



Morgan Lewis

**RUSSIA SANCTIONS UPDATE –  
US / EU (& UK) OVERVIEW  
& RUSSIAN COUNTERSANCTIONS**

as of 20 April 2021

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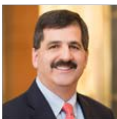
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*The Russia sanctions regime is quite complex. Many of its provisions overlap with one another, and are otherwise subject to varying interpretations and application. Thus, legal advice should be sought for each specific situation. (Even official FAQs or other “guidelines” published by the relevant government agencies are subject to change or withdrawal – and are, in any event, alone neither dispositive or sufficient for pursuing a particular course of action.)*

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# What's Newest

## United States

- April 15 Biden Admin. sanctions package: wide scope / heavily-publicized, but only limited targeting of meaningful int'l business – could have been worse (i.e., there are no new oligarch designations)
  - [Executive Order 14024](#) (and see related new FAQs [886](#) and [887](#))
    - provides new framework basis / strengthened authorities for the just-announced and possible further sanctions, in response to Russia's alleged interference in elections, SolarWinds and other malicious cyber activities, transnational corruption, targeting of dissidents and journalists, etc.
    - authorizing sanctions targeted mainly at the Russian tech and defense / related materiel sectors, but also "any other sector of the [Russian] economy..." (and see new [FAQ 887](#))
    - related [White House Fact Sheet](#) – summarizes the range of new sanctions and certain other findings / announcements of measures
    - Administration officials emphasize the measured / "proportionate" nature of the new actions taken (but could be ratcheted up further depending on Ukraine-related and other Russia-US developments)
  - [OFAC Directive 1](#) under the EO
    - expands the existing 2019 CBW Act-based ban (see slides [70-71](#)) on US financial institutions' participating in the primary market of Russian sovereign bonds – by extending this (effective 14 June) from non-ruble to ruble denominated as well, and also bans non-ruble or ruble lending to the same three sovereign instrumentalities (and see related new FAQs [888](#) and [890](#), and updated FAQ [675](#))
    - applies only to RF Central Bank, National Wealth Fund, and Ministry of Finance (and not to any other state-owned entities – see new FAQ [891](#) and updated FAQ [676](#))
    - still no ban on participation in *secondary* market for Russian sovereign bonds (see new FAQ [889](#)) – which would have more serious commercial/financial effects (see [15 April](#) and [18 March](#) reporting)

# What's Newest (*cont'd*)

- OFAC new SDN designations
  - 6 Russian tech companies, for support to Russia intelligence services' cyber program (this may have some real business effect – time will tell)
  - 32 entities and individuals for carrying out Russian gov't directed attempts to influence the 2020 US presidential election etc.
  - 8 individuals and entities for Crimea-related activities (coordinated with UK, Canada and Australia)
- *No new sanctions re Nord Stream 2 pipeline are included* (see slide [9](#))
- And nothing new of substance on the Navalny poisoning/imprisonment (already covered in March actions (see slides [7-8](#)), but more could follow depending on further Navalny-related developments etc.)
- State Dep't 15 April release (see slide [7](#) below)
- BIS: no new corresponding actions yet

# What's Newest (*cont'd*)

- US intelligence community [assessment](#) findings released in March re election interference
- March multi-faceted sanctions packet re Navalny poisoning/imprisonment etc.
  - quite limited effect on business
  - State Dept. overarching 2 March [announcement](#)
    - new round of Chemical and Biological Weapons Act (CBW Act) sanctions:
      - ❖ somewhat broadens the coverage scope and tightens exemptions (re exports of national security-sensitive items, etc.) from what was already in place re the earlier Skripal poisoning – see slides [8](#) and [66-71](#)
      - ❖ including new amendment of Int'l Traffic in Arms Regs. (ITAR) section 126.1 to include Russia in list of countries subject to policy of denial for exports of defense articles and services (with exception in support of gov't, and limited duration exception for commercial space cooperation)
    - CAATSA section 231(e) List of Specified Persons – six more Russian entities (all scientific / research institutes – presumed to be connected with Russia's chemical weapons program) placed on it, such that any person knowingly engaging in a significant transaction with any of them would be subject to sanctions – see slides [54](#) and [57](#)
    - E.O. 13382 sanctions (SDN designations) re weapons of mass destruction (WMD): against the FSB and its head Alexander Bortnikov (re the Navalny poisoning), the Main Intelligence Directorate (GRU) and the two GRU officers (re the 2018 Skripal poisoning – though they had already been designated under other authorities), and three of the same institutes that were just targeted also for the section 231 List – see immediately above
    - E.O. 13661 sanctions (SDN designations): against seven senior Russian gov't officials (at Defense Ministry, Presidential Executive Office, FSB (Bortnikov), Prosecutor General, and the Penitentiary Service) – all for actual/presumed oversight involvement in the Navalny poisoning and imprisonment
      - ❖ some of the seven individuals having been sanctioned by the EU and UK in Oct. 2020 and some more by the EU in March 2021 (see slides [86](#) and [88](#))
      - ❖ and, like EU, no designation of more oligarchs as Navalny had proposed be done
    - And related/follow-on State Dep't 15 April [designations](#) release

# What's Newest (*cont'd*)

- OFAC related 2 March SDN designations [announcement](#) (and FSB GL amendment)
  - reflects SDN designations against the three institutes (per E.O. 13382) and seven gov't officials (per E.O. 13661) as stated in the above State Dep't announcement
  - issuance of cyber-related General License (GL) 1B, replacing former 1A, re permissible interactions with FSB (which was already SDN designated); seems just some tightening of technical wording – see further slides [46-47](#)
- BIS actions
  - amendment of the Export Administration Rules (EAR), [final rule](#) published 4 March, to add 14 Russian, German and Swiss entities (scientific/pharma-related) – including one above-designated RF Defense Ministry Institute – to the Entity List, which imposes strict new license requirements on and limits availability of most license exceptions for exports, reexports and in-country transfers involving such entities (see slides [31-32](#))
  - published [announcement](#) and [rule](#) effective 18 March
- Pending/possible further sanctions laws (and see slides [72-73](#))
  - Early Feb. Senate bipartisan updated “Holding Russia Accountable for Malign Activities Act of 2021” [bill](#) introduced: focuses on imposition of array of Navalny-related sanctions, so may now be moot (though also would require report on Nemtsov killing, and President Putin's/family's wealth)
  - Others? possible revival / adjustment / passage of DASKA Act (DASKAA – latest draft from Dec. 2019), and/or others on hold from 2020?
  - Perhaps less likely now (given new EO 14024), except for Nord Stream 2



# What's Newest (*cont'd*)

- Most recent Nord Stream 2 ("NS2") gas export pipeline sanctions developments
  - No new sanctions in the fresh April 2021 sanctions packet
    - Biden Admin continues trying to navigate between desire for solidarity with close ally Germany and congressional press (see [report](#)) to block NS2 completion
    - The new 15 April EO does include a provision authorizing sanctions against any Russian person/entity involved in "cutting or disrupting gas or energy supplies to Europe, the Caucasus, or Asia" – which could be meant as fresh warning to Gazprom (and perhaps an attempt to mollify congressional anti-NS2 hawks)
  - OFAC's 19 Jan. 2021 SDN [designation](#) of the Fortuna (one of the primary vessels involved in NS2 pipelaying in the Baltic Sea) and its Russian owner co. KVT-Rus – and then their designation [again](#) in late Feb. 2021 (under both PEESA, and CAATSA section 232 – see slides [10](#), [55](#), [63-65](#))
    - related late Feb. PEESCA-mandated Biden Admin. [report](#) to Congress – emphasized / named the several companies known to have stopped participation the project because of sanctions (including a number of global insurers)
    - late Feb. / early March loan funding suspension announcements by two of the five European energy company participants in NS2 – but with the project co. assuring that there is already full funding to complete the work
    - some US Congress pressure on Biden Admin. for further sanctions (including 3 March Senators' [letter](#) to President Biden and 5 March House of Reps. [letter](#) to Secretary Blinken naming several primary and support vessels (mostly Russia-registered) other than Fortuna – including the long-publicized Admiral Cherskiy – also involved in the NS2 pipelaying)
    - continuing spectrum of NS2 views in EU – incl. some renewed opposition in reaction to the Navalny events, and also some hardening German gov't support per perceived need for more Russian gas to help wean economy from nuclear and coal
  - Apparent resumption of Russian vessels' pipelaying work as of early 2021, and most recent Russian pronouncements that all will be finished before end 2021
  - Recent continuing speculation and [reports](#) on German gov't / Biden Admin. possibly willing and working toward compromise that would allow NS2 to be completed without further sanctions
    - in return for agreement on reliable mechanism to shut it down in event Russia reduces gas flow through Ukraine below agreed level in future (and some possible further deal element)
    - the still-effective termination / sunset provision in the original PEESA/NDAA 2020 would allow for such a deal (see slide [64](#))

# What's Newest (*cont'd*)

- Tightened late 2020 sanctions aimed at NS2
  - PEESA / NDAA 2020 of Dec. 2019, and related actions and threats already had real effects on NS2 (see slides [63-65](#))
  - And then the follow-on “Protecting Europe's Energy Security Clarification Act” (PEESCA): comprising section 1242 (pp. 558-560) of National Defense Authorization Act for 2021 ([NDAA 2021](#)) – enacted in Dec. 2020 by Senate override of Trump veto
  - PEESCA clarifies/expands the PEESA / NDAA 2020 anti-NS2 measures adopted in Dec. 2019 (see slide [63](#)) by, among other things, extending the reach to foreign companies that
    - *facilitate* the sale, lease or provision of (in addition to selling, leasing or providing) NS2 (and TS2) pipe-laying vessels
    - provide necessary or essential underwriting services, insurance, reinsurance for such vessels
    - provide necessary or essential services or facilities for technological upgrades or installation of welding equipment, or retrofitting or tethering of such vessels
    - provide necessary or essential pipeline testing, inspection or certification
  - But there is a stated exception for EU, EU member states, Norway, Switzerland and UK gov'ts, and any gov't entity of any of them that is not operating as a business enterprise
    - and the President may waive sanctions if he finds it is in national interest and submits such finding to Congress
    - and required consultations with EU member states and Norway, Switzerland and UK before imposing any such sanctions
  - These amending provisions were made effective back to NDAA 2020's Dec. 2019 in-force date
  - And the CAATSA sec. 232 related important development: July 2020 State Dep't amendment of Oct. 2017 Guidance (see slide [65](#))

# What's Newest *(cont'd)*

- Other recent OFAC actions of note
  - 23 Dec. 2020 further general license extensions to 21 July 2021 on dealings with the major automotive co. GAZ Group (a Deripaska asset not yet delisted) – see slide [38](#) below
  - 18 Feb. 2021 Settlement Agreement (for \$507K) with BitPay Inc., a US digital currency payment processing co., for 2000+ violations during 2013-18 of the Crimea (and also Cuba, N. Korea, Sudan and Syria) sanctions programs
  - 5 Jan. 2021 update/slight refinement of FAQ [545](#) – re what is a “significant transaction” in applying CAATSA sec. 228 secondary sanctions provisions (see slides [56-57](#))
  - 14 Dec. 2020 announcement of new Non-SDN Menu-Based Sanctions (NS-MBS) [List](#) – see slide [62](#)

# What's Newest (*cont'd*)

- Recent BIS actions of note
  - Nothing new yet relating to EO 14024 sanctions packet of 15 April
  - March 2021 Russian-related Entity List additions etc. (see slide [8](#), and also [29-32](#))
  - March 2021 guilty plea announcement by DOJ in Russia-related BIS sanctions violation case (see slide [33](#))
  - Admin. penalties [imposed](#) on 27 Jan. 2021 against an US-based company for repeated false undervaluing of certain exports to Russia to avoid reporting requirements
  - 15 Jan. 2021 [removal](#) of Vsmo Avisma (world's leading titanium producer and key supplier to Boeing) from the Military End-User (MEU) List – on basis that it had been mistakenly put on the list (along with several other Russian companies) a month before
- Actions in 2021 against certain Ukrainians
  - 11 Jan. OFAC SDN [designation](#) of inner circle people and disinformation apparatus entities linked to pro-Russian Ukrainian politician Andrey Derkach – for spreading misleading/unsubstantiated allegations of Ukraine-related corruption etc. by “current and former US officials” (follows 10 Sept. 2020 [designation](#) of Derkach himself – apparently for trying to interfere in the US election by discrediting the Biden, etc.)
  - also 5 March State Dep't [designation](#) of oligarch / former regional governor Ihor Kolomoysky (and immediate family members) for corrupt acts etc., making them ineligible for entry into US

# What's Newest (*cont'd*)

- Recent measures under other-country sanctions programs: possible (and some actual) effects on/for Russian companies – calls for further caution
  - Venezuela
    - further 2020 designation of several shipping cos. and individual vessels, for having carried Venezuelan crude
      - ❖ see this Nov. 2020 investigative press [report](#)
      - ❖ and 19 Jan. 2021 [designations](#) of vessels (including some Russian ones)
    - and 30 Nov. 2020 designation of CEIEC, a leading Chinese telecoms-tech company, for alleged cyber assistance to Venezuelan state telecoms company in stifling political dissent – see OFAC press [release](#)
  - Iran
    - Jan. 2021 designations, on top of 2020 ones – while Biden Admin. policy toward Iran develops (see slides [34](#), [41](#), [45](#) and [50](#))
    - including [5](#) Jan. (key players in Iran's steel sector) and [13](#) Jan. (foundations controlled by Iran's leader)
    - and see OFAC 8 Oct. 2020 [announcement](#) of SDN designations of several Iranian banks, and related general licenses and FAQs – and many more designations of important Iran entities in various industries in 2019-20
  - China
    - the recent multi-pronged US gov't and related measures aimed against several PRC state companies perceived to be linked to the military etc. (2020 Trump Admin., and some more early in Biden Admin. time)
    - including now even US stock exchange Chinese company delisting, and US disinvestments, etc.
  - Various new Russian co. designations under N. Korea sanctions regimes as well ([19 Nov.](#) and [25 Nov.](#) 2020) – and see [8 Dec.](#) designations of (non-Russia) entities and vessels for carrying N. Korean coal
  - And the Turkey sanctions mandate (NDAA 2021, section 1241), for purchase of Russian S-400 missile system (see slides [10](#) and [44](#))

# What's Newest (*cont'd*)

## European Union / UK

- Nothing yet in coordination with the US 15 April actions: some cyber-security blacklist designations will likely come soon – but no sovereign debt bans (see Russian press [report](#))
- Routine sanctions extensions: Crimea to 23 June 2021, blacklist to 15 Sept. 2021, sectoral to 31 July 2021 – see slide [18](#)
- And [pending](#) (as of April 2021) new EU [regulations](#) governing export of dual-use goods, software and technology
- EU Council [Reg.](#) and [Decision](#) of 14 Oct. 2020 designating six Russian gov't officials (including the FSB head) under 2018 chemical weapons proliferation/use reg. re the Navalny poisoning – and further [Decision](#) of 2 March 2021 designating four Russian gov't officials (for Navalny detention, and quelling related protests) under new Global Human Rights Sanctions [Regime](#)
- UK – post-Brexit (see slides [87-88](#))
  - UK's own Russia sanctions regime replaced the EU regime as of 31 Dec. 2020
  - Here too, nothing much yet in coord. with the US 15 April actions (see 15 April press [release](#) re SolarWinds, etc.)
  - 15 Oct. 2020 [enforcement](#) of sanctions against six Russian officials and a chemicals institute for the alleged Navalny poisoning under the EU's chemical weapons sanctions regime ([implemented](#) then under the UK Chemical Weapons (Sanctions) (EU Exit) Regulations 2019)
- EU split views / uncertainty re Nord Stream 2 situation, and conceivable Germany/US deal (or maybe just US inaction) to resolve
- Recent court decisions of note – not involving Russia sanctions but relevance by analogy (and see slide [61](#))
  - English Commercial Court [decision](#) of Nov. 2020, rejecting PDVSA's defense of US-sanctions-based inability to repay USD loan amounts to a bank
  - Paris Court of Appeal (International Commercial Chamber) Dec. 2020 [decision](#) rejecting French contractor's defensive reliance on US secondary sanctions re contract with Iranian entity

# What's Newest (*cont'd*)

## Russia

- Controversial anti-sanctions dispute [law](#) – came into effect in June 2020
  - Seeks to force into Russian court many disputes involving Russian (and other) sanctioned persons/entities ... whether or not the dispute relates to the sanctions
  - And provides for Russian court to issue anti-suit injunction against proceedings in foreign courts or arbitral tribunals, and to award damages up to amount of damages claimed by foreign party in proceedings abroad
  - See our [Lawflash](#) of June 2020; and court practice is developing since then (we can elaborate)
- See slides [89-93](#) for other enacted and pending further countermeasures against US/EU sanctions (and Ukraine)
  - Including draft amendments (re asset blocking, and low 25% control threshold, etc.) to Special Economic Measures Law
  - And newest April 2021 [proposed](#) amendments to same law and to Currency Control Law
- Recent [statement](#) by a Russian official urging cut in use of USD – and continued reports of Russian companies (including oil producers) trying to do this, to Euro (or other currencies), for deals having no other US link – see slides [20](#) and [82](#) below
- And some other Russian gov't initiatives
  - directing pension and similar funds away from banks that are under or are supporting anti-Russian sanctions
  - advancing establishment/acceptance of Russian institute [certification](#) of Russian-produced oil & gas industry equipment as substitute for US API certification
- Also, developing Russian court practice and general view that a contract clause allowing termination / escape from liability on account of anti-Russia sanctions may violate public policy / be unenforceable

# Basic Framework – US/EU/UK

## United States

- Treasury Dep't (*Office of Foreign Assets Control – OFAC*) “sectoral” sanction Directives – as amended to date, most recently in Aug. 2018 (based on EO 13662 from March 2014)
  - *Generally applies only to “US persons” (citizens and US permanent residents) wherever located, any persons / entities in the US, US companies (including branches abroad), and US subs / branches of foreign companies*
  - But may also be applied to non-US persons anywhere, for activity that causes (i) US persons to violate or (ii) a violation to occur within the US – this expansive application being somewhat controversial
  - And all the SDN designations / sanctions are also under OFAC (based on EOs 13660, 13661 etc. of 2014)
  - And Treasury’s further expansive secondary sanctions authorities under CAATSA (slides [49-62](#))
  - March 2021 [Notice](#) (by President Biden) of Continuation of the National Emergency with Respect to Ukraine – routine annual required extension on which the relevant EOs are based – and important new EO 14024 of 15 April 2021 (see slides [5-6](#))
- Commerce Dep't (*Bureau of Industry and Security – BIS*) export restrictions – [15 CFR §746.5](#), “Russian Industry Sector Sanctions”, amended most recently Dec. 2017
  - Applies to activities of any “US person” or within the US
  - And also to US-origin goods, technology, software etc. or foreign-produced goods with sufficient US-origin controlled content, wherever located
  - See also 15 CFR §744.10 (Restriction on certain entities in Russia), §744.19 (Denial of BIS licenses for sanctioned countries or entities), and §744.21 (Restrictions on military end users in Russia) – see slides [12](#) and [27-32](#))
  - *Note: there may well be overlapping OFAC and BIS licensing and enforcement authority – and thus thorough analysis of both sets of rules (and perhaps authorizations from both agencies) re same proposed transaction may be required in some cases*
- State Dep't
  - Has primary authority for certain sections of CAATSA (see slide [50](#)); and contributing authority for most other Russia-related sanctions (now including those under the CBW Act – see next slide and slides [66-71](#))
  - Also has had / will continue to have important behind-the-scenes role in inter-agency consultations on Treasury / Commerce application of OFAC- and BIS-administered sanctions in general (see, e.g., slide [7](#) – State’s overarching announcement of new Navalny-related sanctions package)



# Basic Framework – US/EU/UK (*cont'd*)

- CAATSA enacted August 2017 (and State / Treasury Guidelines of Oct. 2017) – and see:
  - Full summary discussion at slides [49-62](#)
  - The Jan. 2018 CAATSA-based Reports/Lists for Congress (see slides [58-59](#))
  - And note the Sept. 2018 CAATSA-implementing EO (see slide [56](#)), and proposed DASKA Act would further broaden CAATSA (see slides [8](#) and [72](#)) ... and CAATSA sec. 232 scope expansion (see slides [10](#) and [55](#))
  - Various cyber- and defense-related CAATSA secondary-sanctions designations of Russian / other foreign entities to date (see slides [42-45](#) and [53-54](#))
- Crimea-focused EO 13685 of 19 Dec. 2014 ... and Crimea-related SDNs
  - Near-total embargo (as for Cuba), OFAC-administered, amended most recently in Sept. 2019
  - Related BIS implementing [rules](#) of 29 Jan. 2015
  - And OFAC Sept. 2019 Crimea-related SDN designations (see slide [48](#))
- Russian export pipeline sanctions – especially against Nord Stream 2 (CAATSA section 232, NDAA 2020 and 2021 etc., see slides [9-10](#), [55](#) and [63-65](#))
- CBW Act application to Russia of 2018-2019 (two rounds, see slides [66-71](#)) – and now 2021 too (per the Navalny poisoning etc.) – involves Treasury, Commerce and State Depts.
- Application of various Iran, Venezuela, Syria, and North Korea sanctions (including against some Russian companies) authorized by a web of laws and executive orders (see slides [35](#), [42](#), [45](#), [47](#) and [52](#) below)

*Bottom line: US Russia-sanctions analysis is now like peeling an ever more complex onion!*

# Basic Framework – US/EU/UK (*cont'd*)

## European Union

- EU Council Reg. No. [833/2014](#) of 31 July 2014 – as amended and (several times, most recently by Reg. No. 2019/1163 of 5 July 2019)
  - Applies to EU nationals and companies
  - Or anything happening in whole or part within EU territory
  - Or involving an EU-registered aircraft / vessel
  - Currently in effect to 31 July 2021 (extended as of 27 Dec. 2020)
- Commission [Guidance Note](#) (16 Dec. 2014, last amended 25 Aug. 2017) on application of certain provisions (the “EU Guidance Note”)
- And SDN-like “blacklist” Reg. No. [269/2014](#) of 17 March 2014
  - And updates since then (incl. re the Siemens turbines scandal and re the Kerch bridge – see slides [85-86](#))
  - Currently in effect to 15 Sept. 2021 (most recently extended on 12 March 2021)
- And, re Crimea
  - EU Council Reg. No. [692/2014](#) of 23 June 2014 – as amended by Reg. No. 825/2014 of 30 July 2014, and Reg. No. 1351/2014 of 19 Dec. 2014 (last extended on 18 June 2020 – now in effect to 23 June 2021)
  - Hits investments in oil & gas and other mineral resources E&P, power, transport, telecoms
  - And further ban on business in various other sectors – see slide [85](#) for detail
- EU Council Reg. No. [2018/1542](#) of 15 Oct. 2018, Concerning Restrictive Measures Against Proliferation and Use of Chemical Weapons; and implementing measures naming Russians as violators (incl. most recent – slide [14](#))
- And Dec. 2020 enactment of EU Global Human Rights Sanctions Regime – and March 2021 first application, against Russian officials in connection with Navalny detention etc. – see slide [14](#)
- **Post-Brexit UK:** see slides [87-88](#)

# US Sectoral Sanctions – OFAC

## Finance / Capital Markets

- The OFAC SSI sanctions *prohibit without license*:
  - Per [Directive 1](#) (as amended / effective Nov. 2017, per CAATSA addition): new debt financing with maturity of >14 days (*revised down from >30 days*), or new equity financing, for these designated entities or their subs (≥50%-owned), and transactions with or dealing in such debt or equity
    - *Bank of Moscow* (now merged into VTB)
    - *Gazprombank*
    - *Russian Agricultural Bank (Rosselkhozbank)*
    - *Sberbank*
    - *VEB*
    - *VTB*

(except depositary receipts based on pre-existing shares – per FAQ [391](#))

- And note OFAC’s expanded bank SSIs List (by several additions to date)
  - singling out many specific VEB, VTB, Sberbank, Gazprombank and Russian Agricultural Bank subs/affiliates – in Russia, Europe, and elsewhere
  - all of these were technically covered already under the 50%+ ownership rule – so they are also named / singled out just for emphasis / clarity, to help stop circumvention, etc.
  - but note that now any of these named subs would need specific OFAC delisting if/when no longer 50%+ owned by its “named SSI parent”
  - *e.g.*, Russian Direct Investment Fund (RDIF) – no longer a VEB sub, but still on SSI List
  - as opposed to, for example, Estonia’s Coop Bank (formerly Estonian Credit Bank) delisted in 2018 following 2017 buyout by Coop Eesti from VTB

# US Sectoral Sanctions – OFAC (*cont'd*)

## Finance / Capital Markets (*cont'd*)

- Per [Directive 2](#) (as amended / effective Nov. 2017, per CAATSA): new debt financing with maturity of >60 days (revised down from >90 days) for these designated entities or their subs (50%-or-more owned), and transactions dealing in such debt
  - *Gazpromneft*
  - *Novatek*
  - *Rosneft*
  - *Transneft*
- and here again, note the amended SSI Lists issued since 2015 to date – naming / singling out several specific Rosneft, Novatek and Transneft subs – to which the same two above-noted (re Directive 1) coverage caveats apply
- Per [Directive 3](#) (still as of 12 Sept. 2014 – not amended): new debt financing, maturity of >30 days, for Russian Technologies (Rostec) or its subs (≥50%-owned), and transactions / dealing in such debt (and see new FAQ [887](#))
  - and note that Rostec is also a CAATSA section 231 listed defense-industry entity (see slide [54](#) re the added Rostec-dealings burdens/risks this entails, for US as well as non-US persons)
  - and Rostec subsidiary Rosoboronexport (and its subs) now also SDN per 2018 designation
- And see related OFAC FAQs
  - FAQ [395](#) as amended, re permissible / prohibited US persons' activities with regard to L/Cs involving designated companies under Directives 1, 2 and 3
  - FAQ [419](#) as amended, re permissible / prohibited payment terms for US persons' sale of goods / provision of services to, and progress payments for long-term projects with, designated companies under Directives 1, 2 and 3
  - FAQ [371](#) re corresp. banking – OK only if the underlying transaction is permissible (thus seems stricter than under EU rules)
    - in other words, mere use of USD, without more, could violate – which is main reason why Russian companies, including oil exporters, are trying to move from Euro (or other currencies) as possible for transactions that have no other US link*
- Also need to consider possible treatment of certain equipment lease contracts as sanctions-prohibited debt financing
- And note OFAC [General License 1B](#) (of Nov. 2017)
  - Authorizing transactions by US persons (and otherwise within the US) involving derivative products having value linked to underlying asset that is prohibited debt (or equity) under Directives 1-3 (and see related updated FAQ [372](#))
  - Note (see slides [70-71](#)) that the CBW Act ban on US banks' lending doesn't extend to Directives 1-3 SSI state entities

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy

- [Directive 4](#) prohibits (*as amended / effective Jan. 2018, per CAATSA*) without license
  - The provision, export or reexport, directly or indirectly, of goods, services (except financial services) or technology
    - “in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil” in Russia
    - involving any of these designated entities or their subs (50%-or-more owned)
      - *Gazprom*      • *Gazpromneft*      • *Lukoil*      • *Rosneft*      • *Surgutneftegaz*
  - And keep in mind various SSI List amendments to date – singling out several Rosneft, Gazprom and Surgutneftegaz subs (and again with the same above-noted slide [19](#) coverage caveats applying)
  - Note also the 2015 BIS special [designation](#) of South Kirinsky field (only part of it is deep water) ... which hasn't yet been expanded to other such “borderline” fields

# US Sectoral Sanctions – OFAC (*cont'd*)

- *And, per CAATSA section 223 (enacted 2017), the Directive 4 scope was expanded to cover such projects worldwide, where one or more of these five designated Russian cos. has/have a (i)  $\geq 33\%$  ownership interest or (ii) majority of the voting interests*
  - but this scope expansion applies only to such outside-Russia projects that are “initiated” after Jan. 2018 – which means (per FAQ [536](#)) the date when the host government (or authorized agency etc.) “formally grants exploration, development, or production rights to any party”
  - thus, should not apply to outside-Russia projects where the Russian company(ies) obtained its/their interest at any time after the relevant gov’t grant of rights (but there could be fact/law/interpretation nuances here)
  - note also that, per related FAQ [537](#), OFAC’s “50% rule” – regarding involvement of SSI entity(ies) in such project – will apply to determine whether either of the sanction thresholds ( $\geq 33\%$  direct or indirect ownership interests or majority of voting interests) is passed
- The further proposed DASKA Act, if ever enacted, would further broaden sanctions coverage of oil E&P projects both inside and outside Russia (see slides [8](#) and [72](#))

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- Note OFAC FAQ [413](#) (and similar [BIS](#)) clarification that “deepwater” = over 500 ft.
- And OFAC FAQ [418](#) (and similar [BIS](#))
  - Clarification that “shale project” doesn’t include E&P *through* shale to locate or extract oil in reservoirs
  - Also, apparently, not all hard-to-extract = shale (not addressed further in later FAQ updates)
- And OFAC FAQ [421](#)
  - Re “Arctic offshore” = offshore field north of Arctic Circle
  - Including an Oct. 2017 clarification that this bar *doesn't* cover horizontal drilling operations originating onshore that extend to seabed areas above Arctic Circle
- And OFAC FAQ [420](#) – re only production (and *not* midstream / downstream) activities are covered

# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- For in-Russia projects, the Directive 4 reference to “*in Russia or in other maritime area claimed by [Russia] and extending from its territory*” – is understood to mean/include
  - Any offshore areas (inland / territorial seas, EEZ or Shelf): this is per a BIS FAQ [answer](#), and analogous explanations under other-country sanctions rules (and is consistent with EU Reg. [clarifications](#)) – *but see the cautionary note at bottom of slide [39](#)*
  - And Caspian Sea zone claimed by Russia (the similar EU sanction might not cover this?)
  - As well as the Black Sea shelf area extending from Crimea (despite non-recognition by US as being part of Russia)
- And note the FAQ [414](#) clarification that this sanction doesn't apply if an otherwise-covered project has the potential to produce only gas
  - But *does* apply if potential for both (often not clear; per factual / evidentiary showing)
  - *And note that BIS (and likely OFAC too) considers condensate = oil* (even though the old ban on export of US crude oil, which gave rise to the equivalence rule, has been lifted)
  - And most Russian gas fields have some condensate (as South Kirinsky does)



# US Sectoral Sanctions – OFAC (*cont'd*)

## Energy (*cont'd*)

- The Directive 4 export ban thus covers essentially
  - All US-origin goods, US-origin services (*except for financial services – covered in Directive 2*), tech. assistance and technology in respect of such projects
  - To the five main listed companies and their subs (and expressly including the added named Rosneft, Gazprom and Surgutneftegaz subs)
  - And likely also to / for use at the South Kirinsky field (and any others that may be so designated)
  - The carve-out for financial services (includes clearing transactions and providing insurance re such activities – per OFAC FAQ [412](#) – but see also the further explanation in FAQ [415](#))
- There have been some license applications / favorable actions under Directive 4 (but still a much stricter approach than in the EU to date)
- Note the “support services” compliance focus / risk

# US Sectoral Sanctions – OFAC (*cont'd*)

## General

- All four directives (re finance / capital markets, and energy) also expressly prohibit
  - Any transaction that evades or avoids, has that purpose, or causes a violation of, or attempts to violate any of the directive prohibitions
  - Any conspiracy formed to violate any of same
  - And again, note in this respect the several SSI List supplements to date – singling out, essentially just for anti-circumvention emphasis, several subsidiaries/affiliates of
    - Rosneft, Gazprom, Novatek, Transneft and Surgutneftegaz (under Directives 2 and 4)
    - VEB, VTB, Sberbank, Gazprombank and Russian Agricultural Bank (under Directive 1)
- Possible penalties
  - Civil:
    - >\$311,922 (per latest March 2021 inflation adjustment) *per violation*, or up to twice the value of the transaction that was the basis for the violation
    - per separate OFAC [action](#), this amount applies to transactions valued at \$200,000 or more – and the possible penalty is \$200,000 for transactions valued from \$100,000 to \$200,000 (and lesser amounts are on a scale for lesser amount transactions)
  - Criminal: up to \$1 million per violation
  - And individuals could be imprisoned (for up to 20 years) for criminal violations
- *And remember: while these OFAC Directives (and the CBW Act sanctions)*
  - *in general apply directly only to US persons (incl. USD transfers through correspondent banks in the US)*
  - *now there is enhanced risk of application to non-US companies/individuals also – per the CAATSA secondary sanctions (slides [56-57](#) below)*

# US Sectoral Sanctions – BIS

## Export / Reexport Restrictions

- The basic-limited August 2014 initial BIS Russia sanctions / license requirements – applying to *any* Russian end-users / uses
  - When the exporter knows the items will be used directly or indirectly in exploration for or production of oil or gas in Russian deepwater, Arctic offshore, or shale formations
  - Or is unable to determine whether the item will be used in such projects
  - And *presumption of denial* when for use in such projects “that have the potential to produce oil” (here again, grey area where could produce both gas and oil)
  - And importantly, as noted above, BIS considers that condensate = oil
- This August 2014 regulation restricts (requires license for):
  - Only specifically designated ECCN items and also several listed types of drill pipe, casings, wireline, downhole equipment (per Supp. No. 2 to Part 746.5 of the EAR)
    - for *all* Russian entities
    - when used in Russian deepwater, Arctic offshore, or shale projects
  - Expressly including, but not limited to
    - *drilling rigs*
    - *parts for horizontal drilling*
    - *drilling and completion equipment*
    - *subsea processing equipment*
    - *Arctic-capable marine equipment*
    - *wireline & down-hole equipment*
    - *drill pipe and casing*
    - *software for hydraulic fracturing*
    - *high pressure pumps*
    - *seismic acquisition equipment*
    - *remotely operated vehicles*
    - *compressors, expanders, valves, risers*

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- Further, the same five OFAC-designated Russian energy companies (per OFAC Directive 4) have been on the BIS “Entity List” since Sept. 2014
  - *Gazprom*     • *Gazpromneft*     • *Lukoil*     • *Rosneft*     • *Surgutneftegas*
- Plus 15 specifically named Rosneft subs since 2015 and 51 named Gazprom subs since 2016 (essentially the same as those named by OFAC)
- Also likely (but not automatically) applies to some other owned or controlled subs – see BIS Entity List FAQ [134](#) (depends on nature of sub / its activities, control, and other factors)
- This specific Entity List designation imposes (re these companies, and at least several subs) – *see slide [21](#)*
  - A new license requirement for export, reexport, or transfer of “*all items subject to the EAR*”
    - for the 5 initially named energy sector companies (and likely also most of their subs)
    - when used in Russian deepwater, Arctic offshore, or shale projects
    - and now also at least for all the named Rosneft and Gazprom subs
  - *If... or if...* (the same previous-slide first-bullet oil/gas target projects litany applies here – and the rules of (i) denial presumption for oil projects, and (ii) condensate = oil, are applied here too)

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- And, as noted above, per a 2015 amendment, BIS added Gazprom's South Kirinsky field (Sea of Okhotsk, part of Sakhalin-3 areas project, off Sakhalin Island) to the Entity List
  - regardless whether in deepwater portion or not (the field has both)
  - this special designation was likely based on some particular factors
  - more such fields might eventually be named too, as also noted above (but none yet)
- BIS FAQ clarifications and license applications / actions (including re offshore drilling) – quite strict to date, like OFAC
- Also further 2015-20 Russia-related Entity List additions – adding many new Russian, Crimean, European and other OFAC-named SDN companies to this List (see slide [42](#))
  - Mostly in the cyber and/or defense categories; some of which are already OFAC-designated SDNs or may be indirect SSIs (as 50%-or-more owned by a directly designated SSI)
  - March 2020 [additions](#) – Aviron Ltd. and Technomar: “for acting on behalf of a listed company in circumvention of licensing requirements by procuring U.S.-origin items for Technopole Company”, which was listed in 2016
  - These companies are thus subject to BIS license requirement for all items that are subject to the Export Administration Regulations (EAR), with presumption of denial
- See the current full BIS Entity List [here](#)

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- What is “*subject to the EAR*” (including all EAR99 items)?
  - All items in / moving in transit through the US
  - All US-origin items, wherever located
  - And
    - *foreign-made goods that incorporate controlled US-origin goods*
    - *foreign-made software that is comingled with controlled US-origin software*
    - *foreign-made goods that are “bundled” with controlled US-origin software*
    - *foreign-made technology that is comingled with controlled US-origin technology*
  - ... in quantities exceeding the de minimis levels for applicable items (see [15 CFR §734](#))
    - currently 25% for Russia
    - *but there are also intricate rules re what items “count” here, beyond encryption technology*
  - Certain foreign-made direct products of US-origin technology or software
  - Certain commodities, produced by any plant or major component thereof outside the US, that are direct product of US-origin technology or software
- *Note: includes even in-country transfers between entities (e.g., within Russia)*
- And BIS also has discretion to apply these sanctions more broadly (*i.e.*, without direct deepwater, Arctic offshore or shale status), for any Russian users, if there is perceived unacceptable *risk of diversion* etc. (per [15 CFR §746.5\(a\)\(2\)](#) etc. – see slide [21](#))

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- March 2021
  - BIS new Entity List designations – 14 Russian, German and Swiss entities (see slide [8](#))
  - BIS new licensing restrictions on (and waivers re) export / re-export / transfer of national security-sensitive items to Russia (see slides [8](#) and [66-67](#))
- And broader general military end-use / user restrictions for Russia (and other countries) – 2020 chronology
  - Feb. 2020 [final rule](#) tightening some Country Group designations – affecting some exports and reexports to Russia (based on missile, nuclear, and chemical & biological weapons proliferation concerns)
  - April 2020 publication of two final rules (effective 29 June 2020) and one proposed rule (also now issued as final rule) targeting national-security-controlled exports and re-exports to Russia, China and Venezuela, as follows
    - elimination of [Civil End-Users](#) (“CIV”) license exception
      - ❖ the CIV had allowed exports of items controlled for national security reasons to a few countries including Russia, if for civilian end use, per simple confirmation by internal due diligence
      - ❖ this benefitted US companies in some high-tech sectors such as semiconductor, sensors, telecom, aircraft, other advanced manufacture
      - ❖ but US exporters and enforcement officials have been finding it increasingly difficult to distinguish between military and commercial sectors in destination countries including Russia
      - ❖ now exports previously authorized by the CIV exception will require a specific license from BIS, regardless of end use/user (unless another license exception applies) – this presumably affects the civil-use exception recognized under the two rounds of CBW Act sanctions (see slides [66-71](#))
      - ❖ thus US companies may need longer lead time for such sales (and need to evaluate related technology transfer arrangements)

# US Sectoral Sanctions – BIS (*cont'd*)

## Export / Reexport Restrictions (*cont'd*)

- expansion of [military end-use and end-user](#) restrictions – further complicating US companies' business
  - ❖ expands requirement to obtain specific licenses for export to military end users/uses in Russia (and China and Venezuela)
  - ❖ covers wide range of potential dual-use items (there is already a blanket policy of denial for defense articles for these countries)
  - ❖ adopts regional stability controls for certain exports to Russia; and adds a new reporting requirement for controlled items
  - ❖ and see related new [FAQs 1-32](#) re the subject changes to EAR section 744.21
- And final [rule](#) eliminating re-export authorizations APR
  - ❖ to remove a provision of License Exception Additional Permissive Re-exports ("APR") for a small group of countries incl. Russia
  - ❖ namely, eliminated some permissive re-exports of sensitive US items to Russia (and China, Venezuela) based on approval by one of certain close ally countries – "due to variations in how the United States and its partners ... perceive the threat caused by the increasing integration of civilian and military technology development in countries of concern"
- And see related BIS Oct. 2020 [action](#) re Russia (and China, Venezuela)
  - [EAR amendments](#) to revise/refine license review policy for national security-controlled items
  - reviewing agencies now to consider whether proposed export/re-export/transfer of controlled items will make a "material contribution to the development, production, maintenance, repair or operation" of weapons systems capability



# US Sectoral Sanctions – BIS (*cont'd*)

- US Dep't of Justice March 2021 [announcement](#) of guilty plea agreement with Russian company and its owner, for their part in conspiracy to evade BIS-administered sanctions against Russia – attempted export of American-made turbine for use in Russian Arctic offshore oil drilling (and see further background news [here](#) and [here](#))
- Another notable important BIS action with regard to Russia
  - 2019 reported opposition to a US company's export to affiliates of United Aircraft Corp. (owned by Rostec) of high-tech composite material needed for new-generation Russian passenger liner MS-21
  - and reported related US pressure on Japanese producer of same material; this sparked Russian gov't support development of local substitute (see [report](#)) – reportedly now being certified, production kick-off anticipated for 2022
- See BIS 2015 [Guidance](#) on Due Diligence to Prevent Unauthorized Transshipment / Reexport of Controlled Items to Russia
  - Expresses BIS concern “about efforts by front companies and other intermediaries who are not the true final end users...”
  - Special focus on third-country freight forwarders and other dubious parties listed as an export item's final destination
- See also OFAC May 2020 [Guidance](#) to Address Illicit Shipping and Sanctions Evasion Practices

# US Sectoral Sanctions – BIS (*cont'd*)

- Related notes on transshipment etc.:
  - Be wary of relying on a “we only shipped to a third-country distributor / warehouse” defense (generally for Russia, and for Crimea in particular – see slide [44](#) below)
  - The prevailing “knowledge or reason to know” standard (developed for Iran, but applies generally)
  - Various pronouncements / cases to date (see the Epsilon Electronics case [decision](#) in particular)
  - And another OFAC similar enforcement action in 2018: a US company was fined for knowingly shipping controlled hi-tech goods to like-named sub. of known Russian defense industry SDN Almaz-Antey through Canadian and Russian distributors (and the purchaser end-user evidently was known to the seller)
    - i.e., this was not a case of selling through distributor to unlimited/unknown buyers in Russia
    - provides vivid reconfirmation of the importance of a company’s having meaningful, not just facial, screening program and due diligence in all proposed Russian-related dealings
  - And similar 2019 OFAC [announced](#) Settlement Agreement with US/Dutch co. (PACCAR/DAF) involving trucks diverted through Russian front buyer to Iran
  - Also another OFAC 2019 enforcement action involving a prominent US company – direct payments to it from Cuban SDN end-user of product, per sales through Canadian customer (and various others since then)
  - See also OFAC case [announcement](#) 20 Oct. 2020 Settlement Agreement with a prominent US private equity firm for its Turkish subsidiary’s repeated evasive product sales through Turkish third-party distributors to end-customers in Iran in violation of US trade sanctions
  - And newest relevant OFAC Settlement [Agreement](#) with Nordgas of Italy, 26 March 2021
- Possible penalties
  - Essentially same as for OFAC, and now CAATSA too, sanctions violations (see slides [26](#) and [62](#))
  - Plus denial of US export privileges (incl. that no one can export US items to the penalized co.)
- *Note again: BIS and OFAC licensing / enforcement authority often overlaps – and thus thorough analysis of both sets of rules, and perhaps authorizations from both agencies, may sometimes be needed for one and the same proposed transaction*

# US Direct Sanctions – SDNs

## Specially Designated Nationals (SDN) List

### Intro / Basics

- Based on EOs 13660 and 13661 of March 2014, 14024 of 15 April 2021, etc.
- These are the US “direct” sanctions (as opposed to the SSI “sectoral” sanctions)
  - All US persons’ dealings with – including payments to or receipt of goods / services from – individuals or company SDNs (and subsidiaries) are generally prohibited, and US persons must block their assets
  - Absent applicable general or specific license from OFAC (see slides [40](#) and [46](#) below)
  - Possible further penalties – essentially same as above for other OFAC (and BIS) sanctions violations
- Plus risk of application of CAATSA-based secondary sanctions – see slides [49-62](#) below
  - Against non-US companies / individuals that initiate or continue dealings with designated SDNs (“for knowingly facilitating significant transactions for or on behalf of” them – per OFAC April 2018 release)
  - See also OFAC FAQs [574](#), [579](#), [580](#), [589](#), [590](#) and [627](#) – and see generally slides [60-61](#) below
  - *Note: there have been some CAATSA-based SDN designations to date (including Russian companies and individuals in the cyber sector)*

### SDN Individuals

- Some industry executives / oligarchs have been on OFAC’s SDN list since 2014 (and then expanded further in 2015-20) – most notably
  - Initially Messrs. Sechin, Timchenko, Rotenberg – and then Technopromexport’s CEO (per the Siemens turbines scandal of 2017); and another Kremlin insider Yevgeniy Prigozhin in 2016
  - April 2018 dramatic expansion: including Messrs. Deripaska (control of RUSAL, En+, Basic Element, GAZ Group, etc.), Vekselberg (controls Renova, etc.), Miller (Gazprom CEO), Kostin (VTB CEO), Bogdanov (Surgutneftegaz CEO) and Kerimov
  - These designations followed the US Treasury Dept. CAATSA sec. 241 Report to Congress listing many of Russia’s senior political figures, oligarchs, and “parastatal entities” (see slides [58-59](#))
  - And in Feb. 2020 Didier Casimiro, CEO of simultaneously SDN-designated Rosneft Trading S.A. (and he’s now a Rosneft SVP), under Venezuela sanctions
  - *Some fear in early 2021 of further leading oligarch designations in connection with Navalny events, but hasn’t happened yet (though could still) – see slides [7](#) and [73](#)*

# US Direct Sanctions – SDNs (*cont'd*)

- Such individual-person listing
  - Bars US persons' dealings with them or their controlled companies, blocked assets etc.
    - generally measured by  $\geq 50\%$  shareholding
    - including by two or more SDNs (see OFAC FAQs [398-402](#))
    - *note in particular the serious knock-on effect of the 2018 designations of Messrs. Deripaska and Vekselberg – given their vast direct and indirect controlled-company holdings*
  - Doesn't bar dealing with *non-SDN company* where SDN person is just officer/director, etc. (e.g. Mr. Sechin - Rosneft ... and also Messrs. Miller, Kostin, Bogdanov, etc.)
    - except is now clearly interpreted to bar having an SDN-individual executive signing a contract on behalf of a non-SDN company with US person (OFAC FAQs [398](#), [400](#) – and see FAQ [585](#))
    - and US companies must also be cautious even re "mere" negotiating with such SDN-individual executive (or his/her signing non-binding preliminary documents) acting on behalf of a non-SDN company, or transactions where the SDN-individual is otherwise directly involved
    - note the 2017 OFAC \$2 million penalty imposed on a leading US energy company for Mr. Sechin's signing Rosneft JV documents in 2014 – *but see Dec. 2019 US federal court [decision](#) vacating that penalty, while reinforcing that now US persons are on fair notice*
    - in light of the above, is a US person serving on a Russian company board of directors together with an SDN person still OK? (in any event there is a clear bar on US person's serving on the board of an SDN company – FAQ [568](#), slide [39](#))
    - also need to keep in mind separate SSI sanctions / restrictions re such companies (e.g., Gazprom, Surgutneftegaz and VTB)
  - *Compare with EU June 2020 Commission Opinion on the same subject – which has important broader definition of "control" (see link at slide [86](#) below)*

# US Direct Sanctions – SDNs (*cont'd*)

## SDN Companies

- Dramatic SDN company designations of April 2018 (and wind-down periods, including several successive extensions, set by General Licenses (GLs) for dealings with them), including
  - En+, RUSAL, Basic Element, GAZ Group, EuroSibEnergO, Russian Machines, others (linked to Mr. Deripaska)
  - Renova (linked to Mr. Vekselberg)
  - As well as any other companies ultimately owned  $\geq 50\%$  by any of the SDN individuals
  - These designations hit hard – for the first time in the heart of Russia's private-sector economy
  - More still to come from the Jan. 2018 "Oligarchs List"? (depends on ongoing course of US-Russia events) – *nothing more yet ... though again, could come as part of further Biden Admin. sanctions*
- Then OFAC's SDN delisting of Deripaska-controlled companies – RUSAL, En+, EuroSibEnergO
  - In Jan. 2019 per OFAC [Update](#)
  - Benefited these three companies and their subsidiaries – but Mr. Deripaska himself (and any company he continues to hold  $\geq 50\%$  of) remain as SDN per his April 2018 designation
  - Followed the three companies' petition to OFAC (per 31 CFR § [501.807](#)) and months-long negotiation (and several related General Licenses / extensions during that period – see slide [40](#)), and based on a set of strict restructuring and governance change [undertakings](#)
  - And these companies are subject to redesignation if any of the agreed terms are violated
- See slides [42-45](#), presenting several more Russia-related SDN designations in various categories – which may be less directly important to most business but should be kept in mind

# US Direct Sanctions – SDNs (*cont'd*)

## SDN Delistings

- Further notes re SDN delisting:

- The Deripaska companies' delistings were based in large part on the unintended consequences of the SDN designations for the US (and world) aluminum market etc. – and thus may well not be readily achieved by other Russian SDNs
- Deripaska's GAZ Group (automotive giant) might eventually also be SDN-delisted upon ownership restructuring for Deripaska decontrol etc. – per July 2020 extensions of GLs to 22 Jan. 2021 (and now further extended in late Dec. 2020 to 21 July 2021):
  - [GL 13P](#): for divestment / transfer of debt and equity holdings etc.
  - [GL 15J](#): for maintenance/wind-down of pre-existing commercial relations – *but also allowing a broad range of new commercial activities with GAZ and its controlled entities* (and imposing new regular reporting requirements on GAZ – including monthly certifications that the Group is not acting for or on behalf of Deripaska or other SDN, and that control is in the hands of the Board and shareholders)
  - Also OFAC July 2020 related amendments to several FAQs
- Still pending Vekselberg and Deripaska US court challenges against their OFAC SDN designations / consequences
  - Vekselberg- and Renova-linked US investment management cos. and GP entities, which are not SDNs but whose assets and related proceeds were blocked because of Vekselberg/Renova majority ownership of asset-holding entities, filed [complaint](#) in US federal court in 2019 – basically challenging OFAC's 50% rule as applied to them – case [dismissed](#) in Sept. 2020
  - And reported Dec. 2020 Swiss court decision rejecting Vekselberg co. claim against bank to unblock USD funds (see slide [61](#))
  - OFAC notified Mr. Deripaska in Jan. 2020 that he is unlikely to be delisted (see [letter](#) and [news report](#)), and OFAC formally denied his request in March 2020 (see federal court case [complaint](#) and current [status report](#))
- But note Russian-American physicist/entrepreneur V. Gapontsev's successful legal challenge to his 2018 OFAC "Oligarch List" designation – seems a special case: notified by OFAC Sept. 2019 [letter](#) that he "is not an oligarch in the Russian Federation for purposes of Section 241 of CAATSA" (see slides [58-59](#)); this lifted cloud from him and his Mass.-based company IPG Photonics
- And also March 2020 [delisting](#) of Khudainatov's Independent Petroleum Co. (NNK) and a sub (had been designated in 2017 for shipping petroleum products to North Korea)

# US Direct Sanctions – SDNs (*cont'd*)

## Dealing with SDNs: Guidance, Licensing, etc.

- See the related OFAC 6 April, 23 April FAQs [567-582](#) and more on 1, 22 and 25 May, and 14 Sept. 2018 (FAQs 625 and 626 – see below), as further amended on [22 July 2020](#) – giving guidance to US persons re continued relations with such designated SDN companies (or those also covered by the 50% rule) or individuals, including:
  - Employment by or board service at such a company
  - Purchase / import of goods from such a company
  - Ownership of such a company's shares or GDRs
  - Holding accounts or other property of such a company or individual
- And note the most recent OFAC FAQ re “maintenance” of operations, contracts etc. with GAZ Group (and their subs)
  - This is [FAQ 625](#) (as amended July 2020, from initial 2018 issuance that applied to all the then-designated Deripaska-controlled companies)
    - which refers specifically to the relevant General License re GAZ
    - may well also have more general application in other analogous GL-based maintenance/wind-down situations – so important to review / have in mind
    - *but caution is needed – OFAC and/or BIS or State Dep't guidances, restrictions and permissions (contained in GLs, FAQs, regulations etc.) stated in one document in the context of one sanctions program cannot automatically be applied / relied on in the context of a different-country and/or different agency program*

# US Direct Sanctions – SDNs (*cont'd*)

- *Specific licenses* – needed (especially by a US person) for any activity vis-à-vis an SDN that is otherwise prohibited by law, absent coverage by any general license (“GL” – see slides [46-47](#) re two important Russia GLs)
  - These licenses are issued on a private basis to the specific applicant (i.e., are not published or usable by others)
  - These may be / are granted by OFAC to allow certain transactions such as purchases / sales or money transfers to or from an SDN for a longer period than an applicable general license allows (or if no general license applies)
  - For example, [see](#) the report of Swiss pump-maker Sulzer obtaining two such licenses in April 2018, allowing (i) its buyback of shares from new SDN Mr. Vekselberg to reduce his holding to below 50%, and (ii) the related unblocking of Sulzer’s US bank accounts
  - Also the Oct. 2019 private license(s) reportedly granted for an SDN’d Chinese-owned ship to onload cargo (and various other examples reported from time to time)
  - And such licenses may be granted to allow US lawyers to advise / collect fees from SDNs on sanctions compliance (incl. help in SDN delisting application)



# US Direct Sanctions – SDNs (*cont'd*)

- OFAC "[Guidance](#) on the Provision of Certain Services ..." of 12 Jan. 2017 (and FAQs [495-499](#))
  - Provides some clarity as to what a US person (citizen or permanent resident) legal counsel (in-house or outside) or compliance officer can/can't do in advising a non-US company (employer, client) on the legality of proposed transactions under the US sanctions laws
  - Essential point: can advise on whether complies / violates (and approve if clearly complies ... e.g., upon OFAC authorization); but can't otherwise "facilitate" a violative transaction ... by voting at Board level, signing, etc.
  - *Indeed, as a general matter, "facilitation" (re a US person's direct or indirect participation in a non-US person's sanctions-relevant activity – involving not only SDNs but also SSIs) is a complex, case-by-case determination requiring careful factual analysis to determine whether any such US person's actions may be viewed as facilitating prohibited transactions or activities*
- And OFAC general (some Russia-related, others not) 2019-21 releases of note
  - See slides [11](#) and [48](#) for OFAC settlement agreements announcements re US companies' dealings with Crimea
  - Oct. 2020 Settlement Agreement with a leading US private equity firm (trade with Iran) – see slide [34](#) above
  - 9 Sept. 2020 OFAC [Settlement Agreement](#) with a US affiliate of a leading European bank for processing various USD payments involving two SDN-designated entities under the Russia sanctions program: the bank's diligence lapses are highlighted
  - Sept. 2019 OFAC [Settlement Agreement](#) with British Arab Commercial Bank (BACB):
    - London-based bank, having no US offices, business, or presence, was found to have violated the Sudan sanctions regs by processing many USD funding transactions for sanctioned Sudanese financial institutions that involved a nostro account at a non-US bank but also indirectly involved funds flows to or through the US financial system
    - OFAC found that BACB "ignored warning signs that reasonably should have put the bank on notice" of violative conduct (as elaborated in the settlement [announcement](#))
  - FAQs [819-820](#) of Feb. 2020 on amendments to OFAC's Reporting, Procedures and Penalties Regulations (RPRR)
    - clarifying that both US persons *and persons otherwise subject to US jurisdiction* (e.g., foreign banks handling USD transactions) are required to report to OFAC on a rejected transaction within 10 business days, and elaborating on the info required to be collected/submitted
    - see the underlying RPRR [amendments](#) of June 2019 (re blocking, unblocking, and rejected transactions reporting, and licensing procedures, etc.)
  - Framework for OFAC [Compliance Commitments](#) of May 2019 (including indication of OFAC intent to focus more on enforcement against responsible executives of companies, US as well as non-US, that have violated sanctions)
  - And see May 2020 [Guidance](#) for shipping industry etc.

# US Direct Sanctions – SDNs (*cont'd*)

## Other Notable SDN Designations

- Designations (persons / companies) under EOs 13661, 13662, and now 14024 of 15 April 2021 etc. – including against:
  - 48 Russian entities and individuals [designations](#) (for alleged cyber security, elections interference, and Crimea-related activities)
  - Fortuna and KVT [designations](#) re Nord Stream 2 (Jan. 2021)
  - Russian gov't officials [designations](#) re Navalny poisoning and imprisonment (March 2021)
  - 2018 designations of several Russian companies (including *Power Machines*) and officials involvement in transfer of turbines made by a Siemens Russian JV co. to Crimea
  - [Sept. 2019](#) designations of employees of already blacklisted Internet Research Agency (IRA), private jets and yachts of Evgeny Prigozhin (also an SDN already) and his front companies that allegedly finance IRA, under related Trump EO re election interference (see slide [48](#))
  - [Dec. 2019](#) and [Oct. 2020](#) cyber-criminal designations (re malware infesting financial institutions and industrial safety systems worldwide)
  - [Jan. 2020](#): further individuals in Crimea, and rail carrier running to Crimea across new bridge
  - And [July 2020](#): three individuals and five entities involved in furthering financier Prigozhin's operations in Sudan and assisting his ability to evade sanctions (and related 23 Sept. 2020 designation – see slide [45](#))

# US Direct Sanctions – SDNs (*cont'd*)

- Several more Russian officials in connection with the Ukraine/Russia Kerch Strait incident, Russian defense industry enterprises and four entities operating in Crimea, and some for alleged election interference operations
- Some coordinated with similar EU and Canada actions
- Also several Crimean commercial port and transport companies (and some Russian ships that call in Crimea), companies involved in the Kerch Strait and other Russia / Crimea transport projects, banks and resort complexes are also named
- And a number of Russian defense industry companies (as supplemented April 2018)
  - Including *Rosoboronexport* (ROE – Russia’s giant arms-export enterprise, a sub of Rostec ... an existing SSI per OFAC Directive 3 and on LSP) – and ROE’s sub Russian Financial Corp (RFK Bank)
  - And note a COVID-19 / Russia sanctions link: April 2020 [report](#) that the USG purchased a large shipment of ventilators, face masks etc. from KRET, another Russian SDN subsidiary of Rostec
  - And note Nov. 2018 SDN designations of three human rights abusers (two people and an entity) per CAATSA section 228
- And June 2017 (Independent Petroleum Co. – NNK, and a sub.) for dealings with North Korea – but now *delisted* as of March 2020 (see slide [38](#))

# US Direct Sanctions – SDNs (*cont'd*)

- Note: State Dep't Oct. 2017 CAATSA section 231(e) listing of Russian defense / intelligence sector entities (see slide [54](#)) – supplemented with 45 more individuals and entities in late 2018 (see below), and 6 more in early March 2021 (see slide [7](#))
  - This is the List of Specified Persons (“LSP”): doesn’t itself impose SDN (or any other sanctions) on them
  - *But*
    - many were already SDNs and some were SSIs (including Rosoboronexport – now is both), and
    - there is likely chilling effect in practice on US / other companies’ willingness to do business with them (see linked list of them at slide [51](#)), and
    - other companies risk having some SDN-like sanctions imposed on *themselves* under CAATSA section 235 for some kinds of “significant transactions” with them (see State Dep't announcement (slide [51](#)), and slides [54](#) and [57](#))
  - See further discussion on this at slides [54](#), [56-57](#) and [60](#) below
- And SDN designations of Sept. 2018 – per CAATSA section 231 (defense/intelligence-related)
  - Against
    - EDD (Equipment Development Dep't), a weapons-purchasing entity of the Chinese military – for taking delivery of advanced aircraft and missiles from Rosoboronexport of Russia, which is on the CAATSA section 231 List of Specified Person (LSP), and is also an SDN (see slide [54](#) below) and EDD’s director
    - these were the first-ever SDN designations under CAATSA section 231 (for significant transactions with the Russian defense or intelligence sectors)
    - [announced](#) by State Dep't (which also set out the specific sanctions chosen and being applied) – and also corresponding OFAC SDN designations announcement of Sept. 2018
- See also new Turkey sanctions mandate in NDAA 2021 (section 1241) – for purchase of Russian S-400 air-defense missile system – including statutory finding that this was a “significant transaction” per CAATSA section 231 (see next slide and slide [57](#))

# US Direct Sanctions – SDNs (*cont'd*)

- Further recent SDN designations of note affecting Russia – though not under the Russian sanctions regime
  - Trading affiliates of Rosneft: Feb.-March 2020 SDN designations, re Venezuela/PdVSA oil business
    - Rosneft's sale of all its Venezuela assets – after its two Swiss subs, Rosneft Trading S.A. and TNK Trading International S.A., were SDN-designated in Feb.-March 2020 (along with RT's Chairman and President) for buying/trading Venezuela crude
    - and then [announcement](#) that Rosneft was closing down these subs because of the SDN-related disruption caused (and new Swiss trading co., Energopole S.A., has been established by Rosneft)
    - and follow-on vessel designation of Jan. 2021 (see slide [13](#))
  - Chinese state-owned shipping giant – SDN designations in Sept. 2019 under Iran sanctions regime
    - two specific subsidiaries sanctioned under EO [13846](#), for shipping Iranian crude oil
    - with a Russia-related effect: one of those two subs had a venture whose tankers were carrying Yamal LNG product
    - in Jan. 2020 OFAC delisted that sub; thus, no more obstacle to dealing with it
    - note also related FAQs 804-807 issued in Nov. 2019 (only FAQs [804](#) and [805](#) have survived the Jan. 2020 delisting)
- Further designations – per CAATSA sec. 224 (cyber / election interference, etc.), and various EOs
  - [23 Oct.](#), [23 Sept.](#) and [10 Sept.](#) 2020 designations (for malware/election interference)
  - 15 July 2020 election-interference [designations](#); and [Sept.](#) and [Dec.](#) 2019 designations; and several more in previous few years
  - Several individuals and entities, mostly related to Crimea and the breakaway areas of eastern Ukraine
  - Various Russian and other entities and persons, for Venezuela, Syria and North Korea sanctions violations (oil shipments and others)
  - Against several Russian entities and individuals, for providing support for / enabling FSB
  - *And likely more coming in spring 2021 re SolarWinds / other hacking etc.*

# US Direct Sanctions – SDNs (*cont'd*)

## Two Special Cases – Glavgosekspertiza and FSB Designations / Related GLs

- Two general licenses issued by OFAC to respond to / correct overbroad reach of the Sept. 2016 and Dec. 2016 designations of GGE and FSB as SDNs (re GGE activities in Crimea and FSB alleged involvement in hacking / election-tampering):
  - OFAC [General License No. 11](#) of 20 Dec. 2016 (entitled “Authorizing Certain Transactions with FAU Glavgosekspertiza Rossii” - GGE)
    - gives general authorization for “all transactions and activities ... that are ordinarily incident and necessary to requesting, contracting for, paying for, receiving, or utilizing a project design review or permit from [GGE]’s office(s) in [Russia]”
    - except for carving out (i.e., still prohibiting) anything to do with GGE relating to Crimea
  - OFAC [General License No. 1B](#) of March 2021 (as replacing/slightly amending earlier GL 1A) under the cyber- and now also WMD-related sanctions – entitled “Authorizing Certain Transactions with the Federal Security Service” (FSB)
    - gives authorization for “all transactions and activities ... necessary and ordinarily incident to ... [r]equesting, receiving, utilizing, paying for, or dealing in licenses, permits, certifications, or notifications issued or registered by [FSB] for the importation, distribution, or use of information technology products” in Russia
    - but export, reexport, or provision of any goods or technology subject to the EAR requires BIS license, and fees payable to FSB must not be ≥\$5,000 annually
    - compliance with FSB law enforcement / administrative actions or investigations as well as regulations administered by FSB is also authorized

# US Direct Sanctions – SDNs (*cont'd*)

- And note OFAC FAQs [501-504](#) (the first three as amended in March 2021) repeating / clarifying certain points of General License No. 1B
  - Exportation of hardware and software directly to FSB or when FSB is end-user is prohibited
  - No license needed to clear Russian border control (which is under FSB jurisdiction)
- At the same time, keep in mind the various cyber-related SDN designations to date for assisting / enabling certain FSB activities etc. (see slide [45](#) above), and likelihood of more such
- And the related carve-out, per Oct. 2017 State Dep't CAATSA section 231 [Guidance](#), on required regulatory dealings with the FSB – while generally section 231 warns / sets new risk re “significant transactions” with FSB (see slide [54](#))
- [Executive Order 13848 of 12 Sept. 2018](#) – re election interference
  - Authorized imposition of asset blocking, exclusion from the US, and possible additional sanctions against any individual or entity found to have directly or indirectly engaged in, concealed or otherwise been complicit in foreign interference in a US election, to have assisted in such, or to be owned or controlled by or to have acted for such, etc.
  - Attempted to specify what constitutes election interference (perhaps to clarify “red lines” for Russia)
  - Further OFAC implementing regs. were supposed to follow, but none to date
- See also July 2020 Senate committee [report](#) (The Art Industry and U.S. Policies That Undermine Sanctions) – and OFAC 30 Oct. 2020 [Art Advisory](#)

# US Crimea Sanctions

- Crimea-focused Executive Order 13685 of Dec. 2014
  - Bars all new direct or indirect US investments / transactions into Crimea – including for energy sector / offshore areas
  - There are also Jan. 2015 BIS rules implementing this EO (see slide [17](#))
  - Many Crimea-related SDN designations (entities and individuals) from 2014 to date (slides [42-43](#))
  - And March 2020 voluntary [disclosure](#) by Swedbank of Crimea-related USD transfers by its Baltic affiliates
  - And these recent OFAC settlement agreements for Crimea-related sanctions violations
    - [Feb. 2021](#) one with a US digital currency payment processing company
    - [July 2020](#) one with world-leading US-based e-commerce co. re business with Crimea etc.
- And see July 2015 OFAC [Advisory Release](#) re circumvention / evasion by omitting critical information in financial and trade transactions (further to the EO)
  - OFAC warns re
    - various patterns / practices in financial transactions that hinder correspondent banks' efforts to identify and interdict (*note the very substantial fines suffered in recent years by various European banks for similar-type violations of OFAC sanctions – against countries other than Russia / Crimea*)
    - and similar practices in trade transactions – incl. in distributorship arrangements covering Russia
    - and OFAC advises various types of mitigation measures for these risks
- Note also these OFAC Crimea-related General License exceptions, including:
  - No. [4](#) of Dec. 2014, permitting various food and agricultural products (including soft drinks, cigarettes, etc.) and medicines, medical supplies and devices
  - No. [9](#) of May 2015, permitting common internet communications (see related OFAC FAQ [454](#))
- Further SDN designations (somewhat coordinated w/Canada and EU) following 2018 Kerch Strait Ukraine/Russia navies incident: in Sept. 2019, of 3 officers and 5 vessels of already blacklisted Sovfracht and its front co. Maritime Assistance; and in Jan. 2020 (slides [42-43](#))



# CAATSA / Guidances / Lists

- CAATSA (Countering America's Adversaries Through Sanctions Act)
  - Enacted in August 2017 (after passage through both Houses of Congress by near-unanimous vote)
  - Full text is [here](#) (PL 115-44) – the Russia-related part is Title II, sections 201-292
  - Eastern Ukraine / Crimea situation, alleged US (and European) election meddling, and Syria were/are the three bases for it
  - Broadened / toughened the pre-existing sanctions as contained in six Executive Orders, the Ukraine Freedom Support Act of 2014 (the "UFSA") and another 2014 law in support of Ukraine (now amended by CAATSA)
  - Also has framework authorization for some more *primary sanctions* (aimed at US persons, or dealings having some other nexus to US) and *secondary sanctions* (aimed at non-US persons – and not needing any US nexus)
  - Dramatically widened the gap between US and EU sanctions against Russia (*which has widened even further since then*)

# CAATSA / Guidances / Lists (*cont'd*)

- By accompanying Presidential Memorandum
  - CAATSA implementation functions were delegated mostly to State and Treasury Dep'ts (and in consultation with Director of National Intelligence)
  - with primary responsibility given to one or the other, on CAATSA article-by-article basis
- And note EO 13849 of Sept. 2018 setting out certain CAATSA sanctions implementation details for State and Treasury (see slide [59](#) below)
- CAATSA also covers Iran and North Korea – introduced stiffened primary and secondary sanctions with regard to those two countries
- The ever-tightening Iran, North Korea, Venezuela and Syria sanctions, aside from CAATSA, can also continue to affect some Russian (and Chinese) companies, banks, etc. (but those other-countries sanctions regimes are not further covered in this CAATSA summary)
  - e.g., the 2020-21 SDN'ing of two Rosneft subs., and various-nationality (including Russia) oil tankers and their owners – re Venezuela (see slides [13](#) and [45](#))
  - and Sept. 2019 SDN designation of two Chinese cos. (and Jan. 2020 delisting of one of them) – re Iran (see slide [45](#))
  - see also a July 2020 OFAC [Settlement Agreement](#) with a UAE company for trade with North Korea (through Chinese front companies)
- Also keep in mind
  - potential application of CAATSA secondary sanctions to non-US companies for dealings now barred for US persons under CBW Act second-round sanctions of 2019 – e.g., primary-market purchase of Russian non-ruble sovereign debt, or US bank lending to Russian sovereign (see slides [70-71](#))
  - the possible further broad expansion of Russia primary and secondary sanctions provisions by the still-proposed DASKA Act which, if ever enacted, would amend CAATSA (see slide [72](#) below)

# CAATSA / Guidances / Lists *(cont'd)*

- CAATSA's basic content (as Russia-relevant)
  - Codification by statute
    - of the existing Russia blacklist (SDN) and sectoral (SSI) sanctions enacted by the series of EOs since 2014
    - which made it harder for President Trump (and now will make it harder for President Biden and beyond) to narrow / loosen any of these sanctions by exec. action – would require new law to repeal CAATSA (*recall Jackson-Vanik Amendment's decades-long life*)
  - State / Treasury Dep'ts in Oct. 2017 issued important Guidances (and FAQs, Entity List, revised Directives) per various sections of the then-new law
    - State Dep't on 27 Oct. 2017 issued CAATSA section 231(e) List of entities in the Russian defense / intelligence sectors: section 231 requires President to impose sanctions on any US or non-US person, wherever located, that the President determines has knowingly engaged in a "significant transaction" with a Russian defense / intelligence sector entity on the [List of Specified Persons](#) as of now (and associated [Public Guidance](#) – and see slides [44](#), [54](#) and [57](#))
    - State Dep't also issued on 31 Oct. 2017 [Public Guidance](#)
      - ❖ on CAATSA section 225 (requiring President to impose sanctions on non-US persons that invest in certain types of oil projects in Russia (see further slide [53](#)))
      - ❖ and on section 232 (giving President discretion to impose sanctions on US or non-US persons that invest or are otherwise involved substantially in construction / modernization / repair of Russian energy export pipelines) – *and State Dep't update of July 2020 stiffen interp./application of that re Nord Stream 2 etc. (see further slides [10](#) and [65](#))*
    - OFAC (Treasury Dep't) on 31 Oct. 2017 issued its initial [Guidance](#) (including some revised and new FAQs) to implement various CAATSA provisions for which it has primary authority – including amended / expanded Directive 4 (re Arctic offshore, deepwater and shale projects) and three other CAATSA provisions (see below)
    - and see FAQs [540-547](#), [579](#) and [589](#) (all from Oct. 2017 or after) re "significant transaction", "facilitation" and other related CAATSA application issues
    - and further 2020 State Dep't stiffening Guidance re CAATSA section 232 – see slides [10](#) and [65](#)

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA stiffened existing OFAC Directives 1, 2 and 4 (*this is essentially for US persons – see slides [19-21](#)*)
  - *Directive 1*: permissible “new debt” of designated Russian banks was reduced from max. 30 to 14 days
  - *Directive 2*: permissible new debt of designated Russian energy cos. was reduced from max. 90 to 60 days
  - *Directive 4*: the prohibition on goods / services / technology involvement in deepwater, Arctic offshore or shale projects was expanded from Russia to worldwide
    - ❖ but, for outside Russia, applies only to “new” projects (see slide [22](#) above)
    - ❖ if one or more of the designated Russian energy companies has  $\geq 33\%$  ownership or  $> 50\%$  voting interest
  - All of this was then implemented by OFAC amendments of the relevant Directives – see slides [19-26](#) above
- Per CAATSA section 223(a), *potential* expansion of industry coverage of the OFAC sanctions (beyond financial services, energy, engineering / defense-related) – see FAQ [539](#) ... but none yet
- *Requiring review / approval by Congress*
  - per CAATSA section 216 – before President can terminate or waive existing sanctions (or grant any non-routine-type license that “significantly alters” foreign policy re Russia)
  - apparently including SDN delistings – such as those of En+, RUSAL and EuroSibEnergo in 2019 (Congress was notified, and opposition was insufficient to block)
- Reality check: Despite the “President shall impose” CAATSA sanctions language (see slides [53-56](#))
  - to date there has been no case of such imposition on any non-US person save for a few in the cyber-security and defense sectors – i.e., none yet in the purely civilian-economy space (see slides [42-45](#) above)
  - *but* notable recent secondary sanctions imposed on non-US persons under Venezuela (two Rosneft oil trading subs.) and Iran (two Chinese entities) sanctions programs (see slide [13](#))

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA: *requires* the President to impose sanctions – from a few menus of possibilities, mostly involving penalties re business with/in the US – in various contexts (*upon findings, and with some carve-outs / waiver possibilities – in other words, de facto discretion*) including against:
  - per CAATSA section 224 – US or non-US persons that knowingly engage in significant activities undermining cyber-security on behalf of the Russian gov't, materially assist, sponsor, or provide support for, or provide financial services in support of same (no general State or OFAC Guidance yet on this provision – but there has been some application ... see slides [42](#) and [45](#))
  - per CAATSA section 225 (and see the Oct. 2017 State Dep't Guidance), *non-US* companies and individuals that knowingly make significant investment in deepwater, Arctic offshore or shale oil projects in Russia (as written, could be whether or not one of the Directive 4 Russian cos. is involved – and the State Dept. Guidance doesn't clarify)
  - per CAATSA section 226 (and see the Oct. 2017 OFAC Guidance), *Russian and other foreign financial institutions ("FFIs")* that knowingly engage in / facilitate "significant" transactions involving any of the Directive 4-type oil projects in Russia, certain defense-related activities, or Gazprom's withholding of gas supplies
  - per CAATSA section 228 (and see the Oct. 2017 OFAC Guidance), *non-US* companies and individuals that knowingly – *this being the broadest / most worrisome CAATSA provision*
    - ❖ materially violate, attempt or conspire to violate or cause a violation of *any* Russia sanction
    - ❖ facilitate "significant transactions" (including "deceptive or structured transactions") for or on behalf of any person that is subject to *any* Russia sanction – or child, spouse, parent or sibling of same
    - ❖ though the related OFAC Guidance does go some way to calm fears of over-expansive application with respect to SSI sanctioned entities (see slides [60-61](#) below for details)
    - ❖ but note also the section 225 stiffened requirement to impose sanctions on any FFI that knowingly facilitates a significant financial transaction for any SDN

# CAATSA / Guidances / Lists (*cont'd*)

- per CAATSA section 231 (and see Oct. 2017 State Dep't List and Guidance), *US or non-US* companies and individuals that knowingly engage in a significant transaction with a Russian defense / intelligence sector entity on the List of Specified Persons
  - ❖ see the List, expanded as of 2 March 2021 (see slides [42-44](#) above) – and again note that a company's appearance on it doesn't itself mean any new sanction against it ... (but some were already SDNs or SSIs – *e.g., Rosoboronexport, which was on the list, has since been made an SDN*)
  - ❖ these include some defense-sector companies that also have important civilian-oriented production (*e.g. Sukhoi, Tupolev, and holding companies United Aircraft, United Shipbuilding*)
  - ❖ but the State Dep't Guidance (in FAQ) stresses that:
    - ✓ for now at least, purely civilian end-use / end-user transactions, and not involving intelligence sector, are not likely to be considered "significant"
    - ✓ and that transactions with the FSB (which is also on the List) are unlikely to be considered "significant" if necessary to comply with FSB rules or law enforcement / admin. actions / investigations involving FSB re import / distribution / use of IT products in Russia and payment of related processing fees to FSB (*i.e., this dovetails with OFAC General License No. 1 of Feb. 2017 – see slide [46](#) above*)
  - ❖ and from another State Dep't release of Sept. 2018 it appears that only the actual listed companies and not necessarily their subsidiaries are covered (at least not yet)
- per CAATSA section 233 (and see Oct. 2017 OFAC Guidance), *US or non-US* cos. and individuals that with actual knowledge make or facilitate investments into privatization of Russian state-owned companies (of \$10M, or combination \$1M+ bites for \$10M total in a year) where the process "unjustly benefits" RFG officials or their close associates / family (*this is also one of the CAATSA sections covered in further Sept. 2018 EO – see slide [59](#)*)

# CAATSA / Guidances / Lists (*cont'd*)

- Per CAATSA section 232 (and see Oct. 2017 State Dep't Guidance *as updated/stiffened July 2020* – detail and link at slide [65](#)), creating *discretionary* power for the President, *in coordination with US allies*, to impose various possible sanctions on US or non-US cos. or individuals that knowingly invest or are otherwise involved substantially in construction (or modernization, repair) of *energy export pipelines* by Russia – *e.g., Nord Stream 2* – namely:
  - make an investment that directly and significantly contributes to the enhancement of Russia's ability to construct energy export pipelines, or
  - sell, lease or provide to Russia, for such construction purpose, goods, services, technology, information or support that could directly and significantly facilitate the maintenance or expansion of construction, modernization or repair of Russian energy export pipelines
  - if any of the above has fair market value of >\$1 million, or an aggregate fair market value of >\$5 million during any 12-month period
  - there are some remaining softening points re CAATSA section 232 in the State Dep't Guidance clarification (despite the July 2020 update having closed the general grandfathering provision that had seemed to exempt Nord Stream 2) – namely:
    - ❖ covers only energy export pipelines that originate in Russia, and not those originating outside and transiting through Russia – *thus, safe harbor for the CPC pipeline*
    - ❖ and would not target investments / activities related to standard repair / maintenance of pipelines already in commercial operation as of 2 August 2017
  - AND see slides [10](#) and [63-65](#) re the Dec. 2019 additional PEESA / NDAA 2020 sanctions
    - ❖ *and now PEESCA / NDAA 2021 further tightening aimed directly against Nord Stream 2*
    - ❖ *and newest 2021 Fortuna (pipelaying vessels) and KVT (owner) SDN designations*

# CAATSA / Guidances / Lists (*cont'd*)

- *CAATSA has thus introduced a range of possible "secondary sanctions" – i.e., aimed at non-US persons (as well as potential new sanctions against US persons for certain conduct)*
  - whether or not there is any US person / US nexus
  - but OFAC's Oct. 2017 CAATSA Guidance reflects recognition that it would be inappropriate to penalize any / all foreigners' activities – *i.e.*, various possible dealings with SSIs (as opposed to SDNs) that aren't prohibited for a US person
  - for example
    - ❖ per OFAC's section 226 Guidance, FFIs are not to be subject to sanctions solely on basis of knowingly facilitating significant financial transactions on behalf of an SSI listed under Directives 1-4
    - ❖ and per OFAC's section 228 Guidance (appearing as FAQs [544-546](#) – and see FAQs [585](#), [589](#) and [590](#) as well):
      - ✓ a transaction isn't "significant" if US persons wouldn't need a specific OFAC license to participate in it
      - ✓ and if involves only an SSI entity there must also be a deceptive practice (attempt to obscure, conceal, evade) to be considered "significant"
      - ✓ and even if an SSI entity is involved, and also involves deceptive practices, it is still not automatically "significant" – rather, totality of circumstances (bearing in mind the below-specified factors) are considered
      - ✓ see updated / slightly refined [FAQ 545](#), as of 5 Jan. 2021
  - *but, caveat re the above and below references to US gov't agency "guidances" or FAQs:*
    - ❖ *they may be changed without notice (e.g., the July 2020 amended State Dep't Guidance re CAATSA sec. 232)*
    - ❖ *and in any event are not alone dispositive or otherwise sufficient to pursue a particular course of action, without specific agency authorization and/or targeted professional advice*



# CAATSA / Guidances / Lists (*cont'd*)

- what is a “significant” transaction (in “totality of the facts and circumstances”)?
  - ❖ in the State Dep't and OFAC Oct. 2017 Guidances, there are slightly differing elaborations of the “totality of facts and circumstances” factors taken into account, in view of the differing focuses of the specific CAATSA provisions at issue – but basic similarity
  - ❖ the State Dep't Guidance on section 231 implementation (re transactions with LSP-listed Russian defense / intelligence entities) highlights
    - ✓ relation to / significance of US national security and foreign policy interests, and significance of defense / intelligence nature
    - ✓ versus goods / services for purely civilian end-use / end-user weighing heavily against determination of significance
    - ✓ and also notes that unity with allied countries will be taken into account as a factor ... even with regard to such countries' purchase of Russian military equipment (from entities on the CAATSA section 231 List)
    - ✓ and see elaboration on this in State Dept's Sept. 2018 [release](#) / press conf. [transcript](#)
  - ❖ the State Dep't Guidance on section 225 (re investments into certain Russian oil projects) notes, among relevant factors, “the relation and significance of the investment to the Russian energy sector”
  - ❖ the OFAC Guidances on sections 226 (re certain energy or defense-related activities etc.) and 228 (facilitating significant transactions for any sanctioned entity etc.) set out several factors
    - ✓ keying on size, number, frequency, nature, management's level of awareness / whether part of pattern of conduct / nexus with blocked person (for FFIs' financial transactions) / impact on statutory objectives / whether involves deceptive practices
    - ✓ and other factors deemed relevant on case-by-case basis

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA section 241 Report and Lists:
  - US Treasury Dep't in January 2018 issued its required Report to Congress (per CAATSA sec. 241) re Russia's senior political figures, oligarchs and parastatal entities
  - Comprising an [unclassified main report](#) with list-appendices, and a classified annex
  - This Report was not a sanctions list (as stated in the Report itself, and in OFAC's accompanying FAQ [552](#), and in CAATSA sec. 241 itself)
  - The unclassified part
    - listed 114 senior political figures – in the Presidential Administration, Cabinet of Ministers, and “other senior political leaders” (including the CEOs of many of Russia's largest majority state-owned companies such as Messrs. Miller, Sechin, Gref, Kostin and Chemezov – *some of whom were already or have since become SDNs*)
    - and 96 “oligarchs” – Russian individuals having a net worth estimated at \$1 billion (apparently just taken from the Forbes list, set out in alphabetical order ... *a few having since become SDNs – see slide [35](#) above*)
  - The classified annex (submitted only to Congress) apparently featured
    - a list of Russia's “parastatal entities” (companies having ≥25% state ownership and 2016 revenues of >\$2 billion – see such an unofficial [list](#), in Russian, created / published by *Kommersant* newspaper on 30 Jan. 2018), an assessment of their role in Russia's economy, etc.
    - the oligarchs' (apparently including some not included on the unclassified list of 96) “closeness to the Russian regime” and sources of income, location of assets, etc.
    - an overview of key US economic sectors' exposure to Russian persons and entities
    - an analysis of possible impact of additional sanctions on these persons / entities

# CAATSA / Guidances / Lists (*cont'd*)

- The April 2018 SDN individuals designations came from among those on the Jan. 2018 List (and there have since been some threats of more, including per the proposed DASKA Act if ever enacted)
- And subsequent public news reports and further private sense
  - that some leading oligarchs have been restructuring holdings to reduce potential or actual sanctions exposure
  - and a number of state / “parastatal” companies are making preparations for possible further sanctions imposition
- Note also Jan. 2020 [news report](#) of an Asian gov’t declining to go forward on a proposed project with a Russian co. – apparently just because its principal is on the Oligarchs List; but most recently reported to be going forward despite this
- And a few legal challenges against inclusion on this List (e.g., successful Gapontsev case – slide [38](#))
- *Bottom-line note: companies considering dealing with any individuals or entities on these lists should have in mind the additional risks / due diligence concerns raised, and proceed with caution*
- And companion January 2018 report to Congress on the Effects of Expanding Sanctions to include Russian Sovereign Debt and Derivative Products (per CAATSA sec. 242)
  - Had an [unclassified main text](#); not clear if it also had a classified annex
  - Did not recommend in favor of such sanctions expansion (given the effects this would have on the ban on US and European, as well as the Russian, financial markets)
  - But note that a limited version of this sanction – ban on US banks’ participating in primary market for Russian *non-ruble* sovereign debt – became one of the CBW Act second-round measures in 2019 (see slides [70-71](#) below)
  - This limited Trump Administration measure has so far served to forestall Congressional appetite for possible broader Russian sovereign debt ban (*but more may now be brewing – see slide [8](#) above*)
- See also [Executive Order 13849](#) of 20 Sept. 2018 – re implementation of certain CAATSA sections, and see related OFAC FAQ [627](#) of 20 Sept. 2018 on this

# CAATSA / Guidances / Lists (*cont'd*)

- Some further CAATSA interpretative / application points
  - *Important issue*: whether all / any of these tightened and new anti-Russia secondary sanctions may be imposed against *Russian* as well as other non-US companies / individuals
    - by the technical CAATSA wording, yes – though such imposition against “target-country” persons isn’t traditional in US sanctions practice
    - and the fact of only CAATSA section 226 (amending UFGA section 5) being expressly aimed at “*Russian and other foreign financial institutions*” (emphasis added) might be taken as another sign that otherwise Russian entities/individuals are not intended to be caught – *i.e.*, that they are and can continue to be more easily targeted by existing/future *primary* sanctions as SDNs or SSIs
    - but in fact in 2018
      - ❖ a number of Russian companies and individuals have been SDN-designated for cyber-related activities under CAATSA section 224 (and some Russian companies / individuals already put on the section 231 LSP List, and others, might be vulnerable to same)
      - ❖ and Fortuna/KVT designations (per CAATSA sec. 232 and PEESA) in early 2021 – see slide [9](#)
  - In any event, here again, the mere possibility / threat of such application against otherwise non-sanctioned or at least non-SDN Russian companies / banks now makes some of them pause before doing possible sanctions-targeted business with sanctioned or possibly sanctioned Russian companies (especially with SDNs) under any of the CAATSA provisions
  - And *non-Russian* companies / banks certainly have become more cautious about doing any such business with Russian cos. (whether sanction targets or not) in general ... all the more so with the April 2018 SDN designations (core-economy oligarchs / their companies) and some newer US actions

# CAATSA / Guidances / Lists (*cont'd*)

- See a [reported](#) Jan. 2020 Finnish court decision dismissing claim by Boris Rotenberg, a US-designated SDN, that certain Scandinavian banks refused to serve his Euro accounts
- And a similar (Sept. 2019) English court [judgement](#) that upheld a bank's secondary sanctions risk argument against (non-USD) payment to creditor (a Vekselberg-affiliated entity); and also [reported](#) new Dec. 2020 Swiss court ruling against same Vekselberg affiliate (involving USD deposit at Swiss bank – so, involved primary sanctions)
- See also interesting 2018 English court [judgement](#) in the *Mamancochet* case involving claim vs. UK insurers controlled by US persons on Iranian insured loss
- Also a Singapore arbitration filed by Mordashov-owned Power Machines (“PM”) vs. Petrovietnam (“PV” – Vietnam’s state oil & gas co.) – per Nov. 2019 [press report](#) (and then Jan. 2020 [press report](#) that PM willing to carry on with project per non-USD payments)
- But see newest English court decision rejecting loan debtor PDVSA’s sanctions defense argument for non-payment: seen as “return to orthodoxy” under English law – and also the recent French court decision re US secondary sanctions (both links at slide [14](#))
- Note also this series of [reported](#) European court cases
  - holding that European cos. refusal to perform under contracts (e.g., with an Iran or Cuba entity) for fear of exposure to US secondary sanctions may well not be justified by force majeure – and may also violate [EU Blocking Statute](#)
  - including April 2020 Dutch court decision in the PGP case (see [report](#))
- Note: there is still a CAATSA exemption for Russian suppliers for NASA or DoD space launches
- And note the Russian counter-measures enacted in response to CAATSA and the April 2018 SDN designations – and more still to come? (see slides [15](#) and [89-93](#) below)

# CAATSA / Guidances / Lists (*cont'd*)

- CAATSA – potential penalties (same as for OFAC / BIS regs. violations – based on underlying laws)
  - Civil: \$311,922 (per most recent inflation adjustment) *per violation*, or up to twice the value of the transaction that was the basis for violation
  - Criminal: up to \$1 million per violation, and individuals could be imprisoned (for up to 20 years) for criminal violations
  - These being in addition to the CAATSA-referenced (see primarily section 235) menus of potential sanctions themselves
    - for non-US persons, involving various penalties re business in/with the US (and which can also include some possible personal penalties against CEOs / other officers of a sanctioned company)
    - note also OFAC's 14 Dec. 2020 [announcement](#) of new Non-SDN Menu Based (NS-MBS) list – primarily re CAATSA section 235
- Possible consultation with US authorities
  - Many US, allied-nation and other companies have been seeking private clarifications from State and Treasury Departments (and licenses) re the possible CAATSA application to their Russian dealings
  - For example, note the reported approach to / blessing from State Dep't re a major non-US energy company's participation in Russia deepwater drilling in 2017 (and other companies' reported similar consultations re Russian unconventional resource project participation)
  - And India's apparently getting a specific waiver to protect it from CAATSA section 231 sanctions in connection with a major new arms purchase from Russia, under a special US defense law provision amending CAATSA to allow this (*contrast with treatment of China – see slide 44*)
  - But most Russian companies seem hesitant to seek such, unless they need to
    - e.g., already-designated SDNs applying for delisting – *including En+, RUSAL, GAZ, etc. ... see slide 38*
    - and some more direct court challenges to SDN and/or Oligarch List designations (see slide 38 above)

# Export Pipeline Sanctions

- See latest legal/political/practical Nord Stream 2-related developments at slides [9-10](#) above – including
  - One of Russia’s two main pipelaying vessels, the Fortuna, has been SDN’d under PEESA and CAATSA
  - PEESCA / NDAA 2021 (see summary at slide [10](#)) – further expansion of existing NDAA 2020 Nord Stream 2 (and TurkStream 2) sanctions ... see just below
  - But nothing more in the whole 15 April 2021 sanctions packet: still not clear how NS2 will play out
- [NDAA 2020](#) enacted in Dec. 2019 (section 7503, pp. 1103-1107 as relates to Russian export pipelines – PEESA) essential contents
  - Supplemented the pre-existing (and since further stiffened) CAATSA sec. 232 (see slides [55](#) and [65](#)) – but aimed specifically at pipe-laying vessels and foreign persons participating in this
  - President *shall* (upon the mandated initial 60-day and thereafter 90-day report dates) exercise powers to block all property / interests in the US etc. of any company that is in violation of the requirements as of 20 Dec. 2019 enactment date – subject to wind-down, exceptions and waiver provisions (see next slide)
  - And exclude corporate officers and controlling shareholders of the above from entry into the US (or other involved foreign persons), and possible related blocking of property/interests

# Export Pipeline Sanctions (*cont'd*)

- There was a de-facto wind-down period
  - for persons having, not later than 30 days after the 20 Dec. 2019 enactment, engaged in good faith efforts to wind down operations that would otherwise subject the person to the sanctions
  - see also OFAC FAQ [815](#) of 20 Dec. 2019 in this regard
  - could be subject to different interpretations – in any event the main pipelaying contractor Allseas of Switzerland stopped work immediately following the enactment and never resumed – and more recently several other int'l cos. have backed out (see slide [9](#) above)
  - and consider further implications of Biden Admin. Feb. 2021 update report under PEESCA
- Plus typical exception and waiver authorities, including for
  - repair / maintenance / environmental remediation re pipelines, or safety of vessels and crew
  - national security and national interest waivers
- And a "termination and sunset" provision – which would end the sanctions authority (and any sanctions already imposed) on the earlier of (i) 5 years from enactment or (ii) the date on which the President certifies to Congress that appropriate safeguards have been put in place
  - to minimize Russia's ability to use the pipeline project as a tool of coercion / potential leverage (including by achieving unbundling of energy production/transmission in Europe), and
  - to ensure that the project would not result in a >25% decrease in volume of Russian energy exports transiting through existing pipelines in other countries, particularly Ukraine, relative to the 2018 average monthly volumes (note that the [reported](#) Russia-Ukraine gas transit extension agreement for 2020-2024 might serve to satisfy this requirement – will need analysis over time)
  - *note: these provisions could provide the basis for a US-Germany/EU compromise agreement allowing NS2 to go forward – if there is the political will on both sides*



# Export Pipeline Sanctions (*cont'd*)

- And State Dep't Oct. 2020 [guidance](#) on PEESA (prior to Dec. 2020 PEESCA / NDAA 2021 enactment)
  - Clarifying that knowingly providing vessels for construction of such project “may cover foreign firms or persons who provide certain services or goods that are necessary or essential to the provision of operation of a [pipelaying vessel]”
  - Including “providing services or facilities for upgrades or installation of equipment for those vessels, or funding for upgrades or installation of equipment for those vessels”
- And see
  - The closely related CAATSA section 232 (slide [55](#)), and
  - The July 2020 [updated](#) / stiffened State Dep't guidance thereon
    - removed key grandfathering carve-out for pipeline projects (such as NS2) that were underway upon CAATSA's August 2017 enactment
    - also removed the carve-out for investments and loan agreements made before August 2017 – thus evidently exposing anew the participating European energy companies and other “finance partners” to risk of section 232 sanctions
    - but accompanying State Dep't FAQs somewhat softened this aggressive new stance – by indicating that pre-July 2020 participation as such would not be targeted (see FAQs 3-5)
    - the FAQs also stress intended CAATSA 232 application to proposed TurkStream second line (TS2)
  - All the above taken together (plus direct threat letters by senator Cruz of [Dec. 2019](#) and [August 2020](#)) already had real effects
    - on NS2 very much so – the undersea pipe-laying for which wasn't quite complete: the contractor Allseas immediately suspended pipe-laying and then announced that it would not resume work
    - and another direct threat [letter](#) of 5 August 2020 from Senator Cruz and two others to executives of the German port that has been serving as staging area for completion of NS2 (which triggered considerable backlash in Germany)
    - then the further tightening US sanctions (by law and executive guidances) and related threats through 2020 and into early 2021 continued to scare off non-Russian supporting participation (by [insurers](#) and then [DNV-GL](#), the leading Norway-based certification agency) – thus causing further/ongoing delay

# CBW Act Sanctions

- Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (“CBW Act”) and related EO 12851 of June 1993
- Newest imposition of CBW Act sanctions (per BIS published announcement and rule effective 18 March 2021 (following from 2 March State Dep’t release) – see slides [7](#) and [8](#)) – for the Navalny poisoning (building on / overlapping with the [2018](#) and [2019](#) two rounds of such sanctions imposed for the Skripal poisoning, still in effect)
  - Specific provisions (and notes re: (i) waivers of certain of these new restrictions; based on national security, and (ii) comparison to the 2018-19 restrictions and waivers; and (iii) the practical effect)
    - termination of assistance to Russia under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food/agricultural commodities etc. (already imposed in 2018 – little/no practical effect)
    - termination of (a) sales to Russia under the Arms Export Control Act of any defense articles or services, and (b) licenses/other approvals for export to Russia of any items on US Munitions List – except in support of commercial space cooperation, but only for a six-month transition period (this is new), and government space cooperation
    - termination of all foreign military financing for Russia under the Arms Export Control Act (same)
    - denial to Russia of any credit, credit guarantees, or other financial assistance by any dep’t, agency or instrumentality of the USG, including the US Eximbank (same)
    - prohibition on 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 – i.e., National Security (NS) controls (same)

# CBW Act Sanctions (*cont'd*)

- And some of the waivers to restrictions on arms sales and commerce NS-sensitive items that were supplemented in connection with the first round CBW Act sanctions in August 2018 will continue, including:
  - items eligible for some standard license exceptions (need to carefully check the details) – i.e., no license application needed
  - safety-of-flight items (for civil passenger aviation) – case-by-case licensing still OK
  - “deemed exports/reexports” to Russian nationals in the US – licensing permitted on case-by-case basis unless otherwise prohibited
  - to wholly-owned US (and other foreign-company) subsidiaries in Russia – on same basis
  - in support of government space cooperation – on same basis
  - for state-owned/-funded enterprises – case-by-case licensing, but presumption of denial (*not clear*)
- But other export-related waivers from 2018 are now removed, including
  - items that were subject to some other standard license exceptions (again, need to carefully check the details)
  - for export/reexport of NS items to commercial end-users in Russia for civil end-uses (such applications will now be reviewed under “presumption of denial”)
  - for exports of US Munitions List items and NS items in support of commercial space flight activities are to be removed following a six-month transition period (after which, subject to presumption of denial)

# CBW Act Sanctions (*cont'd*)

- Notes re NS-sensitive goods and technologies
  - these being items designated as “NS 1” or “NS 2” on the [Commerce Control List](#) (“CCL” – Supp. No. 1 to Part 740 of EAR), all of which had been exportable with license for Russia pre-2018
  - there are many such items – spanning the whole CCL: nuclear materials, facilities and equipment; special materials, equipment, chemicals, microorganisms, toxins etc.; materials processing; electronics; computers; technology and information security; sensors and lasers; navigation and avionics; marine; and aerospace / propulsion
- *Keep in mind also the BIS Feb. 2020 final rule (see slide [31](#)), which may already have further narrowed the August 2018 exceptions/waivers even before the March 2021 new overlay; careful case-by-case consultation is needed in this area*
- Effectiveness term/conditions
  - minimum 12 months
  - and can be removed thereafter only upon Russia’s meeting several conditions (assurances of future preparation / no unlawful use of lethal chemical/biological weapons against its own nationals, and restitution to Navalny) which Russia is all but certain to not satisfy (or indeed make any effort to) just as in 2018-19
- New second round should be imposed in June 2021 (re Navalny poisoning) per CBW Act terms (not clear what may be included)

# CBW Act Sanctions (*cont'd*)

- The President (in consultation with Congress) will be required to impose at least three of the following six possible further sanctions:
  - Opposing loans/assistance from multilateral development banks (IFIs – e.g., World Bank, IMF)
  - Ban on US banks making almost any loan or providing any credit to the RF Gov't
  - Additional restrictions on exports of goods or technologies to Russia
  - Restrictions on the imports into the US of articles (which may include petroleum or any petroleum products) produced in Russia
  - Downgrading or suspension of diplomatic relations
  - Ban on air carriers owned or controlled (directly or indirectly) by the RF Gov't from flying to or from the US
- But note that in fact three of these enhanced-penalty menu items were already imposed, in August 2019 (see next slide), as second round of Skripal-related sanctions for Russia's failure to meet the above-noted conditions
  - By Trump Administration Executive Order ("EO") [13883](#), and follow-on clarifying State and OFAC releases – and again with various narrowing interpretations, exceptions and waivers

# CBW Act Sanctions (*cont'd*)

- State Dep't [Release](#) of August 2019 announced those three selected new sanctions:
  - 1) US opposition to any loan or financial assistance to Russia by int'l financial institutions (IFIs)
    - ❖ but there has been very little if any such loan / assistance activity to Russia in recent years in any event
    - ❖ and the US, while having weighty vote, doesn't have formal veto power over these (World Bank, IMF)
  - 2) prohibition on US banks' (i) participating in the primary market for *non-ruble denominated* Russian sovereign debt, and (ii) lending non-ruble denominated funds to the Russian government
    - ❖ this left US banks still free to purchase Russian sovereign debt on the *secondary market*, and *ruble* sovereign debt generally
    - ❖ and the ban on lending to the Russian "government" is narrowly defined as being only to the "Russian sovereign" – so that lending to Russian gov't-owned companies have been/is untouched by this sanction (but OFAC Directives 1 and 2 still restrict lending to the designated state-owned banks and energy companies – see slides [19–20](#) above)
  - 3) additional export licensing restrictions on Dep't of Commerce controlled goods / technology
    - ❖ stated to apply only to items controlled for chemical and biological weapons proliferation reasons
    - ❖ and the same waivers (license exceptions) that applied to first-round CBW Act sanctions (slide [67](#)) continued to apply here on case-by-case basis (and with same presumption of denial for state-owned / -funded entities)
    - ❖ but again, such availability of waivers now tightened by early 2020 Commerce/BIS rules, and now the new Navalny-related CBW Act sanctions (see slides [7](#), [31](#) and [66-67](#))
- Thus, the Skripal-related second-round sanctions (taken together with the waivers also simultaneously granted) had quite narrow/limited "bite" as a practical matter
  - But need to await the likely second-round Navalny-related sanctions – maybe the same, and/or different (and in any event with likely narrower exceptions/waivers)
  - See related new FAQ [890](#), and updated FAQs [673](#), [674](#), [675](#), [676](#)
  - And OFAC [Directive 1](#) of 15 April 2021 (per EO 14024 of same date – providing its own new authority ... not CBW Act based) now expands the Russian sovereign debt ban to ruble-denominated on primary market (but still no ban re secondary market – may still come?)

# CBW Act Sanctions (*cont'd*)

- OFAC CBW Act [Directive](#) of 2 August 2019 – provides definitions/details on the US bank lending sanctions, confirming that:
  - foreign branches of US banks, as well as US branches and subs of foreign banks, are covered
  - gives further wide definition of US “bank” – including depositories, securities/options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, investment companies, and employee benefit plans
  - confirms that “Russian sovereign” means any Russian ministry, agency or sovereign fund (including Central Bank, National Wealth Fund, Ministry of Finance) – but does *not* include Russian state-owned enterprises (though again, keep in mind OFAC SSI Directives 1 and 2)
  - and now see also OFAC Directive 1 of 15 April 2021 (related “US financial institutions” broad definition) and new OFAC FAQ [891](#) (narrow scope of covered Russian sovereign instrumentalities)
- State Dep't [Notice](#) in 26 August 2019 Fed. Reg.
  - memorialized the new CBW-related export control sanction, but also incorporated and appeared to somewhat expand/adjust the first-round export control sanction (slides [66-69](#))
  - *so special caution is needed with regard to any possibly sensitive exports / reexports to Russia (and all the more so per newest Commerce/BIS rules – see generally slides [12](#), [27-34](#))*
- Note also the risk of imposition of secondary sanctions on non-US persons under CAATSA (see slides [49-62](#)) for certain violations of the CBW Act sanctions
  - The CBW Act (and the EO triggering this second round) isn't among the sanctions acts specifically covered under CAATSA (see its section 222(a))
  - But CAATSA sec. 228 catches anyone who “facilitates a significant transaction” for or on behalf of “any person subject to [US] sanctions...” (i.e., could mean *any* sanctions); and would now be caught under EO 14024 of 15 April 2021 in any event

# Proposed Further US Laws

- See slide [8](#) for newest proposed additional sanctions law as of early 2021
- DASKA Act (DASKAA)
  - Dec. 2019 amended [draft](#) approved by Senate Foreign Relations Committee; and Senate sponsors' 18 Dec. 2019 [statement](#), and State Dept's 17 Dec. 2019 [letter](#) stating Administration's opposing views
  - As of fall 2020 some renewed focus on possibly moving it forward to enactment – though nothing more on this yet in 2021
  - Would amend/enlarge CAATSA in various ways (incl. enlarging scope of possible secondary sanctions – applicable to non-US persons) ... including mandating sanctions against:
    - Russian malicious cyber activities; shipbuilding industry; individuals and parastatal entities thought to be close to President Putin (and their family members, and financial institutions engaging in significant transactions with them)
    - a wide range of Russian domestic energy projects, and global energy projects involving certain Russian companies, including
      - making investments in LNG "export facility located outside of [Russia]" (with low \$ thresholds)
      - making investments in energy project (unclear meaning) outside Russia that also has involvement by a Russian parastatal or state-owned/controlled company (where total value of project is >\$250 million)
      - that sell, lease, provide to Russia goods, services, technology, financing or support that could directly/significantly contribute to Russia's ability to develop/produce crude oil resources in Russia (including with respect to associated infrastructure)
        - ❖ excludes maintenance of existing projects
        - ❖ USG to issue guidance as to (i) scope/application of the exception, and (ii) listing specific covered goods, services, technology, financing, support
    - US persons' dealing in Russian sovereign debt (this would expand the current limited CBW Act ban re Russia's sovereign debt – see slide [70](#))
  - Menu of possible sanctions is from existing CAATSA (mainly re commerce in/with US)



# Proposed Further US Laws (*cont'd*)

- And at least three more sanctions bills were introduced in Congress in 2020 (further forward movement only on the second one to date – see slide [8](#) above)
  - 10 Sept. proposed “Russia Bounty Response Act of 2020” – by Sen. Menendez and five other Democratic senators (keying on the Afghanistan bounty payment allegations, and containing a wide range of proposed sanctions consequences – see [press release](#) and [full text](#))
  - 24 Sept. proposed “Holding Russia Accountable for Malign Activities Act of 2020” – by three Democratic senators and Republican Sens. Rubio and Romney (keying on the Navalny poisoning – less elaborate, see [press release](#) and [full text](#))
  - 1 Oct. proposed “Safeguarding Elections by Countering Unchallenged Russia Efforts” (SECURE) Act by five House representatives (like DASKAA, would impose broader restrictions on US persons dealing in Russian sovereign debt than are in the current CBW Act (see slides [66-71](#)), including Central Bank or Treasury bonds and certain FX swap agreements – with some exceptions for shortest-term debt (see [press release](#) and [full text](#)))
- Further anti-Russia sanctions [package](#) proposed in June 2020 by a Task Force of the Republican Study Committee (“RSC” – a national security focused group in the US House of Representatives)
  - Advocates DASKAA enactment and further strengthening of the NS2 sanctions (the latter already well in progress – see slides [7-10](#) above)
  - And, among other things
    - SDN designation of VEB (Vnesheconombank – already an SSI entity under OFAC Directive 1, see slide [19](#))
    - sanctions on SWIFT (Society of Worldwide Interbank Financial Telecommunications) until it expels Russia from the SWIFT system
    - designation Russia as state sponsor of terrorism
  - Such proposed measures may seem extreme – but in the current environment this RSC report can’t be dismissed as a non-starter
- Momentum for any of these may be blunted for now (perhaps except for NS2) by Biden Admin. new 15 April 2021 sanctions package?

# EU Sectoral Sanctions

## Overview

- The EU sanctions regime (in Council Reg. No 833/2014 of 31 July 2014, most recently amended by [Reg. 2019/1163](#) of 5 July 2019, focuses on financial, energy, and dual-use / military sectors
  - Now in effect to 31 July 2021 (and likely to keep being extended for now)
  - Was fairly well coordinated with US ... but no longer, with CAATSA / Nord Stream / secondary sanctions, etc.
  - *E.g.:* no sanctions on anything re Russian gas-focused projects (given Europe's dependence on Russian gas supplies) ... and maybe not interpreted to cover condensate (see slide [24](#) above)?
  - And no sanctions on any oil & gas projects with Russian participation outside Russia (or on Russian energy export pipelines)
  - And guidance notice exempting mere correspondent banking (payment / settlement services) from the loan / credit bans – thus more lenient than analogous US rule / interpretation (*but see slide [88](#) re new UK interp.*)
  - *And, unlike the US, no broad-reach blacklisting into leading commercial entities, CEOs of leading state-owned cos. (and no Rosneft for business with Venezuela, no Chinese cos. for business with Iran, etc.)*
- Much easier to grasp the basic EU rules than the US ones (and all the more so now, with all the newer US acts and regs.) – essentially all in one document's four corners
- *But the devil (?) is in the diversity:*
  - Each member state competent authority interprets, authorizes (where called for) or denies, enforces, ... and sets / imposes its own penalties
  - Unlike the US ... where this is all a uniform, federal-level matter
  - Though some coordination / consistency is called for in the Regulation
  - And see EU Commission [Guidance Note](#) of Dec. 2014 (as amended most recently 25 Aug. 2017) – FAQs

# EU Sectoral Sanctions (*cont'd*)

- And now, with Brexit done as of 31 Dec. 2020, the EU sanctions no longer apply in UK
  - Replaced by UK's own essentially identical (for now) regime
  - But emerging interpretive differences between the EU and UK Regs already create some real questions (see slides [87-88](#) below, and FT [report](#))

## Energy

- Per the initial July 2014 energy-sector sanctions regime (Reg. art. 3):
  - Prior authorization is required for sale, supply, transfer or export, directly or indirectly, of the items listed *in Annex II* (see link to the Reg. at slide [18](#))
    - to *any person or entity* in Russia or elsewhere
    - if for use in Russia (clarified to include its EEZ and Continental Shelf – but not clear whether includes Russian sector of Caspian Sea)
  - Authorization is to be considered / granted by competent authority “*of the member state where the exporter is established*”, per other EU rules

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- But authorization shall *not* be granted for supply etc. of Annex II items
  - if reasonable grounds to determine that is for Russian oil (incl. condensate?) E&P projects:
    - ❖ in waters deeper than 150 meters (circa 492 feet)
    - ❖ in offshore areas north of the Arctic Circle
    - ❖ in shale formations by way of hydraulic fracturing (but not including E&P activities *through* shale formations to locate/extract oil from non-shale reservoirs)
  - *except for*
    - ❖ execution of obligation arising from contract concluded before 1 Aug. 2014 – or, per Dec. 2014 liberalization, from “ancillary contracts necessary for the execution of such contracts”, or
    - ❖ items necessary in case of certain events threatening health, safety or environment
  - in fact, there have been many such license applications / approvals since 2014 to date (for European and US companies, and EU subsidiaries / JVs of Russian energy companies)
  - and further note – EU has not followed US CAATSA / OFAC Directive 4 expansion of coverage to any such project worldwide having  $\geq 33\%$  ownership or  $> 50\%$  voting interest by designated Russian company(ies)

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- Restricted activities include (per Reg. art. 3a, as amended Dec. 2014):
  - Provision, directly or indirectly, of specified types of “associated services necessary for” deepwater, Arctic offshore, shale oil E&P projects (same litany-detail as for art. 3 – see slide [75](#) above) in Russia including in its EEZ and Continental Shelf (again note uncertainty re Russia’s Caspian zone):
    - these specified types of services:
      - *drilling*
      - *well testing*
      - *logging*
      - *completion services*
      - *supply of specialised floating vessels\**

[\* Note: EU Guidance Note FAQ 10 exempts “supply vessels such as platform supply vessels, anchor handling tug and supply vessels or emergency response vessels”]

  - and the same exceptions apply for
    - ❖ execution of an obligation arising from a prior (pre-12 Sept. 2014) contract / agreement or follow-on ancillary contracts, or
    - ❖ services necessary in case of certain events threatening health, safety or environment
  - *again, otherwise apparently no scope for authorization here – rather, a pure prohibition for / to all (if neither of the above two carve-outs applies)*
  - but may be attainable for activities (per Reg. arts 3 or 3a) in shallow-water portion of mixed shallow/deep water field?

# EU Sectoral Sanctions (*cont'd*)

## Energy (*cont'd*)

- Also, provision of the following services related to any Annex II items *needs authorization* from national competent authority (per art. 4.3 – existing since initial July 2014 version of the Reg., and as refined by Dec. 2014 amendment):
  - Technical assistance (or brokering services) re Annex II items and re provision, manufacture, maintenance and use of those items directly or indirectly
    - to anyone in Russia (including its EEZ and Shelf)
    - or to anyone in any other country if concerns items for use in Russia (including EEZ / Shelf)
  - Financing or financial assistance re Annex II items – including grants, loans and export credit insurance
    - for any sale, supply, transfer or export of those items
    - or for any provision of related technical assistance
    - also (as above for technical assistance) directly or indirectly to anyone in Russia (including its EEZ / Shelf) or to anyone in another country for use in Russia (including its EEZ / Shelf)
  - Per art. 4.4, authorizations may be granted on same basis as set out in art. 3 (and possible emergency services, with prompt post-reporting – per arts. 4.3 and 3.5)

# EU Sectoral Sanctions (*cont'd*)

## Finance – for Energy (and Military) Sector Companies

- Prohibits (per Reg. art. 5.2) direct or indirect purchase or sale of, provision of investment services for or assistance in issuance of, or other dealings with, certain debt or equity “transferable securities” (and money-market instruments) issued after 12 Sept. 2014 by
  - *Rosneft, Transneft, Gazpromneft* (the three currently designated entities engaged in “sale or transportation of crude oil or petroleum products” – per Annex VI [*Novatek isn't included*]), their non-EU subs (>50% owned), or persons or entities acting at their behalf / direction
  - Applies to debt securities, including money market instruments, with maturity >30 days (note OFAC Directive 2 now is = 60 days max.)
  - And note the relevant “transferable securities” definition: “... which are negotiable on the capital market” (some uncertainty re whether equity investment in LLC-type cos. is covered: some specialist practitioners take the view that it isn't – but can't surely rely on this)
  - And see EU Guidance Note FAQ 36 allowing modifications to transferable securities depending on materiality – *i.e.*, if would not “actually or potentially result in additional capital being made available to a targeted entity”
- Same basic prohibition re the three designated Russian entities connected with military-sector goods / services – including United Aircraft Corp. (per Annex V), with exception for space / nuclear sector entities (and a hydrazine exception)
- And note that the EU rule / interpretation re depositary receipts (GDRs etc.) appears to be stricter than that of the US (compare EU Guidance Note FAQ 37-39 with OFAC FAQ 391)

# EU Sectoral Sanctions (*cont'd*)

## Finance – for Russian Banks

- Prohibits (per Reg. art. 5.1) purchase or sale of, provision of investment services for or assistance in the issuance of, or other dealings with, “transferable securities” or money-market instruments
  - issued by the 5 Russian banks designated in Annex III (Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank – Russian Agricultural Bank)
    - or their non-EU subs (>50% owned)
    - so, essentially the same coverage as the US OFAC sanctions
  - or persons or entities acting on their behalf or at their direction
- Applies to
  - debt securities issued (i) 2 Aug. - 12 Sept. 2014, with maturity >90 days; and (ii) after 12 Sept. 2014, with maturity ≥30 days (*note OFAC Directive 1 now is = 14 days max.*)
  - and to equity securities issued after 12 Sept. 2014 (as does US OFAC Directive 1)
- See EU Guidance Note FAQs 33-34, addressing what EU subs of targeted Russian bank entities can / can't do (including warning re passing on funds = circumvention)



# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks

- Prohibits (per Reg. art. 5.3) directly or indirectly making or being “part of any arrangement to make” new loans / credits with maturity >30 days after 12 Sept. 2014 to any entity covered under the previous two slides – namely
  - the three Russian energy-sector companies (per Annex VI)
  - the five Russian banks (per Annex III)
  - the three Russian military-sector companies (per Annex V)
  - or their non-EU subs, or persons acting on their behalf or at their direction
- And see EU Guidance Note, FAQ 31
  - rollover of an existing debt is allowed, subject to 30-day maturity restriction
  - but succession of rollovers each with maturity of  $\leq 30$  days may = circumvention

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks (*cont'd*)

- Certain carve-outs provided (per Reg. art. 5.3, amended as of Dec. 2014)
  - *Trade finance exemption*: for “loans or credit having a specific / documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between the [EU] and any third State” (intended for use by targeted entity)
  - *But not* for purpose of *funding* any such entity (see art. 12)
  - Practical approach to the interplay here: compliant vs. circumvention? (see Reg. art. 12)
  - And see EU Guidance Note FAQ 11: this exception “should be interpreted narrowly” (but also FAQs 11-21 clarifications)
- And note these further EU Guidance Note FAQ clarifications
  - Post-Sept. 2014 cancellation of a pre-Sept. 2014 loan = prohibited new loan (FAQ 25)
  - A new term deposit at a targeted bank isn’t barred (but see FAQ 27 re circumvention)
  - Correspondent banking (or other payment / settlement services) is in itself ≠ making or being part of arrangement to make new loan or credit (FAQ 28, and see FAQs 1 and 2) – *contrast this with the US/OFAC position, see slide 20*
  - Payment terms / delayed payment for goods / services ≠ per se prohibited loan/credit – but warning that may suggest circumvention if (per FAQ 30)
    - “not in line with normal business practice”, or
    - “have been substantially extended” since 12 Sept. 2014
- Some forms of prepayment finance for Russian oil producers are permissible (and occurring daily)
- Note the Feb. 2020 UK Office of Financial Sanctions Implementation [announcement](#) of penalty against a major UK-based bank for making several loans to then-Sberbank-sub. Denizbank of Turkey in violation of Reg. article 5.3

# EU Sectoral Sanctions (*cont'd*)

## Loans – for Energy (and Military) Companies and Banks (*cont'd*)

- And note art. 5.4 (introduced by Dec. 2014 clarification) – carving out from the general prohibition *new drawdowns / disbursements under pre-12 Sept. loan / credit contracts*
  - If
    - “all the terms and conditions” were agreed pre-12 Sept. 2014 and haven’t been modified since then; and
    - before 12 Sept. 2014 “a contractual maturity date has been fixed for the repayment in full of all funds made available ...”
  - Possible issues re
    - whether “all” terms and conditions really mean *all* (ref. FAQ 30 by analogy?)
    - treatment of typical carry-type loans – re the “repayment in full” aspect (in case no commercial discovery)
- Again, see the various EU Guidance Note FAQ clarifications
- Note – here again, there have been many such license applications / approvals to date (experience varying by member state)

# EU Sectoral Sanctions (*cont'd*)

## Important Overarching Provisions

- The Reg. also bans knowing and intentional participation in activities having object or effect of circumventing the above prohibitions (Reg. art. 12). UK has only somewhat similar to this bullet (items 15 and 55 of the Russia Sanctions Regs.)
- But, per art. 10, no liability w/o knowledge or reasonable cause to suspect that actions would violate
- Jurisdictional reach – the Reg. applies (art. 13, and see EU Guidance Note FAQ 8):
  - Within EU territory (or on board aircraft / vessels under member state jurisdiction)
  - To any person, wherever located, who is an EU member state national
  - To any entity, wherever acting, that is incorporated in an EU member state
  - To any entity “in respect of any business done in whole or in part within the Union”
- *Note the distinctions between US / EU regs. overall reach – especially now with CAATSA*
- And the “no claims ... shall be satisfied” provision but without prejudice to “judicial review of the legality of the non-performance of contractual obligations in accordance with this Regulation” (Reg. art. 11) – interesting for lawyers
- And note the 13 Sept. 2018 EU General Court decisions upholding the sectoral sanctions against challenges by Rosneft, Gazpromneft, Sberbank, VTB, VEB and others
  - Rejecting challenges brought some years ago by Rosneft, Gazpromneft, Sberbank, VTB, VEB and others
  - And then the European Court of Justice (ECJ – the EU’s top court) affirmed these rejections / dismissals in its 25 June 2020 rulings in appeals by [VTB](#) and [VEB](#), and 17 Sept. 2020 ruling in appeal by [Rosneft](#)

# EU Crimea Sanctions

- Reg. No. 692/2014 as amended
  - Bars sale, supply, transfer, export of goods and technology (per this Reg's Annex II) to any Crimean entity or individual or for use there
  - Covers oil & gas / other mineral resources and E&P, transport, telecoms, power sectors
  - And further general ban on financing, corporate acquisitions, JVs, investment in real estate, construction / engineering services, investment services, tourism services
- And see EU [Information Note](#) to EU Business Operating and/or Investing in Crimea / Sevastopol (Joint Working Doc. SWD/2014) of July 2014
  - As amended August 2014, June 2015 and most recently 25 Jan. 2018
  - Gives updated summary of restrictions now in effect for EU-connected commercial activity there (though no real interpretive guidance)
- And EU's Sept. 2017 blacklist reg. (see next slide) amendment to allow member state authorities to permit certain types of payments to Crimean Sea Ports
- Note the still-reverberating 2017 scandal re Siemens gas turbines that found their way to Crimea (evidently without the company's knowledge and despite its compliance program / efforts)
- And NL-based Booking.com's 2018 announced discontinuance of tourist booking for Crimea
- Some new EU designations in March 2019 following the Russia-Ukraine Black Sea naval incident, and in Jan. 2020 in connection with Crimean elections

# EU Direct Sanctions (SDN-like, etc.)

- The EU's SDN-like "blacklist" Reg. No. 269/2014 of March 2014, and with updates
- And more names have been added in several update regs. to date
- Individuals and entities, including those added
  - in January 2020, in connection with Crimean elections
  - in March 2019, in connection with the Ukraine/Russia Kerch Strait naval incident
  - in 2018, in connection with construction of Kerch Bridge (to Crimea)
  - in 2017 per the Siemens turbines affair
- All dealings with the blocked assets of listed persons (or their subs or certain other affiliates) etc. are generally prohibited
- And see EU Commission [Opinion](#) of 19 June 2020 re financial and other transactions with non-blacklisted / designated entities that are owned or otherwise controlled by a blacklisted / designated person per Reg. 269/2014
  - *Note the broad "control" understanding, including management and/or financial control or major influence reflected here* – this ruling not being specific to the Russia sanctions
  - And similar standard at Section 4.1 of UK June 2020 [General Guidance](#)
- Currently in effect to 15 Sept. 2021 (extended as of 12 March 2021)
- And several Russians (in connection with the 2018 Skripal poisoning in England, and now the Navalny poisoning in Russia)
  - are on the EU's new [list](#) of chemical weapons proliferation/use violators as of Oct. 2020
  - and now 2 March 2021 [designations](#) of four state officials under new EU human rights sanctions regime (see slide [14](#))

# UK Sanctions (post-Brexit)

- Brexit transition period ended on 31 Dec. 2020
- The EU sanctions (see slides [74-86](#)) thus lost effect in UK as of that date
  - But the UK had already adopted its own Russia sanctions, which diverge from the EU sanctions to some extent (e.g., the finance sanctions carve-out is limited to *UK-based*, rather than EU-based, subsidiaries of five targeted Russian banks – see slides [80-81](#))
  - This is
    - the [Russia \(Sanctions\) \(EU Exit\) Regulations 2019](#) as further amended
    - its substantive provisions first came into force on 31 Jan. 2020, then fully on 31 Dec. 2020
    - covers general sectoral sanctions, blacklisting sanctions, and Crimea sanctions against Russia
  - These Regs. (based on the Sanctions and Anti-Money-Laundering [Act 2018](#)) have now revoked / replaced the EU Regs. as of 31 Dec. 2020, and allow the UK gov't now to autonomously amend/lift the existing sanctions, impose new sanctions etc.
  - See also the accompanying [Explanatory Memo](#) from April 2019
    - explaining the reasons for keeping sanctions on Russia and justifying associated criminal sanctions and penalties
    - and two related reports per Sections [2\(4\)](#) and [18](#) of the underlying Sanctions and Anti-Money Laundering Act of 2018
  - And the UK's underlying act on criminal liability for violations of the EU Russia sanctions – [2014 Regulations](#)
    - also note a UK law granting power to impose fine of £1 million or 50% of deal value, for EU financial sanctions breaches as of April 2017
    - now all applies to the UK's own replacement sanctions regime

# UK Sanctions (post-Brexit) (cont'd)

- New Russia sanctions [Guidance](#) of June 2020 – updating original May 2019 guidance, and now with FAQs
  - The FAQs reflect the same points as those comprising the EU Guidance Note last amended 2017 (see slide [18](#) above), but not as complete coverage
  - With these notable differences
    - banks “payment and settlement services” (i.e., corresponding banking) are construed as “making” or “being part of an arrangement to make” a new loan or credit to a targeted entity (compare UK FAQ 6 with EU FAQ 28) – *thus aligning UK’s position with the US position* (see OFAC FAQ 371)
    - the EU Regulation loan and trade finance sanction exceptions for EU subsidiaries / trade with the EU are narrowed to UK subsidiaries / trade with the UK – *which will require extra care, not to violate either rule in applicable cases*
- Sept. 2020 amended Notice and annexed list of blacklisted persons per EU Council Reg. 269/2014 (see slide [86](#))
- Also noteworthy
  - UK gov’t Nov.-Dec. 2020 exchange of letters ([inquiry](#) and [response](#)) clarifying UK sanctions policy post-Brexit
  - “[The Global Human Rights Sanctions Regulations 2020](#)” of July 2020, imposing SDN-like blocking sanctions on initial [list](#) of several Russian (and Saudi, Myanmar and North Korean) officials alleged to be involved in gross human rights violations
  - Implementation of Oct. 2020 sanctions against six Russian officials and a chemistry institute for the Navalny poisoning previously enforced under the EU’s chemical weapons sanctions regime (see slide [14](#) above)
  - No newest further 2021 human rights designations yet akin to the US/EU ones re Navalny imprisonment etc., but may come
  - Gov’t [initiative](#) to crack down on Russian oligarchs’ “money laundering” ... with [reported](#) further attention to this in Jan. 2021



# Russia's Countersanctions

- Russia's 2020 "anti-sanctions disputes law" and developing Russian court practice on this – see slide [15](#)
- Russia enacted in 2018 a law "On Measures (Countermeasures) against Unfriendly Actions of the United States of America and/or Other Foreign Governments", (the "Countermeasures Law" – full text is [here](#), unofficial English translation available on request), which provides essentially as follows:
  - Basic thrust is not to impose automatically – but rather to authorize the President or the Government to institute – various countermeasures (bans on import of goods / work / services, export bans, etc.)
    - upon finding of justification in anti-Russia sanctions measures (presumably including already-effective and possible future ones) of the US and other countries that commit unfriendly actions
    - "as well as against organizations located in the jurisdiction of [such countries], directly or indirectly controlled by [such countries] or affiliated with them, officials and citizens of [such countries], in the event such organizations, officials, and citizens are involved in the commission of unfriendly actions" vs. Russia
  - Thus, this Law as enacted may well not have substantial effect on international trade with Russia, unless/until the Western sanctions and/or general political relations worsen to an extent deemed sufficient to trigger discretionary Russian executive actions under the Law
  - But wording uncertainties (see above and next slide) awaits authoritative interpretation and/or practice to clarify

# Russia's Countersanctions (*cont'd*)

- These specific types of countermeasures are authorized:
  - termination or suspension of “international cooperation” of Russia and Russian legal entities with such countries and organizations, in sectors to be determined by decision of the President
  - prohibition or restriction on import into Russia of products or raw materials that originate from such countries or are produced by such organizations, with a list of such products / raw materials to be determined by the Government – and exceptions provided for (i) goods that are indispensable to life, analogues of which are not produced in Russia (e.g., certain pharmaceuticals), and (ii) goods imported for personal use
  - prohibition or restriction on export from Russia of products or raw materials by such organizations or by citizens of such countries, again with a list of such products / raw materials to be determined by the Government
  - prohibition or restriction on performance of public-procurement-type works / services in Russia for Russian state agencies and certain state-owned legal entities, by such organizations, again with a list of such works / services to be determined by the Government
  - prohibition or restriction on participation by such organizations or by citizens of such countries in Russian privatizations, as well as in performing services on behalf of Russia in connection with such privatizations of federal state property
  - and “other measures” by decision of the President (of course, this “catch-all” provision could be the basis for enactment of possible additional countermeasures, if sanctions-related tensions deteriorate further)

# Russia's Countersanctions (*cont'd*)

- There are these additional closing provisions of note:
  - the countermeasures provided in the Law are to be introduced (and removed) by the Government by decision of the President – or by the President on the basis of proposal by the Security Council
  - the President may introduce a special “national regime” (or exceptions from it) with respect to goods and services originating from unfriendly countries if such countries introduce same for Russian goods and services
- And note there is a pending set of draft [amendments](#) as of July 2020 to a pre-existing general Special Economic Measures Law of 2006
  - which would introduce a detailed mechanism on application of freezing/blocking of assets of blacklisted persons
  - And a low greater-than-25% control threshold for entities in which blacklisted person(s) have an interest
  - Adopted at first reading by Duma in Nov. 2020 (and new Duma legal dep’t [comments](#) of April 2021)
  - And now an April 2021 set of further proposed amendments (see slide [15](#))
- There was another proposed set of Russian law amendments in 2018 that would impose
  - Substantial administrative fines on any (foreign or local) person or company in Russia for compliance with US sanctions, and
  - Criminal liability on any Russian citizen who by willful action facilitates the imposition of such anti-Russian sanctions
  - Further in brief summary as follows:
    - The administrative violation part would be aimed at acts or omissions, for the purpose of implementing / complying with foreign sanctions, resulting in limitation or refusal of the ability of Russian citizens, companies and state entities (and their subsidiaries anywhere) to conduct “ordinary business operations or transactions”
    - The criminal violation part would be aimed at commission by a Russian citizen of willful actions facilitating the imposition of foreign sanctions against Russian persons and entities and their subsidiaries, including by providing recommendations and transfer of information that led or could have led to the imposition of foreign sanctions. Possible criminal penalties for such a violation could include substantial fine or imprisonment

# Russia's Countersanctions (*cont'd*)

- There have been a series of statements from the leading Duma sponsors of this proposed legislation, upon dialogue with Russian business leaders and supported by the President's Administration, accentuating that the proposed administrative violation part (assuming this softened part remains as such if/when the bill is enacted) would be meant to cover
  - only refusal/restriction of "practically automatic"-type business dealings with Russian citizens / entities such as opening bank accounts, or sales that are by law open to any bidders etc.
  - as opposed to more individualized-type dealings such as opening / closing of bank branches (e.g., in Crimea), extending long-term credits
- This proposed 2018 act has remained essentially dormant since then – but early 2021 [report](#) that it might reactivate
- Russia also enacted a special SDN-like blocking sanctions [edict](#) in 2018, with implementing [decree](#) attaching specific designations (as [amended](#) most recently in Feb. 2021 adding nine companies), against Ukraine – which would have a further tightened regime under the above-noted pending law amendments (slide [91](#))
- Gov't [Decree No. 1767](#) of 30 Dec. 2018 includes threat of withholding/removing state pension funds etc. from Russian banks that cooperate with foreign sanctions against Russia (see its art. 2)

# Russia's Countersanctions (*cont'd*)

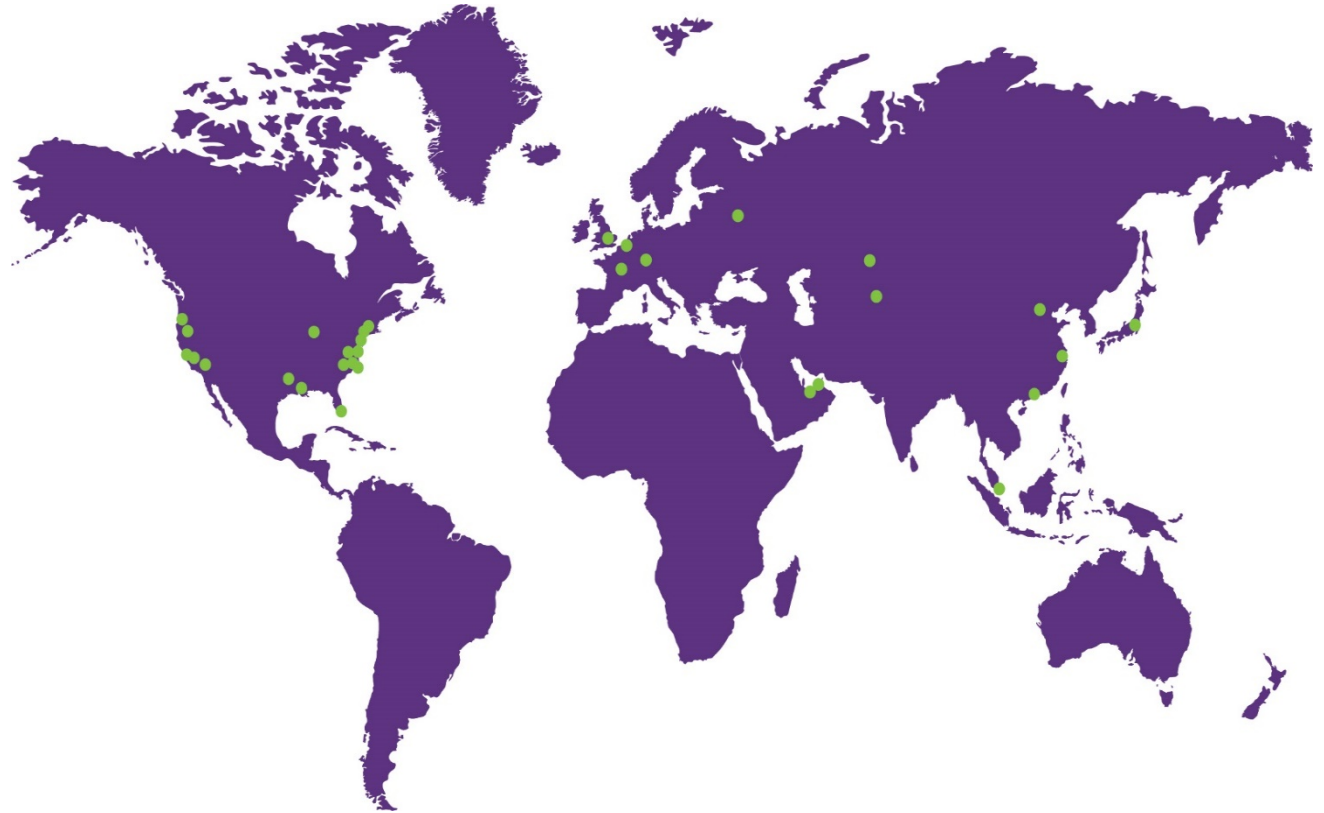
- Foreign blocking statutes (such as Russia is in process of developing / implementing) and US law / practice:
  - What would be OFAC's (or a US court's) reaction, if Russia's blocking legislation is enacted in some form, and a company (US, European, Russian, etc.) acts in a way that violates a US sanction (e.g., deals with an SDN individual or entity) on account of the new Russian-law mandate not to reject such dealings?
  - This is a complex subject in itself, which can't be quickly summarized; suffice it to say here that
    - OFAC might take such claimed foreign-law mandate into account as one mitigating factor in an enforcement proceeding, but will not be controlled by it
    - the leading US court [decision](#) in the *United States v. Brodie* case on this subject to date – essentially rejected such a defense raised by a US company (involving in part an earlier version of the EU Blocking Statute – see also slide [61](#))

## Our Global Reach

Africa  
Asia Pacific  
Europe  
Latin America  
Middle East  
North America

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