



Morgan Lewis

**US AND EU RUSSIA
SANCTIONS UPDATE –
OVERVIEW AND ENERGY SECTOR FOCUS
& RUSSIAN COUNTERSANCTIONS**

as of 26 August 2019

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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.)

We have made reasonable efforts to assure that this presentation is current up to the day before the date appearing on the cover page. Also, the links provided from outside sources are subject to expiration or change.

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What's Newest

United States

- CBW Act Sanctions (Skripal poisoning in 2018) – Second Round
 - Trump Administration has imposed the required three of six menu-items (see slides [55-57](#) for further “CBW” – Chemical and Biological Weapons Act detail)
 - by Executive Order (“EO”) [12851](#) of 1 August, and follow-on clarifying State and OFAC releases
 - these sanctions (taken together with the waivers also simultaneously granted) appear to have quite narrow/limited “bite” as a practical matter
 - State Dep’t [Release](#) of 2 August announces the three selected new sanctions
 - US opposition to any loan or financial assistance to Russia by int’l financial institutions (IFIs) such as World Bank or IMF
 - ❖ but there is 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
 - 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 gov’t
 - ❖ thus, US banks are still free to purchase Russian sovereign debt on the secondary market
 - ❖ 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 is untouched by this new sanction (but OFAC Directives 1 and 2 still restrict lending to all the designated state-owned banks and energy companies – see slides [13-14](#) below)

What's Newest (*cont'd*)

- additional export licensing restrictions on Dep't of Commerce controlled goods and technology
 - ❖ stated to apply only to items controlled for chemical and biological weapons proliferation reasons
 - ❖ and the same waivers (license exceptions) that applied to the first-round CBW Act sanctions (see slide [55](#)) will continue to apply here on case-by-case basis (and with same presumption of denial for state-owned- / -funded entities)
 - ❖ no BIS rules or other release issued on this yet (but are anticipated)
- OFAC CBW Act [Directive](#) of 2 August – provides definitions/details on the US banks lending sanctions (effective as of 26 August), 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 the Central Bank, the National Wealth Fund and the Ministry of Finance) – but does *not* include Russian state-owned enterprises (though again, keep in mind OFAC Directives 1 and 2)
- Finally (for now) State Dep't [Notice](#) in 26 August Fed. Reg. not only memorializes the new CBW-related export control sanction, but also incorporates and somewhat expands / adjusts the first-round export control sanction (see slides [55-56](#) below) – *so special caution is needed with regard to any possibly sensitive exports / reexports to Russia*
- And note risk of imposition of secondary sanctions on non-US persons under CAATSA (see slides [40-54](#)) for certain violations of the new 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 section 228 catches anyone who “facilitates a significant transaction” for or on behalf of “any person subject to [US] sanctions...” (i.e., apparently *any* sanctions)

What's Newest (*cont'd*)

- OFAC has issued further license [extensions](#) of 26 June for dealings with the Deripaska-controlled GAZ Group (major automotive co.)
 - To 8 Nov. 2019, for wind-down/maintenance of operations/contracts, and for divestment/transfer of holdings
 - Seems to indicate that negotiations for delisting of GAZ (left as SDN when RUSAL, En+ and EuroSibEnergo were delisted in Jan. 2019 – see slide [28](#)) are ongoing/progressing
- Notable new challenges against OFAC Russian sanctions
 - Vekselberg- and Renova-linked US investment management companies and their GP entities, who are not SDNs but whose assets have been blocked because of Vekselberg/Renova majority ownership of the funds as LP, have filed a [complaint](#) in US federal court on 1 July 2019 – basically challenging OFAC's 50% rule as applied to them
 - Deripaska filed a [complaint](#) in US federal court on 15 March 2019 challenging his SDN designation
 - A wealthy Russian-American physicist/entrepreneur, Dr. Valentin Gapontsev (and his US-based company IPG Photonics), filed a [complaint](#) in US federal court in Dec 2018 challenging his inclusion in the CAATSA section 241 "Oligarchs List" submitted by Treasury Dept. to Congress in Jan 2018 (see slide [50](#))
- And note the [CFIUS-forced](#) pending sell-off by Pamplona Capital (a London-based private equity house financed in part by Russian oligarch Mikhail Fridman) of its \$400 million minority stake in Cofense Inc., a US cybersecurity firm – *not sanctioned-related, but another important sign of the times*
- Also the proposed new PEESA (re Nordstream 2) and NDAA (re Russian sovereign debt) acts pending in Congress (see slide [58](#))

What's Newest (*cont'd*)

- New OFAC Russia-related [SDN designations of 15 March 2019](#), including against:
 - Four Russian officials in connection with the Ukraine/Russia Kerch Strait incident
 - Four Russian defense industry enterprises and four entities operating in Crimea
 - Coordinated with similar EU and Canada actions
- New BIS [additions to the Entity List of 14 August 2019](#), including Kaluga Scientific Research Institute of Radio Engineering (KNIRTI), a sub. of already designated radio equipment producer KRET (which is part of Rostec)
- Venezuela – further dramatically stiffed sanctions – by EO [13884](#) of 5 August
 - Blocks all property/interests (which would include USD) that are or will come within the US of (i) the Venezuelan Gov't (including the national oil co. PDVSA), and (ii) any person determined to have materially assisted/supported or provided goods/services to or in support of any such Venezuelan entity on OFAC's SDN List per this EO
 - Thus, increased risk of Russian companies facing possible SDN designation for future dealings in/with Venezuela
 - Certain accompanying new and revised OFAC general licenses and FAQs apply (see this [link](#))
 - Also note OFAC's 11 March 2019 [SDN designation](#) of Evrofinance Mosnarbank (a Russia-based bank jointly owned by Russian and Venezuelan state entities), for circumvention of the Venezuela sanctions by financial support for PdVSA, Venezuela's state oil company
- Other new OFAC enforcement actions touching Russia – beware
 - *Iran*: PACCAR/DAF (US/NL) 6 August [Settlement Agreement](#) re trucks directed to Iran (including through a Russian front buyer)
 - *Cuba*: Acteon / 2H Offshore (UK etc.) 11 April [Settlement Agreement](#) re oil services performed for Cuba offshore E&P contractors including Russia's Zarubezhneft
- OFAC general (not Russia-specific) new releases of note
 - Framework for OFAC [Compliance Commitments](#), 2 May (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)
 - Reporting, Procedures and Penalties Regulations [amendments](#), 20 June (re blocked funds, etc.), interim final rule
 - [List](#) of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List) – 14 March

What's Newest (*cont'd*)

European Union

- The sectoral sanctions Reg. 833/2014 (as amended) was extended again on 27 June 2019, now in effect to 31 January 2020
- If/when Brexit: the EU sanctions would remain in effect in the UK on more or less as-is basis – per new [UK Regs.](#) and [Explanatory Memo](#) published 13 April (see slide [62](#))
- EU states [reported](#) to be nearing fruition on SWIFT system workaround re traditional USD transactions (*this concerns the Iran sanctions – but still worthy of note*)

Russia

- No newest countermeasures against US/EU (see slides [74-77](#) for what exists), but ...
- Some recent (2019) efforts in Russian legislature ([link](#)) to stiffen the existing laws – but not supported by the Gov't, Central Bank, etc.
- Continuing reports of Russian companies (including oil producers) trying to move away from USD in favor of Euro (or other currencies) for deals having no other US link – see slides [13](#) and [68](#) below
- And Gov't moving to direct pension and similar funds away from banks that are under or are supporting anti-Russian sanctions

Basic Framework – US/EU

United States

- Treasury Dep't (*Office of Foreign Assets Control – OFAC*) “sectoral” sanction Directives, amended to date – most recently 15 Aug. 2018 (based on EO 13662 from March 2014)
 - *generally applies only to “US persons” and any persons / entities in the US: citizens / US permanent residents, 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 also administered by OFAC (based on various EOs)
 - and Treasury’s further expansive secondary sanctions authorities under CAATSA (slides [40-54](#))
- 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 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)
 - *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 the same proposed transaction may be required in some cases*
- State Dep't
 - has primary authority for certain sections of CAATSA (see slide [41](#)); and contributing authority for most other Russia / related sanctions (now including those under the CBW Act)
 - 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

Basic Framework – US/EU (*cont'd*)

- CBW Act application to Russia of August 2018 and August 2019 (two rounds – see slides [5-6](#) above and [55-57](#)) – involves Treasury, Commerce and State Dept's
- CAATSA enacted August 2017 (and State / Treasury Guidances of Oct. 2017) – and see:
 - full summary discussion at slides [40-54](#)
 - the Jan. 2018 CAATSA-based Reports/Lists for Congress (see slides [50-51](#))
 - the March 2018 OFAC SDN-, FAQ- and FSB-related General License clarifications re cyber activities and to synchronize with CAATSA (see slide [37](#))
 - various April, June (cyber), Sept. (defense) and Dec. (cyber) 2018 CAATSA-based SDN designations (see slides [8](#) and [26-35](#))
 - and note the Sept. 2018 CAATSA-implementing EO (see slide [52](#)), and proposed DASKAA would further broaden CAATSA – (see slide [60](#))... but not clear if/when will ever be enacted
- Crimea-focused EO 13685 of 19 Dec. 2014 ... and Crimea-related SDNs
 - near-total embargo (as for Cuba), OFAC-administered, amended most recently in Jan. 2018
 - related BIS implementing rules of 29 Jan. 2015
 - most recent OFAC 15 March Crimea-related SDN designations (see slide [8](#) above)
- Various North Korea-related sanctions (against Russian and Chinese companies) authorized by a web of laws and executive orders (see slides [33-35](#) below)
- *Bottom line: US Russia-sanctions analysis is now like peeling an ever more complex onion!*

Basic Framework – US/EU (*cont'd*)

European Union

- EU Council Reg. No. 833/2014 of 31 July 2014 – as amended by Reg. Nos. 960/2014 of 8 Sept. 2014, 1290/2014 of 4 Dec. 2014, 2015/1797 of 7 Oct. 2015, and 2017/2212 of 30 Nov. 2017
 - applies to EU nationals and companies
 - or anything happening in whole or part within EU territory
 - or involving an EU-registered aircraft / vessel
- Commission Guidance Note (16 Dec. 2014, last amended 25 Aug. 2017) on application of certain provisions (the “EU Guidance Note”)
- Currently in effect to 31 January 2020 (extended as of 27 June 2019)
- 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 [72-73](#))
 - currently in effect to 15 Sept. 2019 (last extended on 14 March 2019)
- 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 20 June 2019 – now in effect to 23 June 2020)
 - 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 [72](#) for detail
- EU Council Reg. No. 2018/1542 of 15 Oct. 2018, Concerning Restrictive Measures Against Proliferation and Use of Chemical Weapons; and Implementing Reg. No. 2019/84 naming four Russians as violators

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 official OFAC delisting if/when no longer 50%+ owned by its “named SSI parent”
 - *e.g.*, 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 note that Rostec is now also a CAATSA section 231 listed defense-industry entity (see slide [45](#) re the added Rostec-dealings burdens/risks this entails, for US as well as non-US persons)
 - and Rostec subsidiary Rosoboronexport is now also an SDN (and its subs), per April 2018 designation
- And see related OFAC FAQs
 - [FAQ 395](#) as amended, re permissible / prohibited US persons' activities w/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 correspondent banking – OK only if the underlying transaction is permissible (thus appears to be stricter than under EU rules)
 - in other words, mere use of USD, without more, could violate – which is why Russian companies, including oil exporters, are trying to move from Euro (or other currencies) as possible for transactions having no other US link)*
- And note OFAC [General License 1B](#) (of 28 Nov. 2017 superseding GL 1A of 28 Sept. 2014)
 - 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 again (see slide [5](#) above) that the new CBW Act ban on US banks' lending doesn't extend to the Directives 1-3 state-owned 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 [13](#) coverage caveats applying)
 - Note also the 2015 BIS special [designation](#) of South Kirinsky field (only part of it is deep water) ... which could be expanded to other such “borderline” fields – and might well be applied by OFAC too in practice
 - *And, per CAATSA section 223 (enacted August 2017), the Directive 4 scope was expanded to cover such projects worldwide, where one or more of these five designated Russian companies has / have a (i) ≥33% ownership interest or (ii) a majority of the voting interests*
 - but this scope expansion applies only to such outside-Russia projects that are “initiated” after 29 Jan. 2018 – which means (per FAQ [536](#)) the date when the host government (or its 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 (≥33% direct or indirect ownership interests or majority of voting interests) is passed
 - The further proposed DASKA Act, if ever passed, would further broaden sanctions coverage of oil E&P projects both inside and outside Russia (see slide [60](#) below)

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” = 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 other offshore areas (inland / territorial seas, EEZ or Shelf) that aren't Arctic (this is per a BIS FAQ [answer](#), and analogous explanations under other-country sanctions rules (and is consistent with EU Reg. [clarifications](#))
 - And the Caspian Sea zone claimed by Russia (the 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 note reports of the US government's expressed opposition to a Japanese consortium's proposed joint development with Rosneft of the similarly situated Central Tatarsky field
 - might lead to eventual BIS designation of that field too (and possibly some others?)
 - 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: approx. \$302,600 (per latest June 2019 inflation adjustment) *per violation*, or up to twice the value of the transaction that was the basis for the violation
 - 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) generally apply directly only to US persons, now there is enhanced risk of application to non-US companies/individuals also – per the CAATSA secondary sanctions (slides [53-54](#) 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 reg. 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 §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 15*
 - 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 certainly for all the expressly named Rosneft and Gazprom subs
 - and for the South Kirinsky field too
 - *If... or if...* (the same previous-slide 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
- Also further 2015-19 Entity List additions, including [Feb. 2018](#) amendments, adding many new Russian, Crimean, European and other OFAC-named SDN companies to this List (see slide [33](#))
- And more Russia-related Entity List additions of [21 Sept. 2018](#)
 - Including 12 Russian entities, some of which are already OFAC-designated SDNs or may be indirect SSIs (as 50% or more owned by a directly designated SSI)
 - For enabling malicious Russian cyber actors, providing equipment and support to the Russian Navy, supporting Russian military aerospace production activities, or providing material support to Iranian missile programs
 - These Russian companies will now be subject to BIS license requirement for all items that are subject to the Export Administration Regulations (EAR), with presumption of denial
- And a most recent August 2019 one (Russian defense-sector co.) – see slide [8](#) above
- Still more new BIS tightening and broadening updates seem likely
 - Per the 27 Aug. 2018, 2 Aug. and 26 Aug. 2019 State Dep't Notices under the CBW Act (see slides [5-6](#) and [55-57](#))
 - And per the 20 Sept. 2018 State Dep't release and LSP / SDN defense industry designations under CAATSA section 231 (see slide [34](#))
 - And per various other recent OFAC SDN designations
- 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 (see [15 CFR §734](#))
 - currently 25% for Russia
 - *but there are 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 [15](#))

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

Export / Reexport Restrictions (*cont'd*)

- Recent actions
 - Early 2019 reported opposition to a US company's export to affiliates of United Aircraft Corp. (which is 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
 - Russian gov't now to support development of local substitute
 - Also note BIS Final Rulemaking announcement (Item [15](#), published in 24 June 2019 Fed. Reg.): re intended expansion of licensing requirements on exports, reexports and in-country transfers for military end-use/end-users in Russia, China and Venezuela
- BIS FAQ clarifications and license applications / actions (including re offshore drilling) – quite strict to date, like OFAC
- And see BIS 22 May 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

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

Export / Reexport Restrictions (*cont'd*)

- Related notes:
 - 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 [36](#) below)
 - Note 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 a more recent OFAC similar [enforcement action](#) in Nov. 2018: Cobham Holdings, US company, fined for knowingly shipping controlled hi-tech goods (silicon diode switches, etc.) to Russian defense industry SDN to like-named sub. of known Russian SDN end-user Almaz-Antey through Canadian and Russian distributors (*here the purchaser end-user was known to the seller*)
 - i.e., this was *not* a case of selling through distributor to unlimited/unknown buyers in Russia
 - provides excellent new 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 most recent similar OFAC settlement agreement involving trucks diverted to Iran (see slide [8](#) above)
- Possible penalties
 - Essentially same as for OFAC, and now CAATSA too, sanctions violations (see slides [19](#) and [54](#))
 - 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

- 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
 - 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 [40-54](#) below
 - Against non-US companies / people 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](#) and [627](#) – and see generally slides [53-54](#) below
 - *Note: there have been some CAATSA-based SDN designations to date (including Russian companies and individuals in the cyber sector)*
- Some industry executives / oligarchs have been on OFAC’s SDN list since 2014 (and expanded further in 2015-18) – most notably
 - 6 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 [50-51](#))
 - And Messrs. Sechin, Timchenko, Rotenberg, and Technopromexport’s CEO (per the Siemens turbines scandal of 2017)
 - Also many other Russian (and some European) business and political figures, and Russian gov’t officials

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 (incl. by two or more SDNs) – see OFAC FAQs [398-402](#)
 - *and note the dramatic expansion per the 6 April 2018 designations of Messrs. Deripaska and Vekselberg – and given their vast controlled-company holdings, including hundreds of direct / indirect $\geq 50\%$ -owned subsidiaries*
 - Doesn't bar dealing with non-SDN company where SDN person is just officer/director, etc. (e.g. Mr. Sechin - Rosneft ... and now also Messrs. Miller, Kostin, Bogdanov, etc.)
 - except has been interpreted to bar having an SDN-individual executive signing a contract on behalf of a non-SDN company with US person (OFAC FAQs [398](#) and [400](#) and [585](#))
 - and 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
 - see the July 2017 OFAC \$2 million [penalty](#) imposed on ExxonMobil for Mr. Sechin's signing Rosneft JV documents in 2014 – now under challenge by ExxonMobil in federal court (case is pending)
 - but a US person serving on a Russian company board of directors together with an SDN person seems OK (e.g. Rosneft – Dudley / Sechin) – as opposed to the bar on a US person's serving on board of an SDN company (see FAQ [568](#))
 - and also need to keep in mind separate SSI sanctions / restrictions re such companies (for example, Gazprom, Surgutneftegaz and VTB)

US Direct Sanctions – SDNs (*cont'd*)

- Dramatic SDN company designations of 6 April 2018 (and wind-down periods 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 (there are some real questions here – on account of murky ownership structures / arrangements ...)
- Then OFAC's SDN delisting of Deripaska-controlled companies – RUSAL, En+ and EuroSibEnergo
 - In Jan. 2019 per OFAC [Update](#) (following OFAC's 19 Dec. 2018 intent notification [letter](#) to Congress, presenting the basic details)
 - 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 [31](#)), and based on the following agreed strict restructuring and governance change undertakings:
 - reduction of Deripaska's direct and indirect shareholding stakes in these companies to below 50% (and a further limitation on his voting rights in En+)
 - overhauling the composition of their boards of directors (including majority to be independent directors, and half of board of En+ to be US or UK nationals)
 - various restrictive steps re corporate governance (to further assure that Deripaska can't exercise a controlling influence)
 - and further assurances of transparency via extensive ongoing audit, certification and reporting requirements vis-à-vis OFAC
 - Also conditioned on En+ (and RUSAL and all other companies controlled by En+) not shifting to incorporation in Russia without new Board and OFAC approval
 - And these companies are subject to redesignation if any of the agreed terms are violated
- *Further note: these 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*

US Direct Sanctions – SDNs (*cont'd*)

- Unclear why these particular private-sector individuals and companies were singled out in April 2018, and whether more will follow
 - See the OFAC 6 April 2018 [Press Release](#) which gave a reason for each designation (but many were vague)
 - These designations hit hard – for the first time in the heart of Russia’s private-sector economy
 - Note the remarkable rapidity and number of follow-on GL and FAQ issuances (see next slide) to help deal with the serious consequences of the April 2018 SDN designations – especially re RUSAL
 - More to come from the Jan. 2018 “Oligarchs List”? (depends ongoing course of US-Russia events) – *but nothing more yet* (and on the contrary, the Jan. 2019 En+, RUSAL and EuroSibEnergo delistings)
 - The proposed new DASKA Act, if even enacted, would call for more such oligarch designations (see slide [60](#))

US Direct Sanctions – SDNs (*cont'd*)

- And 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 next slide) – giving guidance to US persons re continued relations with any such designated SDN company (or those also covered by the 50% rule) or individual, 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
- Note current indications that Deripaska's GAZ Group (automotive giant) may be SDN-delisted later this year upon ownership restructuring etc. (see slide [7](#) above)
- And the pending Vekselberg and Gaponstev US federal court challenges against their OFAC SDN and/or Oligarchs List designations (see slide [7](#) above)
- *Specific advice should be sought for each particular situation involving these April 2018 designated SDN companies (or companies held ≥50% by them)*

US Direct Sanctions – SDNs (*cont'd*)

- The OFAC FAQs re “maintenance” of operations, contracts etc. with SDNs En+, RUSAL, EuroSibEnergo, GAZ Group (and their subs) – *all of which except GAZ now delisted*
 - These are [FAQs 625 and 626](#) of 14 Sept. 2018, which refer specifically to the General Licenses of earlier in 2018 re these specific companies (but may well also have more general application in other analogous GL-based maintenance/wind-down situations)
 - Interpretation is given (essentially formalizing existing OFAC practice) as to what may be considered “maintenance” (in context of those GLs’ phrasing “... ordinarily incident and necessary for the maintenance or wind down of operations, contracts, or other agreements ...”) re what ongoing activities are permitted until the current (and as may be further extended) wind-down deadline
 - On condition that such activities are consistent with the applicable GL, and with “transaction history” / “past practices” with the blocked entity prior to 6 April 2018
 - And “transactions and activities that are not within the framework of a pre-existing agreement may be considered ‘maintenance’ if such activity is consistent with [the parties’ pre-designation transaction history].”
 - Also gives authorization for “contingent contracts” (again, only if consistent with the above) for transactions / activities extending beyond the current valid GLs expiration, where any performance after the expiration is contingent on such performance either not being prohibited or being authorized by OFAC (e.g., by possible GL further deadline extension or by specific license)
 - In this regard, stockpiling of inventory, even if pursuant to a pre-designation contract, is not authorized unless consistent with past practice in scope and extent, as evidenced by transaction history

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
 - 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
 - And such licenses may be granted to allow US lawyers to advise / collect fees from SDNs on sanctions compliance issues (incl. possible help in trying for SDN delisting)
- Possible SDN delisting – e.g., En+, RUSAL, EuroSibEnergo Jan. 2019 success, GAZ possibly next, and some other applications or challenges pending

US Direct Sanctions – SDNs (*cont'd*)

- The further 2015-19 SDN designations (most recent 15 March 2019 – slide [8](#)) – persons / companies under EOs 13661, 13662, etc.
 - Including for the alleged election interference operations
 - But no designations yet under related Trump EO re election interference (see slide [36](#))
- The Jan. 2018 addition of several Russian companies (including *Power Machines*) and officials involvement in transfer of turbines made by a Siemens Russian JV co. to Crimea
- Several Crimean commercial port and transport companies (and some Russian ships that call in Crimea), banks and resort complexes are also named
- Also a number of companies involved in the Kerch Strait and other Russia / Crimea transport projects have been added
- Also a number of Russian defense industry companies (as supplemented 6 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 Nov. 2018 SDN designations of three human rights abusers per CAATSA section 228
- And June 2017 (Independent Petroleum Co. NNK) and further 2018 SDN designations (see slide [41](#)) for alleged dealings with North Korea – and note that NNK is reported to be challenging this at OFAC

US Direct Sanctions – SDNs (*cont'd*)

- Note: the State Dep't Oct. 2017 CAATSA section 231(d) listing of Russian defense / intelligence entities (see slide [42](#)), supplemented with 45 additional individuals and entities on 20 Sept. and 19 Dec. 2018 (see below)
 - This is the List of Specified Persons (the “LSP”): doesn’t itself impose SDN (or any other sanctions) on them; but – other persons may be sanctioned under section 231 for significant transactions with them (see above-linked State Dep't announcement, and slide [42](#) below)
 - *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 [42](#)), and
 - companies that continue to do some kinds of “significant transactions” with them risk having some SDN-like sanctions imposed on *themselves* under CAATSA section 235 (see below and slide [53](#))
 - See further discussion on this at slides [45](#), [48-49](#) and [53](#) below
- And [SDN designations of 20 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 [45](#) 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 (see the above link – which also set out the specific sanctions chosen and being applied) – and see the corresponding OFAC SDN designations [announcement](#) of 20 Sept. 2018

US Direct Sanctions – SDNs (*cont'd*)

- New SDN designations under CAATSA section 224 (cybersecurity) and various EOs
 - Of 19 Dec. 2018: against 18 individuals (including one associated with Mr. Deripaska) and four companies for 2016 election interference, WADA hacking, and other malign activities - see OFAC [Notice](#) and related [Press Release](#)
 - 20 Nov. 2018: various Russia (and Middle Eastern) individuals and entities in connection with petroleum shipments to Syria – see OFAC [Notice](#) and related [Advisory](#)
 - 8 Nov. 2018: several individuals and entities, mostly related to Crimea and the breakaway areas of eastern Ukraine – see OFAC [Notice](#) and related [Press Release](#)
 - Of 13 Sept. 2018: against a Chinese company, its North Korean CEO, and its Russian Vladivostok-based sister company for allowing North Korea to earn revenue from overseas IT workers – thus undermining the US’s denuclearization negotiations with North Korea – [link](#)
 - Of 21 August 2018: against
 - (i) two Russian shipping companies, and six vessels, for helping North Korea evade the UN ban on its oil trade – [link](#); and
 - (ii) two Russian individuals and Russian and Slovak companies, for helping an already-sanctioned Russian company (Divetechnoservices) procure goods and services for the FSB – specifically alleged thus to be helping improve Russia’s cyber systems for RF gov’t agencies – [link](#)
 - Of 11 June 2018: against several Russian entities and individuals (including Divetechnoservices etc.), for providing support for / enabling FSB – [link](#)

US Direct Sanctions – SDNs (*cont'd*)

- [Executive Order 13848 of 12 Sept. 2018](#) – re election interference
 - Authorized (by its section 2(a), which seems to have immediate effect) imposition of asset blocking and exclusion from the US etc. 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.
 - Builds on existing Obama Administration EOs 13694 of 1 April 2015 and 13757 of 28 Dec. 2016, and leaves them in effect
 - And sections 1 and 3, taken together, would authorize additional sanctions against individuals / entities found in the future to have directly or indirectly participated in any such foreign state-related US election interference activities (*no such clear finding – re the 2018 US midterms*)
 - Attempts to specify what constitutes election interference (perhaps to clarify “red lines” for Russia)
 - Further OFAC implementing regs. are supposed to follow, but not yet
- And the Mueller Report of March 2019 may serve to reignite this debate
- Two general licenses issued by OFAC to respond to / correct overbroad reach of the 1 Sept. 2016 and 29 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

US Direct Sanctions – SDNs (*cont'd*)

- OFAC [General License No. 1A](#) of (as amended 15 March 2018 to take account of / synchronize with CAATSA) under the cyber-related sanctions – entitled “Authorizing Certain Transactions with the Federal Security Service” (FSB)
 - gives authorization for “all transactions and activities ... that are necessary and ordinarily incident to ... requesting, 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 shouldn't be \geq \$5,000 annually
 - compliance with FSB law enforcement / administrative actions or investigations as well as regulations administered by FSB is authorized
- And note OFAC FAQs [501-504](#) (as amended 15 March 2018) repeating / clarifying certain points of General License No. 1A
 - 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 slides [33-35](#) above), and likelihood of more such
- And note 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 [42](#) below)

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 2016 US federal court decision (in the Zarrab case), that may be seen / used to expand extraterritorial jurisdiction to enforce US sanctions vs. foreign companies

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
 - See also the 29 Jan. 2015 BIS rules implementing this EO
 - And many Crimea-related SDN designations (entities and individuals) from 2014 to date (see slide [31](#) above)
- 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 advises various types of mitigation measures for these risks
- Note also these OFAC Crimea-related General License exceptions, including:
 - No. [4](#) of 19 Dec. 2014, permitting various food and agricultural products (including soft drinks, cigarettes, etc.) and medicines, medical supplies and devices
 - No. [9](#) of 22 May 2015, permitting common internet communications (see related OFAC FAQ [454](#))
- Further SDN designations (coordinated with Canada and EU) following the Nov. 2018 Kerch Strait Ukraine / Russia navies incident (see slide [8](#))

CAATSA / Guidances / Lists

- CAATSA (Countering America's Adversaries Through Sanctions Act)
 - Signed into law by President Trump in August 2017 (after passage through both Houses of Congress by near-unanimous vote)
 - Full text is [here](#) (Public Law 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 new *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)
 - Further widened the gap between US and EU sanctions against Russia

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

- By Presidential Memorandum of 29 Sept. 2017
 - CAATSA implementation functions 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 20 Sept. 2018 setting out certain CAATSA sanctions implementation details for State and Treasury (see slide [52](#) below)
- CAATSA also covers Iran and North Korea – introduced stiffened primary and secondary sanctions with regard to those two countries
 - the North Korea part is aimed primarily at foreign companies / banks (de facto focus on Chinese, Russian, etc.) doing various types of business directly or indirectly there
 - ❖ note that Independent Oil Co. (NNK) of Russia is now an SDN in this connection (and NNK has since filed for SDN delisting – apparently still pending)
 - ❖ and Russian and Chinese IT companies SDN designations of Sept. 2018 (and Russian shipping cos./vessels designated Aug. 2018) for links with North Korea
 - have in mind also the ever-tightening anti-Venezuela sanctions (see slide [8](#)) can affect some Russian companies – *but Venezuela, North Korea, Iran are not further covered here*
- And keep in mind
 - the potential application of CAATSA secondary sanctions to non-US companies for transactions now prohibited for US persons under the new CBW Act second-round sanctions – e.g., primary-market purchase of Russian non-ruble sovereign debt or US bank lending to Russian sovereign (see slides [5-6](#) and [55-57](#))
 - the possible further broad expansion of Russia primary and secondary sanctions provisions by the proposed DASKA Act which, if ever enacted, would amend CAATSA (see slide [60](#) below)

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

- CAATSA's basic content (as Russia-relevant)
 - Codification by statute
 - of the existing blacklist (SDN) and sectoral (SSI) sanctions enacted by the series of EOs since 2014 against Russia
 - which make it harder for President Trump (and successors) to narrow or otherwise loosen any of these sanctions by executive 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 new law
 - State Dep't on 27 Oct. 2017 issued CAATSA section 231(d) 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 further slide [45](#) below)
 - State Dep't also issued 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) and 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) – see further slides [44](#) and [46](#) below
 - 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 further slides [43-49](#) below)
 - and see FAQs [540-547](#), [579](#) and [589](#) (all from 31 Oct. 2017 or after) re "significant transaction", "facilitation" and other related CAATSA application issues

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

- CAATSA stiffened existing OFAC Directives 1, 2 and 4 (*this is essentially for US persons – see slides [13-15](#)*)
 - *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 [15](#) above)
 - ❖ if one / more of designated Russian energy companies has ≥33% ownership or >50% voting interest
 - All since implemented by OFAC amendments of the relevant Directives – see slides [13-19](#) above
- Per CAATSA section 223(a), expansion of *potential* industry coverage of the OFAC sanctions (beyond financial services, energy, engineering / defense-related) – see FAQ [539](#)
 - to *state-owned* (i) railway (= RZhD, the Russian State Railway), and (ii) mining & metals companies (*e.g.*, state-owned uranium producer Rosatom?)
 - but shipping industry was left off this expanded list; and nuclear power industry also didn’t appear despite previous consideration of including it
 - and even as to railway and mining & metals sectors, the Oct. 2017 OFAC Guidance makes clear that this is only discretionary – no such actual expansion yet, and no sign of its coming
- *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 early this year) (Congress was notified, and opposition was insufficient to block)
- Reality check: Despite all the “President shall impose” CAATSA sanctions language (see slides [44-54](#)), 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 [34-35](#) above))

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

- *Namely: requiring* 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 [33-34](#))
 - per CAATSA section 225 (and see 31 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 new Guidance doesn't clarify)
 - per CAATSA section 226 (and see 31 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 31 Oct. 2017 OFAC Guidance), *non-US* companies and individuals that knowingly – *this being the broadest 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
 - ❖ but the related OFAC Guidance does go some way to calm fears of over-expansive application with respect to SSI sanctioned entities (see slides [48-49](#) 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 this List of Specified Persons
 - ❖ see the List, expanded as of December 2018 (see slides [33](#) and [42](#)) – and again note that a company's appearance on it doesn't itself mean any new sanction against it ... (but some are 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 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 2 Feb. 2017 – see slide [37](#) above*)
 - ❖ and from a State Dep't 20 Sept. 2018 release it appears that only the actual listed companies and not necessarily their subsidiaries are covered (at least yet)
- per CAATSA section 233 (and see 31 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 20 Sept. 2018 EO (see slide [52](#))*)

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

- Per CAATSA section 232 (and see 31 Oct. 2017 State Dep't Guidance), 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., Nordstream 2* – namely:
 - make an investment that directly and significantly contributes to 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
 - consider these additional helpful points re CAATSA section 232:
 - ❖ the State Dep't Guidance repeats statutory wording re this sanction being “discretionary” and importance of coordination with allies (and notes intent to “avoid harming the energy security of our allies”)
 - ❖ and despite the separate CAATSA statement of US policy “to continue to oppose the Nordstream 2 pipeline” (see section 257(a)(9)), there has been no enforcement action against Nordstream yet (despite its obvious finance/construction progress)
 - ❖ further notes on the State Dep't Guidance: the section 232 sanction focus is to be on investments/projects initiated on/after 2 Aug. 2017
 - ✓ and “a project is considered to have been initiated when a contract for the project is signed”
 - ✓ further Guidance statement that investments / loan agreements made before 2 Aug. 2017 wouldn't be subject to section 232 sanctions
 - ✓ and this: section 232 wouldn't target investments / other activities related to standard maintenance of pre-existing pipelines
 - ✓ and this further important Guidance clarification: section 232 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 (but not gas lines from Central Asia?)

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

- but also these ongoing negative rumblings against the under-construction Nordstream 2 pipeline
 - ❖ non-binding Resolutions of US House of Representatives (11 Dec. 2018 - [link](#)) and Senate (24 Jan. 2019 - [link](#)) opposing the project and calling on the President to impose sanctions relating to it under CAATSA section 232 or for its cancellation
 - ❖ and remarkably, even a stark anti-Nordstream statement in a (non-binding) EU Parliament [Resolution](#) of 12 Dec. 2018 (Para. 79 reads: that the European Parliament “Reiterates the critical role of Ukraine in the European energy network supply: condemns the construction of the Nordstream 2 pipeline, as it is a political project that poses a threat to European energy security and the efforts to diversify energy supply; calls for the project to be cancelled”)
 - ❖ and related recent debate in Germany’s political establishment on this (with some of the conservative party’s candidates to succeed Ms. Merkel coming out against Nordstream 2)
 - ❖ early 2019 press reports re possible US sanctions re Nordstream 2 main pipelaying contractor(s) – and various reported threats from US Ambassador in Germany to German companies warning of same (and reported European industry/gov’ts push-back)
 - ❖ most recently / importantly: the draft Protecting Europe’s Energy Security Act pending in the US Senate – adopted by Foreign Relations Committee at end July 2019, and could be voted on by fall Senate in September (see slide [7](#) above)
 - ❖ *thus* very hard to predict possible future US actions (and further European developments) on this front
- Nordstream 2 may be fait accompli in any event
 - ❖ given the advanced state of construction, with no sanctions yet imposed
 - ❖ but to date still faces EU regulatory (pipeline access) obstacle, and also Denmark’s delay in granting environmental clearance for the preferred pipeline route

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

- *Thus CAATSA has 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](#)):
 - ✓ 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
 - *but, caveat re the above and below references to US gov’t agency “guidances” or FAQs:*
 - ❖ *they may be changed without notice*
 - ❖ *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 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 release and press conf. transcript of 20 Sept. 2018 (see slide [52](#) for links)
 - ❖ 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](#) of 30 Jan. 2018, 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 [28](#) above*)
 - The classified annex (submitted only to Congress) apparently featured
 - a list of Russia's “parastatal entities” (companies having $\geq 25\%$ state ownership and 2016 revenues of $> \$2$ billion – see such a [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)

- Mixed messages from Trump Administration upon release of those Jan. 2018 Report / Lists
- But the 6 April 2018 SDN individuals designations came from among those on the Jan. 2018 List (and there have since been some threats of more to come, including per the proposed DASKA Act if ever enacted) – thus eroding the initial Jan. 2018 words of comfort
- And subsequent public news reports and further private sense
 - that some leading oligarchs are restructuring holdings (such as Messrs. Abramovich and Mordashov) to reduce potential or actual sanctions exposure
 - and a number of state / “parastatal” companies are making preparations for the possibility of further sanctions imposition
- And a few legal challenges against inclusion on this List (e.g., Gapontsev case – see slide [7](#))
- *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 appropriate 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 sanctions – ban on US banks’ participating in primary market for Russian non-ruble sovereign debt – is one of the new CBW Act second-round measures (see slides [5-6](#) above and [55-57](#) below)*
 - *This limited Trump Administration measure may serve to forestall Congressional appetite for possible broader Russian sovereign debt ban*

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

- [Executive Order 13849](#) of 20 Sept. 2018 – re implementation of certain CAATSA sections
 - Its detailed provisions, in four main sections, essentially authorize / amplify / guide implementation by State Dep't and Treasury Dep't (the two agencies that share most CAATSA application/enforcement authority), for cases where the President has determined to impose sanctions under four specific CAATSA sections
 - The CAATSA sanctions sections singled out here are
 - section 224(a) – re Russian activities undermining cyber-security (see slide [44](#))
 - section 231(a) – re transactions with the Russian defense/intelligence sectors (see slide [45](#))
 - section 232(a) – re development of Russian energy export pipelines (see slide [46](#))
 - section 233(a) – re investment in or facilitation of Russian privatizations (see slide [45](#))
 - Note that the sanctions authorized under all four of these CAATSA sections are imposable against both US persons (primary sanctions) and foreign persons (secondary sanctions)
 - And see related OFAC FAQ [627](#) of 20 Sept. 2018 on this
 - Selection of these four CAATSA sections: some insights; questions remain
 - thus far, flowing from this EO the Trump Administration has imposed only new section 231 defense-related sanctions – against a Chinese state military enterprise and its director (see slide [34](#))
 - the present focus on section 231 enforcement is shown in the 20 Sept. 2018 [State Dep't release](#) and a related public release – and further emphasized in State's background briefing of same date (see the [Transcript](#))
 - not yet clear why only the specific other three CAATSA sections (re cyber, export pipelines and privatization – see above) were included – but there has been no CAATSA enforcement to date re pipelines (despite ongoing US Congress and Trump Administration threats and even some European concerns re Nordstream 2 – see slide [46](#)) or re privatizations
 - note that there *have been* some CAATSA section 224 (cyber-related) SDN designations (see slide [34](#)) – against Russian and other non-US entities and individuals (though not specifically linked to this EO)

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 we suppose that some Russian companies / individuals already put on the section 231 LSP List, or others, might be vulnerable to same); and there can be no guarantee that this trend may not spread to targeting Russian companies / individuals under other CAATSA sections too – but no such new enforcement actions yet in 2019*
 - 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 (and apparently has already been making 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 see OFAC’s 6 April 2018 press release specific reminder in this regard*
 - And non-Russian companies / banks have become more cautious about doing any such business with Russian companies (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*
 - Note: there is still an exemption for Russian suppliers for NASA or DoD space launches
 - *And note the Russian counter-measures enacted and pending in response to CAATSA and the April 2018 SDN designations (see slides [74-77](#) below) – and more to come?*

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

- CAATSA – Potential penalties (same as for OFAC / BIS regs. violations – based on underlying laws)
 - Civil: approx. \$302,600 (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 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)
- Possible consultation with US authorities
 - US, allied-nation and other companies have been seeking private clarifications from State and Treasury Departments 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 similar re Russian unconventional resource project participation)
 - And India may well receive a specific waiver to protect it from CAATSA section 231 sanctions in connection with a major new arms purchase from Russia, under a special new US defense law provision amending CAATSA to allow this (*contrast with treatment of China – see slide 34*)
 - But we suppose most Russian companies are hesitant to do seek such, unless they need to
 - e.g., already-designated SDNs applying for delisting – *including En+, RUSAL etc. ... see slide 28*)
 - and some more direct court challenges to SDN and/or Oligarch List designations (see slide 7 above)

The CBW Act

- New second-round sanctions – announced 1-2 August 2019 by EO 12851 and State/OFAC releases and further clarified in 26 August 2019 Fed. Reg. (see slides [5-6](#))
- History / first round – August 2018
 - Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (the “CBW Act”) and related EO 12851 of 11 June 1993
 - First announced by State Dep't [Determinations](#) notice in late Aug. 2018
 - Triggered by finding that the Russian gov't was responsible for the Skripal poisoning by Novichok in England in March 2018 (which Russia continues to deny)
 - The first round of these new sanctions went into effect immediately in Aug. 2018 – with certain exceptions/waivers (per State Dep't finding that such are essential to US national security interests) – *namely*:
 - a ban on foreign assistance, arms sales and related financing (with exception granted for gov't space cooperation and commercial space launches), and denial of US gov't credit / guarantees / other financial assistance
 - and a ban on exports/reexports of national security-sensitive goods and technology to Russia
 - ❖ these being items designated as “NS 1” or “NS 2” on the [Commerce Control List](#) (“CCL”), all of which previously have been exportable with license for Russia
 - ❖ 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

The CBW Act (*cont'd*)

- But at the same time, these exceptions/waivers from the ban on national security goods/technology were also stated:
 - items eligible for several standard License Exceptions will remain so (i.e., no license application needed)
 - safety-of-flight items (for civil passenger aviation) – licensing is still permitted on case-by-case basis
 - “deemed exports/reexports” to Russian nationals in the US – licensing permitted on case-by-case basis unless otherwise prohibited
 - to wholly-owned US subsidiaries in Russia – on same basis
 - in support of gov’t space cooperation and common space launches – on same basis
 - to commercial end-users (for civil end-uses) – on same basis
 - for state-owned/-funded enterprises – case-by-case licensing, but subject to presumption of denial
- The law provides for a rebuttable presumption against retroactive application to contracts already entered into prior to 27 Aug. 2018
- The newly combined first and second rounds are to remain in place for at least a year (i.e., from Aug. 2019) and until further notice – *again, see slides [5-6](#) and the linked docs. there, and exercise particular caution in this area*

The CBW Act (*cont'd*)

- Per the CBW Act, if Russia hadn't met the following three conditions by 90 days after the initial determination (so, in Nov. 2018), as certified by the President to Congress:
 - ... that the RF gov't (i) is no longer using chemical / biological weapons etc.; (ii) has provided reliable assurances that it won't do so in future; and (iii) is willing to allow relevant on-site inspections by UN or other internationally recognized impartial observers etc. to confirm same
- This of course didn't happen (indeed, the State Dep't on 6 Nov. 2018 notified Congress that Russia ignored the deadline)
- Then the President (in consultation with Congress) "shall 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
- The Trump Administration chose the first three of these – and with various narrow interpretations, exceptions, waivers (see slides [5-6](#))

Proposed Further US Laws

- US House-adopted National Defense Authorization Act (NDAA) [amendment](#) of July 2019 that would sanction Russian sovereign debt – but perhaps won't be enacted, given the Aug. 2019 CBW Act coverage of this (see slide [5](#))
- Nordstream-2 (and other Russian energy export pipelines)
 - Existing CAATSA section 232 (from 2017) ... see slide [46](#) above
 - Series of USG (Trump Admin. and Congress) warnings/threats since then, but no enforcement yet ... as Nordstream-2 construction proceeds toward completion
 - Now, May 2019 US Senate [bill](#) ("Protecting Europe's Energy Security Act of 2019" – sponsored by Senators Cruz and Shaheen), which would:
 - require naming of (i) pipe-laying vessels involved in construction of a Russian energy export pipeline, and (ii) foreign persons that have sold, leased, provided for, facilitated provision of those vessels
 - exclude corporate officers and controlling shareholders of the above from entry into the US, and related SDN-type designations
 - impose possible sanctions on underwriting/insurance/reinsurance providers for such vessels
 - with certain exceptions, and national security waiver possibility
 - and various other reporting requirements, etc.
 - approved (as amended) by Foreign Relations Committee end July 2019; may proceed to vote in fall

Proposed Further US Laws (*cont'd*)

- DETER Act – short form (seems meaningless for business)
 - Passed unanimously by US Senate (4 June); no action yet in House
 - Aimed just at foreign persons who participate in actual election interference (bars entry into US)
- DETER Act – long form (and similar House Financial Services Committee bill)
 - If ever enacted ... and if future Russian interference in a US election is found
 - Would mandate that the President impose the following sanctions (among others)
 - Essentially, SDN designations on 2 or more of Russia's state banks – Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank (i.e., the current OFAC Directive 1 SSI banks – but the House bill also includes RDIF and Promsvyazbank)
 - prohibition on new investments in energy sector / energy company (unclear meaning) in Russia
 - ❖ by US persons (or in the US)
 - ❖ and SDN-type designation of foreign persons that make such investments
 - "new investment"
 - ❖ includes "significant upgrades or expansions to projects and construction underway"
 - ❖ excludes "routine maintenance of such projects and construction"
 - ❖ possible national security waiver
 - The House bill would also include some mandated sanctions in response to already-established Russian interference into the 2016 and 2018 elections, including
 - SDN designation of any energy projects (unclear meaning) outside Russia in which a Russian parastatal or state-owned company invests ≥\$5 million after enactment
 - and various other sanctions, not specifically relevant to energy sector
 - But no apparent recent movement forward on either one

Proposed Further US Laws (*cont'd*)

- DASKA Act (reintroduced Feb. 2019)
 - Like DETER long-form and House bills, no clear sense on whether/when could move forward (here again, no apparent recent action on this)
 - Would amend/enlarge CAATSA in various ways (includes enlarging scope of possible secondary sanctions – applicable to non-US persons) ... including mandating sanctions against:
 - persons making investments in LNG “export facility located outside of [Russia]” (with low \$ thresholds) – sense? mistaken wording?
 - persons making investments in an energy project (unclear meaning) outside of Russia that also has involvement by a Russian parastatal or state-owned/controlled company (where total value of project is >\$250 million)
 - persons 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 (incl. 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
 - Menu of possible sanctions is from existing CAATSA (mainly re commerce in/with the US)

EU Sectoral Sanctions

Overview

- The EU sanctions regime (in Council Reg. No 833/2014 of 31 July 2014, most recently amended by Reg. No. 2017/2212 of 30 Nov. 2017 ([link](#)) focuses on financial, energy, and dual-use / military sectors
 - Recently extended again; now in effect to 31 January 2020
 - Was fairly well coordinated with the US regime ... but no longer, with CAATSA / 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 [17](#) 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 seems more lenient than analogous US rule / interpretation
 - *And, unlike the US, no broad-reach blacklisting into leading commercial entities, CEOs of leading state-owned companies, etc.*
 - And there is nothing like the US CBW Act application to Russia (even though triggered by event in England)
- Much easier to grasp the basic EU rules than the US ones (and all the more so now, with all 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 16 Dec. 2014 (as amended most recently 25 Aug. 2017) – FAQs

EU Sectoral Sanctions (*cont'd*)

- And now keep in mind the pending Brexit – and thus possible future independent UK sanctions/rules/politics (see slide [9](#) above)

Energy

- Per the initial July 2014 energy-sector sanctions / authorization 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 [61](#))
 - to *any person or entity* in Russia or elsewhere
 - if for use in Russia (clarified to include its EEZ and Continental Shelf)
 - Authorization is to be considered / granted by competent authority “*of the member state where the exporter is established*”, per some general 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 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 ≥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 [62](#) above) in Russia including in its EEZ and Continental Shelf:
 - these specified types of services:
 - *drilling*
 - *completion services*
 - *well testing*
 - *supply of specialised floating vessels**
 - *logging*
- [* 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)*

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 the initial July 2014 version of the Reg., and as refined by the 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” (... not including *Novatek*) – per Annex VI), 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
- See EU Guidance Note FAQs 32-34, 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 ≤ 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 20)
 - 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 14*
 - Payment terms / delayed payment for goods / services ≠ 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 producers (of mineral products etc.) are permissible

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)
- Also note a UK law granting power to impose fine of £1 million or 50% of transaction value, for EU financial sanctions breaches as of 1 April 2017 (only minor enforcement action to note)

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)
- 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 + 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
 - Finally rejecting challenges brought some years ago by Rosneft, Gazpromneft, Sberbank, VTB, VEB and others
 - See the Court’s [Press Release](#), which gives the various case judgment numbers for those interested in reviewing

EU Crimea Sanctions

- Reg. No. 692/2014 as amended
 - Bars sale, supply, transfer, export of goods and technology (per an 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 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 July 2018 announcement of discontinuing tourist booking services for Crimea
- Some new EU designations in March 2019, following the recent Russia-Ukraine Black Sea naval

EU Direct Sanctions (SDN-like, etc.)

- The EU's SDN-like "blacklist" Reg. No. 269/2014 of 17 March 2014, and with updates
- And more names have been added in several update regs. to date
- Individuals and entities, including those added
 - in March 2019, in connection with the Ukraine/Russia Kerch Strait naval incident
 - in July 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
- Currently in effect to 15 Sept. 2019 (extended as of 14 March 2019)
- And in January 2019 four Russians (the two direct accused last year's Skripal poisoning in England, and two GRU top officials) on its new list of chemical weapons proliferation/use violators ([link](#))

Russia's Countersanctions

- Russia enacted in June 2018 a “Law on Countermeasures against Unfriendly Actions of the United States of America and/or Other Foreign Governments”, (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
 - These specific types of countermeasures are authorized (in most cases seemingly stated to be applicable to unfriendly foreign governments and to organizations located in their jurisdiction that are directly or indirectly controlled by or affiliated with them)
 - in other words, as literally phrased, perhaps narrow application only to companies having state ownership / control etc.)
 - this language uncertainty (see next slide) will have to await authoritative interpretation and/or practice to clarify

Russia's Countersanctions (*cont'd*)

- Here are the countermeasures specifics:
 - 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 there is another proposed set of Russian law amendments – a sort of blocking statute – that would, as seems to have evolved helpfully (but there can be no certainty here, given ongoing political tensions) per lively Russian business community opposition to an initial together draft bill, 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 private and public 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. The 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 "practically automatic"-type business dealings 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
- Per various reports over the past months, it appears this proposed Russian blocking statute bill may remain altogether dormant for now
- Foreign blocking statutes (such as Russia has been considering) 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
 - and note that the US Congress has legislated a new bilateral-cooperation process (the CLOUD Act)
- Russia has also enacted an SDN-like sanctions [act](#) on 1 Nov. 2018, with specific designations, against Ukraine and further expanded it on 25 Dec. 2018 ([link](#))
- Gov't Decree No. 1767 of 30 Dec. 2018 ([link](#)) includes threat of withholding/removing state pension funds etc. from Russian banks that cooperate with foreign sanctions against Russia (see its art. 2)

QUESTIONS?

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