

CLIENT ALERT:

OFAC AGAIN EXTENDS DEADLINE FOR RUSAL WIND-DOWN

December 14, 2018

Introduction

United Company Rusal PLC (“Rusal”), EN+ Group PLC (“EN+”), JSC EuroSibEnergO (“EuorSib EnergO”) and Gaz Group (“Gaz”) 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 a General License, giving U.S. persons until June 5 to wind-down ongoing transactions with the entities, or with any entity in which the designated entities have a 50% or greater interest. Thereafter, OFAC has repeatedly extended the deadline for winding-down transaction with these entities, most recently until January 21, 2019.

Further Extensions Issued By OFAC

On December 7, 2018 OFAC issued General Licenses 14D, 15C and 16D, further extending the time for U.S. persons to wind-down operations, contracts or other agreements with Rusal, EN+, EuroSibEnergO, Gaz, or any entity in which those entities hold a 50% or greater interest, until 12:01 a.m. eastern standard time on January 21, 2019. The U.S. Treasury Department’s announcement of these extensions stated that:

“EN+, RUSAL, and GAZ are proposing substantial corporate governance changes that could potentially result in significant changes in control of these sanctioned entities. In recognition that the review of these complex proposals is ongoing, OFAC is extending the expiration date of related general licenses until January 21.”

It is difficult to predict where the process will wind up, but it is clear from the several extensions granted that the Treasury Department is carefully considering whether the changes in control proposed by these companies justify their removal from the U.S. Specially Designated Nationals List. Copies of General Licenses 14D, 15C and 16D 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 14D, 15C and 16D only apply 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+, JSC EuroSibEnerg or Gaz, 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 14D, 15C and 16D now give U.S. persons until January 21, 2019 to wind down their transactions with Rusal, EN+, JSC EuroSibEnerg, Gaz, 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+, JSC EuroSibEnerg, or Gaz until January 21, 2019 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 14D, 15C and 16D 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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