

CLIENT ALERT:

U.S. MODIFIES RUSSIAN SANCTIONS AGAINST UNITED COMPANY RUSAL EXTENDING TIME TO WIND DOWN CONTRACTS

April 24, 2018

Introduction

In our Client Alert of April 12, 2018 we reported that on April 6th the United States Office of Foreign Assets Control (“OFAC”) designated 12 Russian companies to the U.S. Specially Designated Nationals List (“SDN list”), including United Company Rusal PLC (“Rusal”), which is the world’s second largest producer of aluminum and a major shipper of both raw products and finished materials. Rusal’s designation to the SDN List meant that U.S. persons could no longer transact any business with Rusal and that non-U.S. persons could not engage in “significant transactions” with Rusal. Simultaneous with the April 6th designations, OFAC also issued General License No. 12, which gave U.S. persons until June 5, 2018 to wind down ongoing transactions with Rusal.

Extension of the Wind Down Period for U.S. Persons

The designation of Rusal has caused substantial disruption of shipping contracts and charter parties and Rusal has petitioned OFAC for delisting from the SDN List. While OFAC has not delisted Rusal, it has issued General Licenses Nos. 12A and 14. General License No. 12A amends General License No. 12 to provide that payments to Rusal must be made to a blocked, interest-bearing account in the U.S., except as authorized by General License 14.

General License 14 extends the time for U.S. persons to wind down operations, contracts or other agreements with Rusal, or any entity of which Rusal owns greater than 50%, until 12:01 a.m. eastern daylight time on October 23, 2018. Any funds which were blocked prior to April 23rd remain blocked, but they may be used in the wind down activities authorized by General License 14. As for transactions with Rusal occurring after April 23rd, as authorized by General License 14, U.S. persons need not block funds associated with such transactions.

Impact on Non-U.S. Persons

While General Licenses Nos. 12A and 14 do not directly apply to non-U.S. persons, the authorization for continued transactions with Rusal until October 23, 2018 by U.S. persons, as provided for in General License No. 14, broadens the scope of activities which are permitted for non-U.S. persons. As advised in our prior Client Alert, Section 10 of SSIDES makes it a sanctionable activity for a non-U.S. person to engage in a “significant

transaction” with Rusal. However, as described in OFAC FAQs 542, 545 and 574, a transaction will not be considered “significant” for the purposes of Section 10 of SSIDES, if a U.S. person would not require a specific license from OFAC for such a transaction. According to new FAQ 579 issued on April 23rd:

Therefore, activity authorized by General License 14, and occurring within the time period authorized by General License 14, would not be considered “significant” for the purpose of a sanctions determination under Section 10 of SSIDES....

Also, the new FAQs issued on April 23rd make it clear that when engaging in activities with Rusal authorized by General License 14 up until October 23, 2018 neither U.S. nor non-U.S. persons are required to deposit payments made to Rusal into a blocked account in the U.S.

SUMMARY

With the issuance of General License 14 on April 23, 2018 U.S. persons now have until October 23, 2018 to wind down their transactions and contracts with Rusal or entities 50% or more owned by Rusal. Similarly, the transactions of non-U.S. persons with Rusal between now and October 23, 2018 will not be considered “significant” since they are activities for which U.S. persons would not require a license during that time frame.

Disclaimer: This Client Alert provides only a general summary of General Licenses Nos. 12A and 14 issued by OFAC on April 23, 2018 and is not intended to constitute comprehensive legal advice. Specific legal advice should be taken with respect to each individual inquiry regarding the designations. For additional clarification, please feel free to contact Bill Juska (juska@freehill.com), Gina Venezia (venezia@freehill.com) or Bill Pallas (pallas@freehill.com).

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