



Association
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Businesses

The Damocles Sword: Sanctions, what to expect next

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US Primary Sanctions

Menu of US Primary Sanctions and Export Control

List of Specially Designated Nationals and Blocked Persons ("SDN List")

- US persons may not engage in any transactions involving:
 - SDNs
 - subsidiaries that are 50% or more directly/indirectly owned by SDNs (by one or more in the aggregate ("50% rule"))
- Asset freeze and ban on entry into US
- Administered and enforced by US Treasury Department's Office of Foreign Assets Control ("OFAC")

Sectoral Sanctions Identification List Parties ("SSI List")

- Limited set of restrictions targeted against particular sectors of the Russian economy: energy, defense and finance
- US persons may not engage in prohibited types of transactions involving:
 - entities listed on the SSI List
 - subsidiaries that are directly/indirectly owned 50% or more by listed persons (by one person or more in the aggregate ("50% rule"))
- Administered and enforced by OFAC

US export control

- Export control license requirements to be observed, but with presumption of denial:
 - supplies of dual-use or military items addressed to military users/for military purposes (including, inter alia, chemical and biological weapons)
 - export, re-export or transfer to persons included in the Entity List by anybody of any items subject to EAR (subject to certain exceptions)
- De minimis rule: US military product = product with US components comprising at least 10% of cost (25% for dual-use items)

US Sanctions: Numbers

- Sanctions related to **Ukrainian crisis** (including persons, sanctioned pursuant to CAATSA)
 - SDN List – 203 individuals, 98 companies
 - SSI List – 6 individuals, 289 companies (12 companies were also included in the SDN List)
- Sanctions related to **Crimea**
 - SDN List – 66 companies, 5 individuals and 1 vessel
- Sanctions related to **CAATSA** (other groundings)
 - In total 29 persons: 24 persons in relation to cyber attacks, 3 persons in relation to human rights' violations, 2 in relation to trade in arms
- Sanctions related to **cyber activities**
 - SDN List – 45 individuals and 21 companies
- Sanctions related to **North Korea**
 - SDN List – 10 companies, 5 individuals, 6 vessels
- Sanctions related to **Syria**
 - SDN List – 4 companies, 12 individuals
- Sanctions related to **Venezuela**
 - SDN List – 1 company
- Sanctions against **transnational crime**
 - SDN List – not less than 15 individuals and 6 companies
- Sanctions against **transnational terrorism**
 - SDN List – not less than 2 companies and 12 individuals

Directive 1 of the US Sectoral Sanctions

- Directive 1 relates to Russian **financial services sector**
 - As amended by "Countering America's Adversaries Through Sanctions Act" of August 2, 2017 ("CAATSA"), Directive 1 prohibits US persons from transacting in, providing financing for, or otherwise dealing in (a) debt of specified tenors or (b) equity if that debt or equity was or is issued on or after relevant sanctions effective date ("new debt" or "new equity") by, on behalf of, or for benefit of certain sanctioned persons named under Directive 1, their property, or their interests in property
 - The term debt includes bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper
 - The term equity includes stocks, share issuances, depositary receipts, or any other evidence of title or ownership
 - **Sanctioned persons:** Bank of Moscow, Gazprombank, Russian Agricultural Bank, Sberbank, Vnesheconombank, VTB Bank, and their respective subsidiaries
 - The prohibited tenors of "new debt" under Directive 1 are now as follows:

Period when the debt was issued	Applicable tenor of prohibited debt
from July 16, 2014 to September 11, 2014	Longer than 90 days maturity
from September 12, 2014 to November 27, 2017	Longer than 30 days maturity
from November 28, 2017	Longer than 14 days maturity

Directives 2 and 4 of the US Sectoral Sanctions

- Directive 2 relates to Russian **energy sector**
 - Directive 2 prohibits transacting in, providing financing for, or otherwise dealing in new debt of specified tenors by, on behalf of, or for benefit of persons named under Directive 2, their property, or their interests in property (as amended by CAATSA)
 - **Sanctioned persons:** AK Transneft, Gazprom Neft, Novatek, Rosneft and their respective subsidiaries
 - The prohibited tenors of "new debt" under Directive 2 are now as follows:

Period when the debt was issued	Applicable tenor of prohibited debt
from July 16, 2014 to November 27, 2017	Longer than 90 days maturity
from November 28, 2017	Longer than 60 days maturity

- Directive 2 does not place any restrictions on equity of persons falling under this Directive

- Directive 4 also relates to Russian **energy sector**
 - As amended by CAATSA, starting from January 29, 2018, Directive 4 imposes restrictions on supplies of goods and services
 - to any deepwater, Arctic offshore or shale project
 - for exploration or production of oil
 - whether in Russia or elsewhere
 - if sanctioned company holds in such project at least 33% interest or ownership of majority of voting interests
 - Prior to these amendments restrictions applied only to such projects in the Russian territory, provided that designated Russian company held any interest in such project
 - **Sanctioned persons:** Gazprom, Gazprom Neft, Lukoil, Surgutneftegas, Rosneft and their respective subsidiaries
 - NB! Types of services targeted by Directive 4 include drilling services, geophysical services, geological services, logistical services, management services, modelling capabilities, and mapping technologies
 - Financial services such as clearing transactions or providing insurance for above activities are not covered by Directive 4

Directive 3 of the US Sectoral Sanctions

- Directive 3 applies to the Russian **defense sector**
- Directive 3 prohibits US Persons from engaging in
 - All transactions in, provision of financing for, and other dealings in new debt of longer than 30 days maturity for entities subject to Directive 3
 - **Sanctioned persons:** Rostec and its respective subsidiaries
- No restrictions have been placed on equity of persons subject to Directive 3
- CAATSA did not introduce any changes to Directive 3

Who Must Comply with US Sanctions?

- US sanctions are mandatory for "US persons", namely:
 - Entities organized under US laws and their non-US branches
 - Individuals and entities in the US, even temporarily
 - US citizens and permanent resident aliens ("Green Card" holders) wherever located or employed
 - Any directors, officers, employees, agents, etc. located in the US (irrespective of nationality)
- **NB! Separately incorporated foreign subsidiaries of US companies are not US persons for purposes of the US Russia/Ukraine sanctions**
- US sanctions may become essential for Non-US persons if:
 - They cause violations by US persons
 - They export, re-export, transfer items or services subject to US jurisdiction
 - Non-us persons that deal with SDNs may face the risk of being designated as SDNs themselves (even when they are not required to comply)
- **NB! Payments that are denominated in US dollars will be necessarily processed by US clearing banks**
- Practice of each bank should be analyzed separately because banks in neutral jurisdictions could also opt to comply with US sanctions

A close-up, high-resolution image of the United States flag waving in the wind against a clear blue sky. The flag's stars and stripes are clearly visible, with the blue field of stars on the left and the red and white stripes extending to the right. The flag is slightly tilted, giving it a sense of movement.

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US Secondary Sanctions and Further Development of Sanctions Legislation

Crimea-Related Secondary Sanctions (1)

- **Executive Order 13685** basically provides that secondary sanctions may be applied against any person that operates in or with Crimea
- Blocking provision (risk of secondary sanctions) for person determined to:
 - Operate in Crimea
 - Be a leader of an entity operating in Crimea
 - Be owned or controlled by or to have acted for or on behalf of a blocked person
 - Have materially assisted, sponsored, or provided financial, material or technological support for goods or services to or in support of a blocked person

Crimea-Related Secondary Sanctions (2)

- Thus far, secondary sanctions have been imposed against those persons whose actions contribute to developing of the Crimean infrastructure, e.g.:
 - March 11, 2015 – Russian National Commercial Bank ("RNCB")
 - rationale – for **facilitation of illegal efforts to incorporate Crimea into Russia**. OFAC claims that RNCB bought or took over branches of retreating banks and now operates the largest banking network in Crimea
 - December 22, 2015 – 3 Russian banks and one Crimea-based bank (Genbank, Krasnodar Regional Investment Bank, Commercial Bank Verkhnevolzhsky, and Sevastopolsky Morskoy Bank)
 - rationale – for **operating in Crimea**, which "underscores the US' commitment to opposing Russia's occupation and attempted annexation of Crimea"
 - September 1, 2016 – SGM-Most LLC (a company owned by the gas pipeline construction company Stroygazmontazh which was designated as an SDN), Mostotrest PJSC, and a number of other Russian entities
 - rationale – for **the involvement in the construction of the Kerch Bridge**, which spans the Kerch Strait to connect the Crimean peninsula with Russia
 - January 26, 2018 – Technopromexport LLC and Power Machines
 - rationale – for **the involvement in the transfer of turbines** made by a Russian-German JV to Crimea

Overview of CAATSA

- Calls for **imposition of additional sanctions** targeting Russia, Iran and North Korea
- Developments targeting Russia:
 - codification of existing sanctions
 - restrictions on US President's authority to relax sanctions by including congressional review mechanism
 - tightening of existing sectoral sanctions
 - new/additional mandatory and discretionary secondary sanctions authorities (targeting non-US and, in some cases, US persons)
 - extensive reporting (e.g., as to Russian oligarchs, illicit financing, media)
 - introduction of a possibility of imposition of sectoral sanctions on the Russian state-owned entities operating in the railway, or metals and mining sectors

CAATSA – Section 226

- Sanctions target non-US financial institutions for facilitation of the following:
 - "significant" transactions, involving:
 - Russian deepwater, Arctic offshore or shale oil projects in Russia
 - activities of Gazprom aimed at withholding significant natural gas supplies from certain jurisdictions
 - sale/transfer of Russian defense articles to Syria
 - "significant" financial transactions, involving:
 - SDNs (designated pursuant to US sanctions "addressing the crisis in Ukraine")
- "Significant (financial) transactions" are determined on a case-by-case basis
- "Significant financial transactions" = any transfer of value involving a financial institution, e.g.:
 - receipt or origination of wire transfers
 - acceptance of commercial paper (both retail and wholesale), and the clearance of such paper (including checks and similar drafts)
 - receipt or origination of ACH (Automated Clearing House) or ATM (Automated Teller Machine) transactions
 - holding of nostro, vostro, or loro accounts
 - provision of trade finance or letter of credit services, guarantees or similar instruments
 - provision of investment products or instruments or participation in investments
 - other transactions for or on behalf of, directly or indirectly, a person serving as a correspondent, respondent, or beneficiary
- "Facilitation" = provision of any form of assistance

CAATSA – Section 228 (1)

- **Sanctions target** "foreign sanctions evaders" who are determined to:
 - materially violate, attempt to violate, conspire to violate, or cause a violation of US sanctions against Russia; or
 - facilitate significant transaction or transactions involving deceptive practices for or on behalf of sanctioned persons or their relatives
- **Restrictions apply to the following:**
 - "significant transactions" = dealings otherwise prohibited for US persons
 - "significance" is determined on a case-by-case basis
 - "facilitation" of "significant transactions" = provision of any form of assistance:
 - provision or transmission of currency, financial instruments, securities, or any other value
 - purchasing, selling, transporting, swapping, brokering, financing, approving, or guaranteeing
 - provision of other services of any kind
 - provision of personnel
 - provision of software, technology, or goods of any kind

CAATSA – Section 228 (2)

- Risks arises when dealing with (for the benefit of):
 - SDNs (incl. their subsidiaries determined based on the 50% Rule)
 - any child, spouse, parent, or sibling of a SDN
 - entities subject to US sectoral sanctions (incl. their subsidiaries determined based on the 50% Rule) but only when a dealing involves deceptive practices
 - dealings prohibited by US Directives 1, 2, 3 and 4 are of primary concern
- CAATSA Section 228 has not been implemented in the context of commercial operations
 - November 8, 2018 – the Ministry of State Security of the Luhansk People's Republic and 2 individuals were designated as SDNs under CAATSA Section 228
 - rationale – for being "engaged in serious human rights abuses in furtherance of Russia's occupation or control over parts of Ukraine"

CAATSA – Other Provisions (1)

- **Undermining cybersecurity on behalf of the Russian Government (Sec. 224)**
 - 2018 - OFAC designated a number of Russian individuals and companies for knowingly engaging in significant activities undermining cybersecurity (e.g., Concord Catering, Economy Today, Federal News Agency)
- **"Significant transactions" with Russian intelligence/defense sectors (Sec. 231)**
 - October 27, 2017 – the US Department of State added 39 Russian companies to the List of Specified Persons ("**LSP List**") for being part of, or operating for or on behalf of, the defense or intelligence sectors of the Government of Russia
 - 2018 – the LSP List has been expanded twice and currently includes 84 entities and individuals
 - September 20, 2018 – the Chinese entity Equipment Development Department (EDD) and its director for engaging in "significant transactions" with Rosoboronexport (ROE)
 - December 19, 2018 – OFAC designated pursuant to CAATSA Sec. 224 12 individuals and entities for undermining cybersecurity, which were on the same day added on the LSP List
- **Investment in privatization of state assets (Sec. 233)**
 - by investing or facilitating investments of not less than USD 10 mln, or
 - any combination of investments of not less than USD 1 mln each, which in the aggregate equals or exceeds USD 10 mln in any 12-month period)

CAATSA – Other Provisions (2)

- Provision of "significant" financial, material or technological support materially contributing to the ability of the Government of Syria to (Sec. 234):
 - acquire or develop chemical, biological, or nuclear weapons or related technologies
 - acquire or develop ballistic or cruise missile capabilities
 - acquire or develop destabilizing numbers and types of advanced conventional weapons
 - acquire significant defense articles, defense services, or defense information, or items that are on the US Munitions List
- Significant corruption by Russian government officials, close associates, family members (Sec. 227)
- Provision of certain investments/provision of goods or services that contribute to Russia's ability to construct, maintain or expand energy export pipelines (discretionary) (Sec. 232)
 - by selling, leasing, or providing to Russia goods, services, technology, information, or support, and
 - this could directly and significantly facilitate the maintenance, expansion, construction, modernization, or repair of energy pipelines, and
 - the investment/transaction or any combination of investments is not less than USD 1 mln, or the annual aggregate investments are not less than USD 5 mln
- Significant investments in "special Russian crude oil projects" which is a project intended to extract crude oil from (Sec. 225):
 - the exclusive economic zone of Russia in waters more than 500 feet deep
 - Russian Arctic offshore locations
 - shale formations located in Russia

CAATSA – Available Secondary Sanctions (Sec. 235)

Export license restrictions	Visa restrictions on corporate officers
Property restrictions	No Export-Import Bank of the US assistance
Debt/equity restrictions	Prohibition on US financial loans/credits
Ban on US government procurement	Prohibition on forex transactions
Sanctions on principal executive officer/officers	Ban on transfers of credit/payments
Opposition to loans from international institutions	Specific prohibitions on financial institutions

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CBW Act

CBW Act: Overview and Status

- On August 6, 2018, under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 ("**CBW Act**") the US determined that Russia has used chemical or biological weapons in violation of international law or has used lethal chemical or biological weapons against its nationals
- In response, the CBW Act requires the US President to impose the following **sanctions against the use of chemical or biological weapons**:
 - "**Initial sanctions**" that were imposed on August 27, 2018
 - Measures will remain in place for at least 1 year and until further notice
 - Application of the initial sanctions was partially waived by the US State Department based on the determination that it is essential to the national security interests to waive their application in certain part
 - "**Additional sanctions**" that shall be imposed within 3 months unless the US President is able to certify that Russia complies with certain requirements

CBW Act: Initial Sanctions (1)

- **Foreign Assistance**
 - **Measure includes** termination of assistance to Russia under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products
 - **Waiver:** completely waived
- **Arms Sales**
 - **Measure includes** termination of:
 - Sales to Russia under the Arms Export Control Act of any defense articles, defense services, or design and construction services
 - Licenses for the export to Russia of any item on the US Munitions List
 - **Waiver:** issuance of licenses in support of government space cooperation and commercial space launches (subject to case-by-case analysis consistent with the export licensing policy prior to the application of CBW Act sanctions)
- **Arms Sales Financing**
 - **Measure includes** termination of all foreign military financing for the Russian Federation under the Arms Export Control Act
 - **Waiver:** imposed without any waiver
- **Denial of US Government Credit or Other Financial Assistance**
 - **Measure includes** denial to Russia of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the US Government, including the Export-Import Bank of the US
 - **Waiver:** imposed without any waiver

CBW Act: Initial Sanctions (2)

- Exports of National Security-sensitive Goods and Technology
 - **Measure includes** a prohibition on exports to Russia of any goods or technology listed on the Commerce Control List (CCL) maintained by the Department of Commerce's Bureau of Industry and Security (BIS) and controlled for national security (NS) reasons
 - **Waivers:**
 1. **9 License exceptions**
 - Governments, international organizations, international inspections under the Chemical Weapons Convention, and the International Space Station
 - Encryption commodities, software, and technology
 - Servicing and replacement of parts and equipment
 - Baggage
 - Temporary imports, exports, reexports, and transfers in-country
 - Technology and software unrestricted
 - Additional permissive reexports
 - Civil end-users
 - Aircraft, vessels, and spacecraft

CBW Act: Initial Sanctions (3)

2. Permission of certain exports/reexports under "new" licenses

- BIS will continue to consider license requests and issue "new" licenses on a case-by-case basis, consistent with its pre-existing export licensing policy for Russia for the following exports and reexports:
 - a) Safety of flight: exports and reexports of goods or technology necessary for the safety of flight of civil fixed-wing passenger aviation
 - b) Deemed exports/reexports: the release of technology for deemed exports and reexports to Russian nationals
 - c) Wholly-owned US subsidiaries: exports and reexports of goods or technology to wholly-owned US and other foreign subsidiaries in Russia
 - d) Commercial end-users: exports and reexports of goods or technology for commercial end-users or civil end-users in Russia
 - e) Space flight: exports and reexports of goods or technology in support of government space cooperation and commercial space launches

NB: Separately, license applications for new licenses to export NS-controlled goods or technology to Russian state-owned (SOE) or state-funded (SFE) enterprises will be reviewed on a case-by-case basis, subject to a "presumption of denial" policy

CBW Act: Additional Sanctions

- Menu of **6 possible additional sanctions** (although they were not imposed in November 2018 (as it was initially expected), they still may be imposed in 2019):
 - **Multilateral development bank assistance**: the US shall oppose the extension of loans or financial or technical assistance to Russia by international financial institutions
 - **Bank loans**: the US shall prohibit any US bank from making any loan or providing any credit to the Russian government, except for loans or credits for the purpose of purchasing food or other agricultural commodities or products
 - **Further export restrictions**: a ban on exports to Russia of all other goods and technology (excluding food and other agricultural commodities and products)
 - **Import restrictions**: a ban on importation into the US of articles (which may include petroleum or any petroleum product) that are the growth, product, or manufacture of Russia
 - **Diplomatic relations**: downgrade or suspension of diplomatic relations between the US and Russia
 - **Presidential action regarding aviation**: suspension of the authority of foreign air carriers owned or controlled by the Russian government to engage in foreign air transportation to or from the US

CBW Act: Other Notable Provisions

- **Removal of sanctions**
 - The US President shall remove sanctions if the US President determines and certifies to the US Congress, after the end of the 12-month period that started on August 27, 2018, that the following conditions are satisfied:
 - Russia has provided reliable assurances that it will not use chemical or biological weapons in violation of international law or against its own nations
 - Russia is not making preparations for further use of chemical or biological weapons
 - Russia is willing to allow on-site international inspections to verify that it is not making such preparations
 - Russia is making restitution to those affected by any use of chemical or biological weapons
- **Criteria for waiver**
 - The US President under certain conditions may waive the application of initial and additional sanctions upon a determination that one of criteria below is satisfied:
 - Such a waiver is in the national security interests of the US; or
 - There has been a fundamental change in the leadership and policies of Russia
- **Contract sanctity**
 - The impact of the possible additional sanctions may be limited given that the CBW Act has certain exemptions with respect to existing contracts

A high-resolution image of the United States flag waving against a clear blue sky. The flag's stars and stripes are clearly visible, with the blue field of stars on the left and the red and white stripes extending to the right. The flag is shown in a dynamic, flowing state, with the stripes creating a sense of movement.

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DASKAA v.2.0

Overview and Status

- On August 8, 2018, Draft Bill No. S.3336 "Defending American Security from Kremlin Aggression Act of 2018" was introduced in the US Senate
 - At the end of 2018, the US Congress suspended its activities due to a shutdown caused by disputes over the financing of the construction of a wall on the border with Mexico, and the consideration of the draft bill was postponed
- On February 13, 2019, the US senators introduced a new version of the draft bill "Defending American Security from Kremlin Aggression Act of 2019" ("**DASKAA**")
- DASKAA is supported by a bipartisan group of senators
- In general, DASKAA:
 - Builds upon and expands the sanctions included into **CAATSA** focusing on oligarchs and political figures, energy, financial and cyber sectors of Russia, etc.
 - Expands on sanctions in its 2018 version by adding new sanctions such as measures in connection with the Kerch Strait incident, investment in Russian LNG projects outside of Russia, etc.
 - Provides for extensive reporting (e.g., update on the "Kremlin Report", CBW Act sanctions, etc.)
 - Introduces sanctions by inserting new sections to and redesigning existing sections of CAATSA
 - Provides that the US President shall impose the sanctions within the specified terms tied to the date of DASKAA's enactment ("**Enactment Day**")

New Version of CAATSA Sec. 235

- Sanctions with respect to transactions with **certain Russian political figures** and **oligarchs**
 - **Sanctions target** the following groups:
 - (i) Political figures, (ii) oligarchs, and (iii) other persons that facilitate illicit and corrupt activities, directly or indirectly, on behalf of Mr. Vladimir Putin, and (iv) persons acting for or on behalf of the above persons
 - Russian parastatal entities that facilitate illicit and corrupt activities, directly or indirectly, on behalf of Mr. Vladimir Putin
 - Family members of persons described above in (a) or (b) that derive significant benefits from such illicit and corrupt activities; and
 - Persons, including financial institutions, engaging in significant transactions with persons described above
 - **Measures to be imposed** are specified in CAATSA Sec. 224 (b) that provides for:
 - Asset blocking
 - Exclusion from the US and revocation of visa or other documentation
 - **Timeline** – on and after the date that is 180 days after the Enactment Day

New Version of CAATSA Sec. 237

- Sanctions with respect to transactions related to **investments in Russian liquefied natural gas ("LNG") export facilities**
 - **Sanctions target** a person that knowingly, on or after the Enactment Day, makes an investment in an LNG export facility located outside of Russia that meets both criteria below:
 - **"Criterion of impact"**
 - That directly and significantly contributes to Russia's ability to construct LNG export facilities outside of Russia
 - **"Criterion of value"**
 - That has a fair market value of \geq \$ 1 million; or
 - That, during a 12-month period, has an aggregate fair market value of \geq \$ 5 million
 - **Measures to be imposed** – 5 or more of the sanctions prescribed by CAATSA Sec. 235 (CAATSA Sec. 239E if DASKAA is enacted)
 - **Timeline** – on and after the date that is 180 days after the Enactment Day

New Version of CAATSA Sec. 238

- Prohibition for US persons to engage in transactions with, provide financing for, or otherwise deal in **Russian sovereign debt**
 - **Sanctions target:** Russian sovereign debt issued 90 days after the Enactment Day
 - **The debt includes:**
 - Bonds issued by the Central bank, the National Wealth Fund, or the Federal Treasury of the Russian Federation, or agents or affiliates of these entities with maturity of more than 14 days
 - Foreign exchange swap agreements with these entities with a duration of more than 14 days
 - Any other financial instrument of more than 14 days' maturity (i) issued by a Russian financial institution on behalf of the Russian government; or (ii) that the President determines otherwise represents Russian sovereign debt
 - **Timeline** – the US Government would be required to issue regulations on implementation of CAATSA Sec. 238 within 60 days following the Enactment Day

New Version of CAATSA Sec. 239

- Sanctions with respect to Russian financial institutions
- **Sanctions target:** Russian financial institutions that provided financial or other support for interference by the Government of the Russian Federation in the democratic process or elections of any country other than the Russian Federation
 - **Measures to be imposed** are specified in CAATSA Sec. 224 (b)(1) that provides for:
 - Asset blocking
 - **Timeline** – on and after the date that is 90 days after the Enactment Day

New Version of CAATSA Sec. 239A

- Sanctions with respect to transactions related to **investments in energy projects** supported by Russian state-owned or parastatal entities **outside of Russia**
- **Sanctions target** a person that knowingly, on or after the Enactment Day, invests in an energy project outside of Russia that meets both criteria below:
 - **"Criterion of support"**
 - That is supported by a Russian parastatal entity or entity owned or controlled by the Russian Government; and
 - **"Criterion of value"**
 - Total value of which exceeds or reasonably expected to exceed \$ 250 million
- **Measures to be imposed** – 5 or more of the sanctions prescribed by CAATSA Sec. 235 (CAATSA Sec. 239E if DASKAA is enacted)
- **Timeline** – on and after the date that is 180 days after the Enactment Day

New Version of CAATSA Sec. 239B (1)

- Sanctions with respect to support for the development of **crude oil resources in Russia**
 - **Sanctions target** a person that knowingly, on or after the Enactment Day, sells, leases, or provides to Russia goods, services, technology, financing, or support that meet both criteria below:
 - **"Criterion of value"**
 - Any of which has a fair market value of $\geq \$ 1$ million; or
 - That, during a 12-month period, have an aggregate fair market value of $\geq \$ 5$ million
 - **"Criterion of impact"**
 - That could directly and significantly contribute to Russia's (a) ability to develop crude oil resources located in Russia; or (b) production of crude oil resources in Russia, including any direct and significant assistance with respect to the construction modernization, or repair of infrastructure that would facilitate the development of crude oil resources located in Russia
 - **Measures to be imposed** – 5 or more of the sanctions prescribed by CAATSA Sec. 235 (CAATSA Sec. 239E if DASKAA is enacted)

New Version of CAATSA Sec. 239B (2)

- **Exception** – sanctions shall not apply with respect to the maintenance of projects that are ongoing as of the Enactment Day
- **Timeline** – not later than 90 days after the Enactment Day the US Secretary of State (in consultation with the Secretary of the Treasury and the Secretary of Energy) shall issue regulations:
 - clarifying how the above-mentioned exception will be applied
 - listing specific goods, services, technology, financing, or support covered by CAATSA Sec. 239B

DASKAA – Other Sanctions

- Other Sanctions proposed by DASKAA:
 - Transactions with the **cyber sector** of the Russian Federation (CAATSA Sec. 236)
 - Russian detention of **24 Ukrainian naval personnel** on and after November 25, 2018 (CAATSA Sec. 239C)
 - On March 15, 2019 OFAC sanctioned 6 Russian individuals and 8 entities "playing a role in Russia's unjustified attacks on Ukrainian naval vessels in the Kerch Strait, the purported annexation of Crimea, and backing of illegitimate separatist government elections in eastern Ukraine"
 - Violations by the Russian Federation of **freedom of navigation** (CAATSA Sec. 239D)

DASKAA – Reporting Requirements

- DASKAA Sec. 622: **Update on the "Kremlin Report"**: Secretary of the Treasury shall submit to the appropriate congressional committees an updated report on Russian oligarchs and parastatal entities of Russia (CAATSA Sec. 241)
- DASKAA Sec. 623-628: **Other reporting requirements**: US President shall submit to the appropriate congressional committees a report on persons that, on or after August 2, 2017, and before the date of the report:
 - knowingly engaged in significant activities undermining **cybersecurity** of any person (CAATSA Sec. 224)
 - knowingly made a **significant investment in a special Russian crude oil project** (CAATSA Sec. 225)
 - **foreign financial institutions** that have knowingly engaged in significant transactions involving **significant investments in a special Russian crude oil project** (CAATSA Sec. 226)
 - **materially violated, attempted to violate, conspired to violate, or caused a violation** of US sanctions against Russia; or facilitated a **significant transaction or transactions**, including deceptive or structured transactions, for or on behalf of any person subject to US sanctions against Russia, or any child, spouse, parent, or sibling thereof (CAATSA Sec. 228)
 - have made an **investment of \$10 million or more** (or any combination of investments of not less than \$1 million each, which in the aggregate equals or exceeds \$10 million in any 12-month period); **or facilitated such an investment**, if the investment directly and significantly contributes to the ability of the Russian Federation to **privatize state-owned assets** (CAATSA Sec. 233)
 - exported, transferred, or otherwise provided to **Syria significant financial, material, or technological support for prohibited military purposes** (CAATSA Sec. 234)

Other Draft Bills/Resolutions under Consideration

- **Crimea Annexation Non-recognition Act** - to prohibit US Government recognition of the Russian Federation's claim of sovereignty over Crimea
- **Vladimir Putin Transparency Act** - to strengthen the US response to Russian interference by providing transparency on the corruption of Russian President Vladimir Putin
- **Keeping Russian Entrapments Minimal and Limiting Intelligence Networks Act** (or the "KREMLIN Act") - to direct the Director of National Intelligence to submit intelligence assessments of the intentions of the political leadership of the Russian Federation
- **Resolution** that condemns Mr. Vladimir Putin for concealing details of the murder of Mr. Boris Nemtsov. The resolution calls Russia to conduct an international investigation of the crime, and the White House to impose sanctions on its alleged organizers and perpetrators
- **Protect Our Elections Act:**
 - requires the companies that provide **elections services** to report to the Secretary of Homeland Security, the Election Assistance Commission, and appropriate state or local governmental entities any foreign national who owns or controls their firm. It also requires elections service providers to notify the Secretary of Homeland Security, the Election Assistance Commission, and appropriate state or local governmental entities of any material change in ownership or control. It mandates a USD 20,000 fine for any election service provider that fails to submit the required information
 - requires state and local governments to conduct an **annual evaluation** of their election service providers to ensure that each election service provider is solely owned and controlled by US persons. The legislation includes **an exception** for election service providers created or organized under the laws allies – Canada, the United Kingdom, Australia and New Zealand

Nord Stream 2: Certain Risks

- On July 18, 2018 the senator of the US Congress Mr. Barrasso introduced to the Senate the bill "S.3229 - A bill to enhance the security of the United States and its allies, and for other purposes"
- According to Section 6 of the Bill, the US President shall impose 5 or more of the sanctions described in Section 235 of CAATSA with respect to a person that knowingly, on or after the date of the enactment of the Bill, (a) makes an investment or (b) sells, leases, or provides to the Russian Government, or to any entity owned or controlled by that Government, for the construction of Russian energy export pipelines, goods, services, technology, information, or support any of which meet established economic criteria
- Since the Bill has not been published on the official website of the US Congress, its future is uncertain
- Reaction of EU member states towards the pipeline construction is controversial, Germany strongly supports construction
- The US Government has repeatedly expressed its disapproval of the Nord Stream 2 pipeline project, pledging to impose secondary sanctions envisaged by CAATSA on European companies working with the Gazprom-led enterprise. In January 2019, US Ambassador to Germany Richard Grenell told the media that the firms working on the project "are always in danger, because sanctions are always possible"

The background of the slide is a close-up, slightly blurred image of the European Union flag, showing the blue field with the twelve yellow stars arranged in a circle. The flag appears to be waving, creating a sense of movement and texture.

5

EU Sanctions

Menu of EU Sanctions

Designated Persons ("DPs")

- Assets freeze and/or ban on entry into EU
 - EU persons may not provide direct or indirect access to any "funds" and "economic resources" to:
 - DPs
 - Subsidiaries that are owned directly/indirectly by more than 50% or controlled by DP (by one or more in aggregate)
 - Administered and enforced by EU Member States' respective authorities
-

Persons subject to sectoral sanctions

- Restrictions targeted against particular sectors of the Russian economy: energy, defense and finance
 - Restrictions targeting:
 - Listed persons
 - Entities that are owned directly/indirectly by more than 50% by listed persons or act on behalf or at the direction of listed persons (if established outside the EU)
 - NB! Sanctioned companies from energy sector include such major Russian Oil&Gaz companies as Rosneft, Transneft, and Gazpromneft
 - Administered and enforced by EU Member States' respective authorities
-

EU export controls

- Weapons embargo
- Dual-use restrictions: military end-user, military use, certain (mixed) defense companies
- Crimea trade embargo
- No de minimis rule and reexport control
- Administered and enforced by EU Member States' respective authorities

EU Sanctions: Numbers

- Sanctions with respect to persons responsible for the misappropriation of Ukrainian state funds
 - DPs - 12 individuals
- Sanctions imposed in connection with the "situation in Ukraine"
 - DPs - 170 individuals and 44 entities
- Sectoral sanctions (financial, energy and defense sectors)
 - 20 entities
- Chemical weapons-related sanctions
 - 4 individuals

Who Must Comply with EU Sanctions?

- EU sanctions typically apply to:
 - Any entity incorporated in an EU Member State and its EU and non-EU branches
 - Any entity incorporated outside the EU, but only in respect of any business conducted in the EU
 - Any directors, officers, employees, agents, etc. located in the EU (irrespective of nationality)
 - Any directors, officers, employees, agents, etc. that are nationals of an EU Member State (even if located outside the EU)

Scope of EU Sectoral Sanctions

EU Sectoral Sanctions (Council Regulation No. 833/2014 dated July 31, 2014)

- Finance, energy, defense sectors – restrictions on financial assistance:
 - **Energy sector:** sale, supply, transfer or export of Annex II energy items and related services
 - Require a prior authorization regardless of end-use
 - Authorization will not be granted if supply relates to prohibited projects (deep water, arctic, shale oil)
 - Provision of drilling, well testing, logging and completion services, supply of specialized floating vessels re deepwater, arctic, shale oil projects only – no license possible
 - **Financial sector:** dealings in certain transferable securities and money market instruments issued by, **and provision of new loans/credit >30 days maturity** to listed parties (e.g. Rosneft, Gazprom Neft, Transneft, Sberbank, VTB, Gazprombank, VEB, Rosselkhozbank, Oboronprom, United Aircraft Corporation, Uralvagonzavod)

Scope of EU Sanctions – Export Control and Investments

- **EU Export control restrictions:**
 - Weapons embargo
 - Dual-use restrictions: military end-user, military use, certain (mixed) defense companies
 - Restrictions on oil sector equipment
 - Military end-use restrictions for non-listed dual-use items
- **EU restrictions on investment/services** in following sectors:
 - energy
 - prospection, exploration and production of oil/gas/mineral resources
 - transport
 - telecoms

EU Sanctions on Crimea (1)

- **EU Product Controls:**
 - Prohibition on import into the EU of "goods originating" in Crimea/Sevastopol (unless Ukrainian certificate of origin)
 - Prohibition on provision of **related financing or financial assistance** or **(re)insurance**
 - Prohibition on sale, supply, transfer or export to or for use in Crimea/Sevastopol of items suited for use in following **sectors**:
 - transport; telecommunications; energy (including turbines); prospection, exploration and production of oil, gas and mineral resources
 - main exemption: no reasonable grounds to determine that the items or services are to be used in Crimea or Sevastopol
 - On August 4, 2017, VO Technopromexport JSC, VO Technopromexport LLC, Interavtomatika JSC were added to the EU sanctions list for supplying gas turbines to Crimea

EU Sanctions on Crimea (2)

- Additional prohibitions in respect of targeted sectors in Crimea and Sevastopol (subject to limited exemptions):
 - acquisition of real estate; acquisition of ownership or control of an entity (including JVs) located in Crimea or Sevastopol; granting of any loan/credit or provide financing to an entity in Crimea or Sevastopol; providing investment services
 - technical assistance, or brokering, construction or engineering services directly relating to infrastructure in Crimea or Sevastopol (in transport, telecommunications, energy, and prospection, exploration and production of oil, gas and mineral resources sector, tourism)

EU Sanctions: Recent Developments

- On January 21, 2019, the EU designated as DPs 4 Russian individuals (the Head of the GRU, his Deputy and two GRU officials) for being "responsible for possession, transport and use in Salisbury (UK) of a **toxic nerve agent**" against Mr. Sergei and Mrs. Yulia Skripal and Mr. Nick Bailey (a police officer injured in the nerve agent attack) in March 2018
- On March 15, 2019, the EU designated as DPs 8 Russian officials "as a response to escalation in the **Kerch Strait** and the Sea of Azov and the violations of international law by Russia, which used military force with no justification"
- On March 4, 2019, sanctions with respect to persons responsible for the misappropriation of Ukrainian state funds were prolonged **until March 6, 2020**
- On June 18, 2018, restrictive measures in respect of Crimea and Sevastopol were prolonged **until June 23, 2019**
- On March 4, 2019, sanctions imposed in connection with the "situation in Ukraine" were prolonged for 6 months **until September 15, 2019**
- On December 21, 2018, sanctions with respect to persons subject to sectoral sanctions (financial, energy and defense sectors) were prolonged for 6 months **until July 31, 2019**

Forecast: 2019

- According to press-release of the EU Council, it will fight against the attacks in cyberspace within the frameworks of EU, including **imposition of new sanctions** with regard to cyber activities.
- According to the media, leaders of EU states and certain EU officials call for **imposition of sanctions** against the Russian persons in relation to **human rights' violations**.
- British exit from the EU – **BREXIT**
 - On March 29, 2019 the deadline for the BREXIT deal expires
 - According to the explanations given by the UK on February 1, 2019, if the UK leaves the EU without a deal, the UK will implement the EU sanctions regimes through new legislation, in the form of regulations, made under the Sanctions and Anti-Money Laundering Act 2018 ("**Sanctions Law**")
 - Sanctions Law will provide the legal basis for the UK to impose, update and lift sanctions after leaving the EU
 - On March 14, 2019, the UK Parliament voted to ask for a delay to BREXIT, meaning that the UK would not leave on March 29, 2019, as the UK Prime Minister had originally planned

BREXIT: Certain Risks

- Under Article 5 of EU Council Regulation No. 833/2014 **dealings with EU subsidiaries of sectorally sanctioned entities are exempted** from the sanctions regime. Unless current situation changes, UK subsidiaries of those sectorally sanctioned Russian entities will fall under EU sanctions (e.g., a Dutch company will not be able to give long-term loans to a UK-based subsidiary of Rosneft, etc.)
- EU member states provide companies with **Russia sanctions licenses**. The UK has always taken the position that a **license to a UK entity will cover all EU member states nationals**. In case of BREXIT, unless something changes, there will be **no legal basis for the UK licensing other EU states nationals as well as for the EU member states licensing UK nationals**. The same is relevant for **export control** – UK licenses will not cover exports from EU member states, and vice versa

Canada's Reaction to Recent EU and US Sanctions

- On **March 15, 2019**, Canada designated **114 Russian officials and 15 legal entities** "in response to Russia's military actions against three Ukrainian vessels and the capture of Ukrainian sailors in the Black Sea in November 2018" and "for the illegal invasion and ongoing occupation of Crimea and the destabilization of eastern Ukraine"
- This extension brought **total number of sanctioned persons** to **435** (**314** individuals and **108** entities are sanctioned as DPs; **13** companies are subject to sectoral sanctions)
- Canadian sanctions regime targeting Russia includes the following types of measures (Special Economic Measures (Russia) Regulations SOR/2014-58):
 - **General** sanctions (Schedule 1)
 - Sanctions against **financial services** (Schedule 2)
 - Sanctions against **energy sector** (Schedule 3)
 - List of sanctioned **goods** (Schedule 4)
- **50% Rule does not apply**, thus, screening of Russian counterparties is much easier



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Thank you for your attention!

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