

CLIENT ALERT:

OFAC AGAIN EXTENDS DEADLINE FOR RUSAL WIND-DOWN

October 15, 2018

Introduction

United Company Rusal PLC (“Rusal”), EN+ Group PLC (“EN+”) and JSC EuroSibEnergO (“EuorSib EnergO”) were all named to the U.S. Specially Designated Nationals List (“SDN List”) on April 6, 2018 by the U.S. Office of Foreign Asset Control (“OFAC”). These designations mean that U.S. persons generally cannot engage in any transactions with those entities and that foreign persons cannot engage in “significant transactions.” However, simultaneous with the April 6 designations, OFAC issued General License 12, giving U.S. persons until June 5 to wind-down ongoing transactions with the three entities, or with any entity in which the three designated entities have a 50% or greater interest. Thereafter, as reported in our Client Alerts of April 24 and September 27, 2018, OFAC issued General License 14 extending the Rusal wind-down period until October 23 and General License 14A, granting a further extension until November 12. OFAC also issued General Licenses 16 and 16A, also extending the time for U.S. persons to wind-down operations, contracts or other agreements with EN+ and EuroSibEnergO, or any entity of which either owns 50% or more, until October 23, and then until November 12, 2018.

Further Extensions Issued By OFAC

On October 12, 2018 OFAC issued General Licenses 14B and 16B, further extending the time for U.S. persons to wind-down operations, contracts or other agreements with Rusal, EN+ or EuroSibEnergO, or any entity in which those entities hold a 50% or greater interest, until 12:01 a.m. eastern standard time on December 12, 2018.

The U.S. Treasury Department’s announcement of these extensions can be viewed under the heading “Press Releases” at: <https://home.treasury.gov/news/press-releases/sm50>

The announcement states that “EN+ and Rusal have approached the U.S. Government about substantial corporate governance changes that could potentially result in significant changes in control.” The extension of the wind-down deadline is designed to give the U.S. Government time to review the proposals by EN+ and Rusal

Copies of General Licenses 14B and 16B can be viewed on the OFAC website under the heading “General Licenses” at:

<https://www.treasury.gov/resource-center/sanctions/Programs/Pages/ukraine.aspx>

Impact on non-U.S. Persons

General Licenses 14B and 16B apply only to U.S. persons. However, the extension of the wind-down period contained in those licenses does impact non-U.S. persons. As explained in our previous Client Alerts, while under Section 10 of SSIDES a non-U.S. person is subject to sanctions for engaging in a “significant transaction” with Rusal, EN+ or JSC EuroSibEnerg, OFAC FAQs 542, 545 and 742 state that a transaction will not be considered “significant” if a U.S. person would not need a specific license from OFAC to engage in that activity. Therefore, in effect, non-US persons also receive the benefit of the extension of the deadline to conclude transactions with these sanctioned entities.

Summary

General Licenses 14B and 16B now give U.S. persons until December 12, 2018 to wind down their transactions with Rusal, EN+ or JSC EuroSibEnerg, or with any entity in which those companies own a 50% or greater interest. Non-US persons who continue to wind-down transactions with Rusal, EN+ or JSC EuroSibEnerg until December 12, 2018 will not be subject to sanctions because a U.S. person would not need a specific license to engage in such wind-down activities.

Disclaimer: This Client Alert provides only a general summary of General Licenses 14B and 16B 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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