistance, prohibition on granting of U.S. export licenses, and exclusion of corporate officers from U.S. territory), to the blocking of the property of the sanctioned person, resulting in the person's placement on the Department of the Treasury's Office of Foreign Assets Control ("OFAC") Specially Designated Nationals and Blocked Persons list ("SDN list").

Last October, the U.S. Department of State ("State Department") released a list of Russian entities identified as being part of the defense and intelligence sectors and also issued FAQs providing guidance on the sanctions,

including as to what constitutes a "significant" transaction. Please note that the list of entities is provided as guidance and that significant transactions with other entities in the Russian defense and intelligence sectors not included on the list potentially could trigger sanctions. The decision by the U.S. government to apply secondary sanctions will be highly fact-dependent and usually made only following discussions with the potential sanctions target seeking to end or curtail the underlying activity. As a result, sanctions determinations under this provision may not be issued on January 29 or immediately after that date. Nonetheless, this sanctions provision will present substantial sanctions risks, and any person who is currently engaging or proposes to engage in transactions with the Russian defense and intelligence sectors (especially those entities on the State Department list) immediately should review their transactions from the standpoint of U.S. sanctions compliance.

IMPLEMENTATION OF EXPANSION OF DIRECTIVE 4

In October 2017, OFAC amended its Directive 4 as part of its implementation of Section 223 of CAATSA, which applies to designated entities in the Russian energy sector. Directive 4, as originally adopted, barred U.S. persons from engaging in activities relating to the direct or indirect provision, exportation, or reexportation of goods, services (except for financial services), or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that (1) have the potential to produce oil, (2) are either in, or in the maritime area claimed by, Russia or extends from its territory, and (3) involve persons designated on the Sectoral Sanctions Identification List under Directive 4.

As amended, Directive 4 now also will apply to deepwater, Arctic offshore, or shale projects that (1) are initiated on or after January 29, 2018, (2) have the potential to produce oil **anywhere in the world**, and (3) involve any person designated under Directive 4 when they, directly or indirectly, either have a 33 percent or greater ownership interest, or own a majority of the voting interests, in the project.

SUBMISSION OF TWO REPORTS BY THE TRUMP ADMINISTRATION

Finally, Section 241 of CAATSA requires the president to submit a report to Congress by January 29 identifying "[s]enior foreign political figures and oligarchs in the Russian Federation." The list is to include significant senior political figures, which are to be identified by their closeness to the Russian regime as well as their net worth. The report is required to assess how close these individuals are to Russian President Vladimir Putin and other members of the Russian ruling elite, whether there are any indications that they are corrupt, their sources of income (including those of their family members), and whether they are affiliated with any non-Russian businesses.

The report is also required to identify "Russian parastatal entities," i.e. nongovernmental entities that directly or indirectly support the government. It must outline the entities' roles in the Russian economy, their leadership structures and beneficial owners, and the scope of their non-Russian business affiliations.

In addition to identifying those individuals and entities, the report is required to contain analyses of: (1) the exposure of the above individuals and entities to key economic sectors of the United States, including the banking, securities, insurance, and real estate sectors; (2) the likely effects of new debt and equity restrictions or

asset blockings/freezes if imposed on these individuals and entities; and (3) the potential impact of the imposition of secondary sanctions, including on both the Russian and American economies as well as American allies.

CONCLUSION

For companies doing business in Russia or with Russian individuals or entities (and for persons doing business with such companies), the sanctions developments described above will necessitate enhanced sanctions compliance precautions, particularly in connection with identifying and conducting due diligence on Russian parties to a transaction. We will continue to provide updates on material CAATSA implementation developments.

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The International Trade practice group of K&L Gates is available to assist with these developments and with questions regarding compliance with other international trade laws.

[1] Our previous client alert discussing CAATSA can be found here.

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