

U.S. Sanctions Laws: Dangers Ahead For Foreign Companies

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Introduction. International companies are signaling growing concern about the U.S. sanctions laws. These laws impose restrictions on entering business transactions with certain targeted countries, companies and even individual persons anywhere in the world. These apply, of course, to U.S. firms. However they can also apply to non-U.S. parties in certain cases, even in activities that have no connection to the U.S. Many foreign companies ask how the U.S. Government can extend the long arm of its jurisdiction around the world - yet the incidence of U.S. sanctions on non-U.S. parties is increasing. In light of the significant recent penalties imposed on non-U.S. parties for U.S. sanctions violations, including \$8.9 billion for financial institutions¹ and \$1.19 billion for non-financial companies,² every non-U.S. company should be aware of these laws.

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The U.S. sanctions laws can apply to foreign parties in a number of ways - if foreign companies have certain requisite contacts with the U.S., under “secondary sanctions” and for providing material support and assistance to certain parties that have been targeted for sanctions. In addition, foreign persons and entities can be individually designated for sanctions and placed on U.S. List of Specially Designated Nationals and Blocked Persons or other restricted party lists. Problems can come out of nowhere – such as when Huawei Technologies CFO Meng Wanzhou was recently arrested in a Canadian airport lounge for extradition to the U.S. for U.S. sanctions violations.

These laws create a growing legal risk for foreign companies and financial institutions – often without their even knowing it. The following provides a more detailed discussion of the U.S. sanctions laws for non-U.S. companies and steps they can take to reduce these risks.

1. Overview Of The U.S. Sanctions Laws. The U.S. sanctions laws are a complex web of legal requirements designed to achieve the foreign policy goals of the United States. They are administered by the Office of Foreign Assets Control (“OFAC”) within the U.S. Department of the Treasury in Washington, DC, in conjunction with the State Department and other U.S. agencies. Sanctions are typically initiated by the President issuing an Executive Order declaring a national emergency under the International Emergency Economic Powers Act (“IEEPA”), the National Emergencies Act or similar authority and designating parties who will be the target of the sanctions.

There are currently 30 separate sanctions programs administered by OFAC (a list of the current sanctions programs is set forth in Exhibit A and examples of sanctions requirements are set forth in Exhibit B.) Certain of the sanctions programs are focused on individual countries (the “country-based programs”) and others target specific activities such as terrorist and proliferation activities (the “list-based programs”). Under the country-based programs the U.S. maintains comprehensive sanctions programs for Iran, Syria, N. Korea, Cuba and the Crimea region of Ukraine - U.S. parties are prohibited from entering almost all business transactions with the targeted country, its government and its nationals. Under other country-based programs, such as Russia and Venezuela, parties are prohibited from entering certain types of transactions with the targeted country but permitted to engage in others.

Under list-based programs, the U.S. identifies individuals and entities on a global basis who have engaged in activities that are contrary to U.S. policies such as terrorist attacks, nuclear proliferation, human rights abuses and corruption for individual sanctions.

An important component of the U.S. sanctions laws is that OFAC frequently targets individual persons and entities for the imposition of sanctions. Targeted parties are typically placed on the OFAC List of Specially Designated Nationals and Blocked Persons (the “SDN List”) and all property and property interests of the targeted parties are blocked and may not be transferred, paid, exported, withdrawn or otherwise dealt in. As a result, U.S. persons and other parties subject to U.S. jurisdiction are prohibited from entering most types of business transactions with the targeted party anywhere in the world, and it is cut off from the dollar-denominated U.S. financial system. In addition, U.S. persons are required to block the assets of the targeted party that come within the U.S. person’s possession and not deal in them. In

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addition to the SDN List, OFAC maintains eight other restricted party lists,³ which place different, sometimes less restrictive requirements related to listed parties. OFAC also promulgates a Consolidated List which includes the identities of parties on the SDN List and a number of the other restricted party lists.⁴

But it gets more interesting. Under OFAC's 50% Rule, if an entity such as a company or partnership is owned 50% or more by one or more parties on the SDN List, that entity is also treated as if it is on the SDN List and subject to blocking and asset freezes, even if it is not itself named on the SDN List. OFAC attempts to block all property and property interests of SDN parties and considers stock in an entity that is owned by an SDN (and the entity itself and its assets if owned 50% or more by SDN's) as subject to the blocking and asset freeze requirements. This can create major complexities if a party is trying to enter a transaction with a foreign company but cannot determine if the foreign company is owned by SDNs and subject to sanctions designations.

Sanctions are often imposed in an incremental fashion. For example, in 2014 President Obama imposed sanctions on a small number of Russian government officials in response to Russia's military activity in Ukraine. When Russia continued its military actions, the sanctions were expanded to cover a wider group of political and business leaders and Russian companies, and a total embargo on the Crimea region of Ukraine. Eventually the U.S. placed "sectoral sanctions" on entering certain transactions with targeted Russian companies in the energy, financial and defense sectors, although many other types of business activities in Russia were still permitted. During this period, the Bureau of Industry and Security ("BIS") also imposed restrictions prohibiting certain activities involving Russian deepwater, Arctic and shale energy production.⁵ More recently the United States has imposed additional sanctions on Russian parties for cybersecurity violations, meddling in U.S. elections, corruption and human rights abuses.

The OFAC restricted party lists are not limited to parties from the countries subject to country-level sanctions programs such as Iran and North Korea - OFAC frequently targets parties in other countries as well. Thus sanctions requirements related to SDN's and other listed parties may arise in effectively any country in the world.

OFAC has issued general license that provide certain exceptions to the sanctions restrictions such as involving information materials and the sale of agricultural products, medicines and medical devices.⁶ In addition, OFAC can grant "specific" licenses in which it provides authority for a party to engage in a particular activity that is otherwise prohibited in response to a specific request.

If a party is placed on the SDN List, it is effectively cut off from a major portion of international business and financial transactions, access to most bank accounts and restrictions on international travel. As a result, the restricted party lists have become a powerful tool for the United States to isolate foreign adversaries and advance its interests around the world short of taking military action.

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If a party is placed on the SDN List there is a procedure under which the party can file a delisting petition with OFAC to request to be removed from the list.⁷ However, when a party is initially designated on the SDN List it is not subject to the same proceedings as in an OFAC enforcement case (see section 2 B below for further discussion of this issue)..

Penalties for violations of the U.S. sanctions laws include civil and criminal penalties of up to twenty years imprisonment and \$1,000,000 in fines per violation.⁸ In addition, foreign parties that engage in activities that undermine or circumvent the U.S. sanctions laws may themselves be subject to sanctions liability. (For additional information on penalties and steps for addressing trade violations see: [Dealing With Violations In Export and Import Transactions](#)).

2. Application Of U.S. Sanctions Laws To Non-U.S. Parties. The U.S. sanctions typically apply to “U.S. persons.” However they can also apply to non-U.S. persons and companies in certain cases – and the incidence of and legal theories behind such applications are expanding.

The term “U.S. person” is generally defined in the U.S. sanctions laws as: (i) U.S. citizens and permanent resident aliens wherever located; (ii) entities organized under the laws of the U.S. or a jurisdiction within the U.S. (including foreign branches of such entities); and (iii) any individual or entity within the U.S.⁹ Also property of foreign parties that is located in the U.S. or comes within the possession or control of any U.S. person anywhere in the world is subject to OFAC jurisdiction.

In addition, however, OFAC has applied the sanctions laws to foreign companies in many instances as well. In fact, the incidence of this is increasing due to recent political events (such as in Iran and N. Korea), and recent legislative enactments such as the Countering America’s Adversaries Through Sanctions Act of 2017 (“CAATSA”).¹⁰ To date there are four principal categories in which non-U.S. parties have been subject to U.S. sanctions: (i) where the foreign party has a requisite level of contacts with the U.S.; (ii) where the foreign party has been designated itself for sanctions and listed on the SDN List or other restricted party lists; (iii) under “secondary sanctions” (i.e., sanctions that specifically apply to non-U.S. persons); and (iv) for providing material support or assistance to or facilitating¹¹ a significant transaction with certain parties that are subject to sanctions. If a foreign company or individual violates a provision of the U.S. sanctions laws, they can be exposed to significant consequences for such actions.

A. Contacts With the United States. To start, if a non-U.S. company has a sufficient level of contacts with the United States, it can become subject to OFAC jurisdiction and the U.S. sanctions laws. Such jurisdiction can arise in a number of ways. If a non-U.S. company engages in a transaction involving U.S. persons or U.S. - origin products, technology or services, or has a presence in the U.S., the transaction can become subject to OFAC jurisdiction.

In addition foreign firms can be found to have “contacts” with the U.S. even if they only have a limited presence in the U.S. and there are no U.S. persons, products, technologies or services involved. The question of what constitutes a sufficient nexus to U.S. jurisdiction is an evolving theory of law and is expanding over time as new OFAC enforcement cases are announced. Examples of OFAC cases involving foreign companies include:

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- OFAC has long held that if a non-U.S. company engages in business transactions in U.S. dollars, the foreign party is availing itself of the U.S. financial system and hence becomes subject to the U.S. sanctions laws. This is even if the company and the transactions are outside the U.S. Some of the largest OFAC enforcement cases have involved foreign financial institutions and their operations involving countries subject to sanctions – see for example cases involving: BNP Paribas (\$8.97 billion in combined forfeiture and penalties),¹² Commerzbank (\$1.45 billion in combined penalties)¹³ and Standard Chartered that were alleged to have violated U.S. sanctions laws.
- In an OFAC enforcement case involving a Singapore oilfield services company COSL Singapore Ltd. and its foreign affiliate companies (collectively “COSL”), the company operated oil rigs and crews for third party owners in Asia and the Arab Gulf region. OFAC alleged that the company exported or attempted to export 55 orders of oil rig supplies from the U.S. to Singapore and the UAE, and then reexported such items to be used on oil rigs located in Iran. OFAC initiated enforcement proceedings against COSL for alleged violation of the Iran sanctions regulations and the company agreed to pay a significant penalty to resolve the charges.
- In a recent OFAC enforcement case involving the Taiwanese shipping company B Whale Corporation (“B Whale”), B Whale engaged in transactions involving Iran that were wholly outside of the U.S. and involved no U.S. parties or products. In such transactions, a vessel owned by B Whale conducted a ship-to-ship transfer of oil with a vessel owned by the National Iranian Tanker Company and identified on the SDN List. Previously, B Whale had filed for bankruptcy in a U.S. bankruptcy court. OFAC concluded that the Taiwanese company was subject to U.S. jurisdiction because the company had previously filed for bankruptcy in a U.S. bankruptcy court.
- In another OFAC enforcement case, a Singapore company CSE Global Limited and its wholly owned Singapore subsidiary were found to be subject to OFAC jurisdiction and \$12,000,000 in penalties when it sold non-U.S. origin communications equipment to Iran. OFAC concluded that the company was subject to U.S. jurisdiction since it originated a number of U.S. dollar wire transfers involving the Iranian project.¹⁴ OFAC claimed that by initiating such transfers CSE “caused” at least six financial institutions to engage in the unauthorized export or reexports of financial services from the U.S. involving Iran in violation of §560.204 of the Iran Transactions and Sanctions Regulations (“ITSR”).
- In the well known case involving Chinese company ZTE Corporation (“ZTE”), the company was charged with selling telecommunications products to Iran in violation of U.S. sanctions laws.¹⁵ The company became the subject of a well-publicized investigation by the U.S. Justice Department, OFAC and BIS for sanctions violations and agreed to settle the case and pay \$1.19 billion in combined criminal and civil penalties.

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Foreign companies with the requisite U.S. contacts that engage in sanctions violations face potential OFAC civil enforcement actions and criminal prosecution by the U.S. Justice Department, and are subject to the penalties discussed in Section 1 above.¹⁶ This is a different consequence than may arise for other types of sanctions violations by foreign companies as discussed in Sections 2.B, C, D and E below.

Thus even if a non-U.S. company has only tangential contacts with the U.S., it runs the risk of becoming viewed by OFAC as a “U.S. person” and/or otherwise subject to U.S. jurisdiction. Whether a company’s contacts with the U.S. rise to the level of establishing U.S. jurisdiction will depend upon the facts of the situation and the most recent OFAC enforcement cases. The question of what constitutes a sufficient nexus to U.S. jurisdiction is likely to continue to evolve as new OFAC cases are announced in the future.

B. Direct Designations For Sanctions. At the core of the U.S. sanctions laws is the actual designation of a specific person or entity as a target for sanctions. If a foreign party engages in activities that violate specific U.S. policy goals, the U.S. can designate the party on the SDN List or target it for other types of sanctions. Since most parties designated under U.S. sanctions are non-U.S. parties, this can be a significant source of liability for foreign companies.

The policy goals behind the 30 sanctions programs are set forth in various Executive Orders issued by the President under IEEPA and other legal authorities, and cover a wide array of activities including terrorist activity, weapons proliferation, human rights violations, election meddling, corruption and narcotics trafficking.¹⁷ For example, the U.S. recently listed 17 Saudi Arabian government officials on the SDN List for their participation in the alleged killing of journalist Jamal Khashoggi based upon human rights violations.¹⁸ Other examples of policy reasons for sanctions designations include:

- Repressing Democracy – Designation of the President of Petroleos de Venezuela, SA for being aligned with Venezuelan President Nicolas Maduro.¹⁹
- Terrorist Support – Designation of two officials of Hizballah for engaging in operational, intelligence and financial activities for Hizballah;²⁰
- Computer Hacking/Cybersecurity – Designation of two individuals for exchanging bitcoin related to the SamSam ransomware cyber-security scheme;²¹
- Undermining Democratic Processes – Designation of Murillo De Ortega in Nicaragua for undermining democratic processes and threatening the peace in Nicaragua;²²
- Ethnic Cleansing – Designation of four Myanmar military officials for actions against the Rohingya Muslims in Rakhine State in Myanmar.²³

One dramatic example of SDN designations was the recent listing of 38 prominent Russian “oligarchs” and government officials. On April 6, 2018 OFAC designated 38 Russian parties on the SDN List under the Russia/Ukraine sanctions program including seven Russian business executives, twelve companies that they owned or controlled, seventeen Russian

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government officials, a state-owned weapons company and a Russian bank. The parties were listed for having close ties to Vladimir Putin and playing a key role in Russia's "malign" activities involving Ukraine, Syria, subversion of western democracy and cyber-activities.²⁴

The designations included many of the most prominent and politically-connected businessmen in Russia. In addition, since the sanctions also apply to companies that are 50% or more owned by these parties, the sanctions flowed down to many of the largest companies across the Russian economy that are owned by these parties including publicly traded United Company Rusal PLC, EN+, GAZ Group and Rosoboronoeksport.²⁵ As a result, many companies around the world that conducted business with these companies quickly wound down their business dealings with these parties or risked being targeted for U.S. sanctions themselves. Thus the sanctions designations cut off a large portion of Russia's political and business elite from mainstream global commerce in a single stroke.²⁶

The designation of a party on the SDN List is a non-public process conducted by OFAC in conjunctions with other federal agencies. According to OFAC guidance, information is collected from U.S. government sources, intelligence reports, foreign governments and open sources. OFAC then reviews the information and prepares a formal evidentiary memorandum setting forth evidence supporting its conclusion that the party meets the criteria under the sanctions authority. OFAC then seeks the concurrence of other federal agencies which may include the Departments of the Treasury, Justice, State and other agencies.

Designation of a party on the SDN List is not a civil or criminal enforcement proceeding or the imposition of a penalty thereunder. Rather it is an extra-judicial process for violation of a U.S. policy. Consequently SDN's are not afforded the full procedural protections and due process rights normally provided in U.S. civil or criminal legal proceeding prior to the designation. (However as discussed above parties on the SDN List are permitted to file a delisting petition with OFAC to request to be removed from the list.) Notwithstanding, the "penalty" of being listed on the SDN List can be as bad or worse than the penalty in an enforcement case.

As referenced above, once a party is listed on the SDN List it is cut off from a large portion of international business and banking transactions, international travel and subject to a worldwide asset freeze. Consequently these designations can have a truly devastating impact on individuals and business organizations. Thus by designating parties on the SDN List, the U.S. extends its influence over foreign parties who have no contacts with the U.S. for simply having engaged in activity that is contrary to U.S. policy goals.

C. Secondary Sanctions – Requirements On Non-U.S. Parties That Have No Contacts With the U.S. OFAC also has adopted sanctions that specifically apply to non-U.S. companies and individuals, even if such parties do not fit within the definition of "U.S. person" and even if they have no contacts whatsoever with the United States. These are commonly referred to as "secondary sanctions" or "extraterritorial sanctions." While only used in limited instances prior to 2016, after enactment of CAATSA and other recent events the incidence of secondary sanctions has been increasing and is set to expand even further in the coming year.

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The term “secondary sanctions” is a broad term that covers a wide array of restrictions on foreign companies. These are typically imposed under an existing U.S. sanctions program to bring additional leverage on the country that is the target of the sanctions. The most typical secondary sanctions prohibit non-U.S. companies from engaging in business activities that benefit a sanctioned country, such as purchasing oil from Iran or selling luxury goods to N. Korea. But they can also be applied to restrict foreign parties from engaging in many other types of business transactions as discussed further below. The legal implications of secondary sanctions are significant, as they impose U.S. restrictions on non-U.S. parties with absolutely no contacts with or presence in the U.S.

The most recognized secondary sanctions are under the Iran sanctions program. Prior to entering the Iran nuclear accord in July 14, 2015 (the “Joint Comprehensive Plan of Action”), the U.S. had imposed a number of secondary sanctions on non-U.S. persons for dealing with Iran to apply pressure on Iran in the nuclear negotiations. These included restrictions on non-U.S. companies engaging in certain transactions with Iran involving: (i) insurance; (ii) petroleum products; (iii) shipping;²⁷ (iv) trade in gold and certain other precious metals; (v) trade in metals and industrial materials;²⁸ (vi) trade in software for integrating industrial processes; (vi) transactions involving the Iranian automobile industry;²⁹ and (vii) certain financial and banking activities.³⁰ Clearly restrictions on dealing in basic industrial commodities such as coal, oil, metals and software were aimed at crippling the Iranian economy.

Once the JCPOA was implemented in January 2016 many of the U.S. secondary sanctions on Iran were lifted or waived.³¹ However when President Trump announced the U.S. withdrawal from the JCPOA on May 8, 2018, these secondary sanctions “snapped back” and the U.S. re-imposed a wide array of secondary sanctions on Iran subject to 90-day and 180-day wind down periods. At the time of this writing, the U.S. just completed the process of re-imposing the secondary sanctions across a wide array of industries in Iran including involving: (i) U.S. dollar banknotes; (ii) gold and precious metals; (iii) graphite, raw and semi-finished metals, coal, and software for integrating industrial processes; (iv) dealing in Iranian rial and sovereign debt; (v) the Iranian automotive sector ; (vi) ports and shipping; (vii) the petroleum industry; (viii) transactions by foreign financial institutions and (ix) insurance.³² As part of this, the U.S. listed over 700 Iranian persons, entities, aircraft and vessels on the SDN List, and has prohibited foreign countries from purchasing Iranian crude oil. Under these actions, non-U.S. parties that engage in these prohibited activities involving Iran will be subject to a number of potential consequences including a “menu” of additional sanctions discussed below.

In announcing the re-imposition of the Iran secondary sanctions, Treasury Secretary Mnuchin stated: “Treasury’s imposition of unprecedented financial pressure on Iran should make clear to the Iranian regime that they will face mounting financial isolation and economic stagnation until they fundamentally change their destabilizing behavior.”

Similarly during the past three years the U.S. has imposed a number of secondary sanctions involving N. Korea. In 2016 and 2017 Presidents Obama and Trump issued a series of Executive Orders that authorized an array of secondary sanctions on foreign companies that engage in transactions with N. Korea and foreign financial institutions that finance trade with N. Korea to apply pressure on the N. Korean regime in the nuclear negotiations.³³ These included,

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for example, the authority to designate for sanctions any person (including foreign companies) that engage in at least one significant importation from or exportation to N. Korea of any goods, services or technologies. Following these Executive Orders the U.S. then designated numerous private companies based in China, Singapore, Hong Kong, Panama and other countries for sanctions for engaging in transactions with N. Korea. This included trading companies,³⁴ oil companies,³⁵ transportation companies³⁶ and financial intermediaries.³⁷ The U.S. placed a high priority on foreign financial institutions in the effort to cut off financial transactions with N. Korea. In addition, OFAC even designated individual shipping vessels on the SDN List.³⁸ (These designations of non-Korean companies were in addition to designations of N. Korean companies, government organizations and individuals.) The purpose was simple: to isolate the N. Korean regime and cut it off from the rest of the world economy.

Thus through the imposition of secondary sanctions the U.S. announced to the world that non-U.S. companies can choose to do business with the U.S., or countries targeted for sanctions, but not both.

Prior to 2017 the use of secondary sanctions such as described for Iran and N. Korea were limited. However CAATSA, enacted in August 2017, specifically addresses secondary sanctions - providing not just increased authorization for secondary sanctions but also *requiring* the President to impose them in certain situations.

D. Assisting Others In Violating Sanctions Laws. A fourth category in which non-U.S. parties can be subject to U.S. sanctions is assisting others in sanctions violations. This covers a number of restrictions including providing material assistance and support to sanctioned parties and knowingly facilitating significant transactions with such parties. This is perhaps the broadest category of potential liability and presents the greatest level of risk for foreign companies.

The rule here is simple – if you provide assistance to a party that is designated for sanctions, you run the risk of being designated for sanctions yourself. It is important to note that these restrictions apply not just to entering transactions with a rogue regime such as Iran or N. Korea – but also entering transactions with individual parties that are designated for sanctions, including parties listed on the SDN List in many cases. In addition, there is no definition of “material assistance” - and many types of business transactions can theoretically fit within this term. Thus merely entering significant business transactions with certain parties designated for sanctions opens a foreign company up to potential sanctions liability as well.

This became clearly evident under OFAC’s Russian “oligarch” sanctions designations in April 2018.³⁹ In these designations, the sanctions were not just aimed at the 38 Russian parties that were added to the SDN List but also other U.S. and foreign companies that conducted business with such parties. Thus when the SDN listings of the Russian oligarchs and their companies were announced, other companies (including non-U.S. companies) quickly ceased conducting business with the designated parties out of fear of being designated as SDN’s themselves. This issue was addressed in the Treasury Department’s April 6, 2018 press release accompanying the new sanctions: *“Additionally, non-U.S. persons could face sanctions for*

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knowingly facilitating significant transactions for or on behalf of the individuals or entities blocked today.”

Many of the secondary sanctions are aimed at parties that provide direct support to a sanctioned regime. However they are also aimed at parties that play a secondary or tertiary role in dealing with sanctioned parties – in targeting the shipping companies, insurance companies, financial intermediaries and business advisors that provide services to support transactions with sanctioned parties. This is a subset of secondary sanctions - broadening the net from those who are primary actors to those in the background that provide an indirect level of support.

Once again under OFAC’s 50% rule, these risks arise not just in entering transactions with parties that are listed as SDNs, but also with companies that are owned 50% or more by SDNs. So the complex web of sanctions restrictions extends even farther.

Many of the parties that provide “assistance and support” may not have a direct business relationship with the sanctions regime, and may not even know that there is any sanctions involvement (for example they might not recognize that SDNs own the stock of a company with which they are dealing). This creates perhaps the greatest risk for foreign companies – when they are not aware of any sanctions involvement in the transaction.

The legal authority for imposing sanctions on persons that provide “material support” to sanctions parties or who “knowingly facilitate” significant transactions with sanctioned parties arises from a number of sources. First, many of the recent Executive Orders issued in connection with various sanctions programs authorize sanctions not just on the party that is the primary target of the sanctions, but also on others who aid and assist such parties. For example, Executive Order 13662 (one of the three Executive Orders used to authorize the April 2018 designations of the Russian “oligarchs”) authorizes the President to impose sanctions on the targeted Russian parties, *and also on any other person determined by the Secretary of the Treasury and State:*

“To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order; or

To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to this order.”⁴⁰

This language was drafted quite broadly to capture a wide array of activities.

In addition, CAATSA provides legal authority for sanctions on foreign parties that “knowingly ... facilitate a significant transaction” with parties designated for sanctions under certain of the sanctions programs, and actually *requires* the President to impose them in certain instances. For example, §228 of CAATSA provides that the President *shall* impose sanctions on foreign persons if the President determines that the person knowingly “facilitates a significant transaction or transactions, including deceptive or structured transactions, for or on behalf of ...

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any person subject to sanctions imposed by the U.S. with respect to the Russian Federation, or any child, spouse, parent or sibling” of such party. Similarly §226 of CAATSA amended §5 of the Ukraine Freedom Support Act of 2014 (“UFSA”) to impose mandatory sanctions on foreign financial institutions if Treasury determines that they knowingly facilitate significant financial transactions on behalf of any Russian person who is listed on the SDN List pursuant to the UFSA or Executive Orders 13660, 13661, 13662, 13685 or any other Executive Order addressing the crisis in Ukraine.

Other examples of potential liability for foreign companies providing assistance to sanctioned parties include under OFAC’s Foreign Sanctions Evaders List⁴¹ and the State Department’s Section 231 List.⁴²

The exact restrictions on providing “material support” and “facilitation” vary under the different sanctions programs, and sometimes within the same program. Thus one must look at the specific legal authority behind a particular sanctions designation to assess if restrictions also apply to providing support or facilitation to the sanctioned party.

These legal authorities provide a number of qualifiers which must be satisfied in order for a violation to occur. For support and assistance, the support must be “material” – hence insignificant transactions might be excluded. Similarly under §228 of CAATSA a person must “knowingly” facilitate a “significant” transaction.⁴³ Thus there are some limitations on these provisions, however they are still quite broad and provide significant discretion to U.S. regulatory officials.

The following are examples of parties that have been designated by OFAC for sanctions solely because they provided some form of material support or assistance to the primary target of the sanctions:

- Designation of the Russian port service agency Profinet Pte. Ltd. that provides port loading, bunkering and departure arrangements for vessels calling at various Russian ports. The designation was for providing port loading services for vessels listed on the SDN List (including Chon Myong 1 and Rye Song Gang 1). Profinet’s Director General Vasili Kolchanov was also designated. (August 15, 2018)
- Designation of the Russian bank Agrosoyuz Commercial Bank for knowingly conducting or facilitating a significant transactions on behalf of Han Jang Su, the Moscow-based chief representative of N. Korean Foreign Trade Bank. Ri Jong Won, the Moscow-based deputy representative of Foreign Trade Bank, was also personally designated. (August 3, 2018)
- Designation of Velmur Management Pte. Ltd., a Singapore company, for having materially assisted, sponsored, or provided financial, material or technological support for another SDN (Transatlantic Partners Pte. Ltd.). On the same day the U.S. Justice Department filed a complaint against Velmore Management in the U.S. District Court For the District of Columbia for money laundering violations. (August 22, 2017)

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- Designation of Lebanon-based Nasco Polymers and UAE-based Sonex Investments for chartering vessels and serving as consignee for Syrian Company Oil Transport – which is the port authority for the ports of Baniyas and Tartus in Syria; Also designation of Adnan Al-Ali for providing financial, material or technological support and serving as advisor to Abar Petroleum (which was designated as an SDN). (September 6, 2018)
- Designation of Russian born South African Vladlen Amtchentsev pursuant to Executive Order 13722 for having acted on behalf of and advised another SDN (Velmur Management Pte. Ltd.) in evasion of the N. Korean sanctions. (November 19, 2018)
- Designation of the Chinese entity Equipment Development Department and its director Li Shangfu for engaging in significant transactions with persons on the CAATSA Section 231 List of Specified Persons (“LSP”). (September 20, 2018)

To date, parties designated for sanctions for providing material support or assistance to parties on the SDN List generally appear to have engaged in egregious activities to assist other parties in circumventing sanctions requirements.

The U.S. effort to curtail “material assistance and support” has targeted entire industries such as the worldwide shipping industry. For example OFAC has issued numerous shipping industry advisories warning foreign companies to avoid providing support for shipments to sanctioned countries or parties or face U.S. penalties. In one recent release OFAC stated:

“Treasury reminds the shipping industry, including flag states, ship owners and operators, crew members and captains, insurance companies, brokers, oil companies, ports, classification service providers, and others of the significant risks posed by N. Korea’s shipping practices.”⁴⁴

Thus if you are operating a foreign shipping company, insurance company, cargo inspection company, port facility or freight forwarder, OFAC wants you to verify that your customers are not engaging in activities that evade U.S. sanctions. Similarly, if your company sells any other types of products, services, software or other resources, OFAC wants you to verify that these will not be sold to parties that are evading U.S. sanctions.

Another major industry focus has been on foreign financial institutions. For example, Executive Order 13810 related to the N. Korea sanctions provides specific authorization to the Secretary of the Treasury to impose secondary sanctions on foreign financial institutions if the institution has:

“(i) knowingly conducted or facilitated any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13551 of August 30, 2010, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, or this order, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities; or

(ii) knowingly conducted or facilitated any significant transaction in connection with trade with North Korea.”⁴⁵

The U.S. is effectively saying: if the foreign banks do not comply with U.S. sanctions laws, they can be cut off from dollar-based transactions and the U.S. financial system – a death sentence for most international financial institutions.

Thus in this fourth category of requirements for foreign companies - if your company knowingly facilitates significant transactions with parties subject to sanctions, or provides material support and assistance for such parties, this opens the door to your company being designated for sanctions as well. While the transactions must meet certain thresholds such as being “material,” “knowing” and/or “significant,” the authority is still quite broad. It is not clear how far the U.S. will go in enforcing these restrictions – but the legal authority is now in place for it to do so.

The above is not necessarily an exhaustive list of all areas of potential sanctions liability for foreign companies – others may also exist either under current authorities or new ones adopted in the future.

E. Penalties For Violations of Secondary Sanctions. If a non-U.S. party violates U.S. secondary sanctions it becomes subject to a number of significant consequences. The exact penalties for such violations will depend on the legal authority behind the secondary sanction in question. In most cases the most significant consequence is that the foreign company runs the risk of being placed on the SDN List. In addition, in certain instances the President has the option to impose other sanctions under a “menu” of options such as denial of the target party’s right to obtain U.S. visas, to obtain access to U.S. government sponsored export financing, to receive export licenses and to sell goods and services to the U.S. Government.⁴⁶

The penalties for secondary sanctions are technically different from those under civil enforcement actions or criminal prosecution for sanctions violations. Civil enforcement actions would typically be used for a direct sanctions violation, especially if the respondent had sufficient contacts in the U.S. (such as the B Whale Corporation cases discussed In Section 2.A. above) or assets subject to U.S. jurisdiction. However the U.S. Government could certainly pursue multiple remedies to bring maximum leverage on the target party and has done so on multiple occasions. For example, following OFAC’s designation of Tan Wee Beng on the SDN List on October 5, 2018 for financing shipments of goods to N. Korea, he was indicted in the Southern District of New York for sanctions evasions and money laundering.⁴⁷ Similarly, following Velmur Management Pte. Ltd.’s designation to the SDN List referenced above, the U.S. Justice Department simultaneously filed a complaint against Velmure Management for money laundering violations.⁴⁸ There are additional examples of simultaneous sanctions designations and law enforcement actions,⁴⁹ and these will most likely continue in the future.

It is not clear how aggressive the U.S. will be in enforcing secondary sanctions, either alone or in conjunctions with conventional law enforcement actions. The U.S. is still in the early stages in the use of this practice and details are still evolving. However due to the importance of the sanctions programs to the U.S. Government, it will likely take secondary sanctions very seriously. World events are moving quickly – we will likely find out very soon.

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3. Steps To Mitigate Risk. Foreign companies face growing challenges – and legal risks - under the U.S. sanctions laws. In response, many are taking heightened precautions in dealing with these laws in their business activities. Questions for foreign companies to consider in addressing these risks include:

(i) Is your company engaged in transactions with U.S. parties, U.S. products, U.S. technologies or U.S. software or does your company have a presence in the U.S.?

(ii) Is your company doing business in countries subject to the U.S. sanctions laws, such as Iran, N. Korea, Cuba, Syria, Russia, Ukraine and Venezuela? Are there secondary sanctions involving those countries that affect your company?

(iii) If your company is doing business in countries subject to U.S. sanctions laws, are you conducting a heightened level of due diligence review in such transactions to understand the applicable legal requirements and parties with whom you are dealing?

(iv) Is your company engaged in transactions with persons or entities listed as an SDN or other OFAC restricted party lists?

(v) Is your company engaged in transactions with entities that are owned 50% or more by parties listed on the SDN List?

(vi) Does your company own shares in companies that are listed on the SDN List or their subsidiaries? Are officers and/or directors of your company, subsidiaries or joint ventures SDNs? Does your company have shareholders that are SDNs?

(vii) Are SDNs investors in your investment, private equity or real estate funds or partnerships?

(viii) Does your company have contacts with the U.S. financial system and if so are these sufficient to subject your company to U.S. sanctions jurisdiction?

(ix) Is your company engaged in transactions that could be viewed as providing material support or assistance to SDNs or knowingly facilitating “significant” transactions with such parties?

There are a variety of compliance practices that foreign companies can use to address these issues and help reduce potential liabilities and we can advise further on these.

Sanctions laws have become a major focal point for the United States in dealing with some of its most important foreign policy issues. As a result, OFAC takes enforcement of these laws extremely seriously. Companies should use care to understand these requirements so they do not get caught in the cross-fire.

February 21, 2019

This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as

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legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. For more information, please visit our website at www.williamsmullen.com or contact Thomas B. McVey, 202.293.8118 or tmcvey@williamsmullen.com.

To be placed on our list to receive additional articles on export and import law please contact [Thomas McVey](mailto:tmcvey@williamsmullen.com) at: tmcvey@williamsmullen.com or 202.293.8118. Additional articles on ITAR, EAR and US sanctions programs are available at: "[Export Articles.](#)"

EXHIBIT A

LIST OF U.S. SANCTIONS PROGRAMS

Balkans-Related Sanctions
Belarus Sanctions
Burundi Sanctions
Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)
Central African Republic Sanctions
Counter Narcotics Trafficking Sanctions
Counter Terrorism Sanctions
Cuba Sanctions
Cyber-Related Sanctions
Democratic Republic of the Congo-Related Sanctions
Foreign Interference in a United States Election Sanctions
Global Magnitsky Sanctions
Iran Sanctions
Iraq-Related Sanctions
Lebanon-Related Sanctions
Libya Sanctions
Magnitsky Sanctions
Nicaragua-Related Sanctions
Non-Proliferation Sanctions
North Korea Sanctions
Rough Diamond Trade Controls
Somalia Sanctions
Sudan and Darfur Sanctions
South Sudan-Related Sanctions
Syria Sanctions
Transnational Criminal Organizations
Ukraine-/Russia-Related Sanctions

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Venezuela-Related Sanctions

Yemen-Related Sanctions

Zimbabwe Sanctions

EXAMPLES OF SANCTIONS REQUIREMENTS

Examples of recent sanctions requirements include⁵⁰:

- Iran – Restrictions on U.S. persons entering most types of business and financial transactions with Iran, the Government of Iran and persons in Iran with limited exceptions; certain secondary sanctions apply to non-U.S. parties;
- Russia/Ukraine – Multiple restrictions on U.S. persons including (i) restrictions on entering transactions with designated Russian and Ukrainian government officials and private parties; (ii) a complete trade and investment ban for the Crimea region of Ukraine; (iii) restrictions on entering certain transactions with targeted Russian companies in specific industry sectors including energy, banking and defense;⁵¹ (iv) restrictions on entering transactions with certain Russian “oligarchs” and companies in which they have ownership interests of 50% or more; and (v) restrictions on entering transactions with Russian individuals and entities that have been designated for sanctions for cybersecurity violations, election meddling, corruption and other activities; certain secondary sanctions apply to non-U.S. parties;
- Syria, Cuba, N. Korea – For U.S. persons, comprehensive sanctions similar to Iran sanctions program; certain secondary sanctions may apply in certain instances to foreign parties;
- Venezuela - Restrictions on entering certain transactions with the Government of Venezuela, Petroleos de Venezuela, S.A., other designated Venezuelan parties and transactions involving cryptocurrency issued by the Government of Venezuela;
- Chinese Banks, Trading and Shipping Companies – In addition to restrictions on dealing with N. Korean parties, the N. Korean sanctions program imposes restrictions on U.S. and foreign parties in dealing with designated Chinese and other non-U.S. banks, industrial companies, trading companies and shipping companies that do business with N. Korea;
- Cybersecurity – Restrictions on entering transactions with parties that have been sanctioned for involvement in cyber-security attacks against the U.S. including N. Korean parties in the Sony Pictures cyber-attack and Russian parties in connection with the 2016 U.S. Presidential elections;
- Global Magnitsky Sanctions – Prohibition on entering transactions with parties designated by the U.S. for human rights and corruption violations;
- Cryptocurrencies – The prohibition on entering transactions involving cryptocurrencies issued by the Government of Venezuela (including the newly established Venezuelan cryptocurrency the “Petro”);
- Global Terrorist Sanctions – Restrictions on entering transactions with parties designated for sanctions for engaging in acts of terrorism, and with entities controlled 50% or more

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by such parties and parties that sponsor, provide financing or material or technological support for such parties;

- Vessels - Restrictions on chartering certain vessels that have been designated by OFAC for participation in sanctions evasion under various sanctions programs;
- Sanctions Evaders – Restrictions on U.S. and foreign parties providing material support, assistance, financing and other resources for certain parties that are listed on the OFAC List of Specially Designated Nationals and Blocked Persons.

¹ On May 1, 2015 the U.S. Justice Department announced the conviction of BNP Paribas S.A. for conspiring to violate the U.S. sanctions laws with a total financial penalty (including forfeiture and criminal fine) of \$8.9 billion. See Justice Department release at: <https://www.justice.gov/opa/pr/bnp-paribas-sentenced-conspiring-violate-international-emergency-economic-powers-act-and>.

² In March 2017 ZTE Corporation agreed to pay \$1.19 billion in combined civil and criminal penalties for violations of U.S. sanctions laws regarding sales of products to Iran. See: <https://www.justice.gov/opa/pr/zte-corporation-agrees-plead-guilty-and-pay-over-4304-million-violating-us-sanctions-sending>.

³ These include the: Consolidated Sanctions List; Sectoral Sanctions Identifications List; Foreign Sanctions Evaders List; Non-SDN Palestinian Legislative Council List; Non-SDN Iranian Sanctions List; List of Foreign Financial Institutions Subject to Part 561 (the "Part 561 List"); 13599 List (see technical notice at: <https://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/20181105.aspx>); and List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List).

⁴ The US government also maintains other restricted party lists such as the BIS Entity List, Denied Persons List and the Unverified List, and the State Department's Statutory Debarred Parties List, Administrative Debarred Parties List, Nonproliferation Sanctions List, Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA) Section 231 List (or Section 231 Guidance) and the Cuba Restricted List.

⁵ In addition to the Ukraine/Russia sanctions administered by OFAC, the Bureau of Industry and Security within the Commerce Department maintains a number of sanctions involving Russia including the Russian Industry Sector Sanctions set forth at 15 CFR §746.5, restrictions on dealings with certain Russian parties under 15 CFR §744.10 and restrictions on dealing with military end use and military end users in Russia under 15 CFR §744.21.

⁶ The scope of these general licenses may vary under certain of the sanctions programs.

⁷ In order for legal counsel to represent an SDN in filing a delisting petition and receiving payment therefor a specific or general OFAC license must be in effect. Counsel are prohibited from receiving payment from the SDN as well as from family members and other representatives of the SDN unless such licenses are in effect.

⁸ Penalties for violations include civil and criminal penalties. Criminal penalties are up to twenty years imprisonment, \$1,000,000 in financial fines, or both per violation. Civil penalties are up to the greater of \$295,141 or twice the amount of the underlying transaction, per violation. OFAC has a robust enforcement division which initiates civil enforcement cases. In addition, the U.S. Justice Department in Washington, D.C. and individual U.S. Attorneys' offices initiate criminal prosecutions of sanctions violations, sometimes in conjunction with OFAC or independent of the agency. Judicial review of OFAC determinations is authorized under most of the sanctions programs, but cases are limited. (See, *eg.*, Epsilon Electronics Inc. v. U.S. Dept. of the Treasury Office of Foreign Assets Control, Et. Al., In the U.S. Court of Appeals for the District of Columbia Circuit, No. 16-5118, May 26, 2017.).

⁹ In addition, foreign subsidiaries of U.S. entities are subject to OFAC requirements in certain instances (See for example provisions under the Iran and Cuba sanctions programs).

¹⁰ Public Law 115-44.

¹¹ The concept of "facilitation" by foreign parties in assisting others in sanctions violations is separate from OFAC's well known doctrine of "facilitation" by U.S. persons in assisting foreign parties in sanctions violations. See Section 2.D. below.

¹² See Department of Justice release at: <https://www.justice.gov/opa/pr/bnp-paribas-agrees-plead-guilty-and-pay-89-billion-illegally-processing-financial>.

¹³ See Department of Justice release at: <https://www.justice.gov/opa/pr/commerzbank-ag-admits-sanctions-and-bank-secrecy-violations-agrees-forfeit-563-million-and>

¹⁴ In this case, CSE was contracted to supply telecommunications equipment for projects in Iran, and retained numerous non-U.S. vendors to assist on the project. OFAC alleged that CSE made payments to such vendors through CSE's U.S. dollar-denominated accounts in non-U.S. financial institutions. OFAC charged that originating such wire transfers in U.S. dollars violated the Iran Transactions and Sanctions Regulations ("ITSR"). Specifically, OFAC claimed that by initiating such transfers CSE "caused" at least six financial institutions to engage in unauthorized exports or reexports of financial services from the U.S. to Iran in violation of ITSR §560.204.

¹⁵ ZTE was alleged to have purchased certain U.S.-origin telecommunications components, incorporated such components into ZTE telecommunications equipment and sold the equipment to Iran.

¹⁶ Parties subject to civil enforcement proceedings are entitled to the procedural protections under OFAC's enforcement regulations and judicial review of adverse determinations, and for criminal prosecutions the constitutional protections for criminal prosecution.

¹⁷ Many of the list-based sanctions programs are focused around such policy goals such as the Counter Narcotics Trafficking Sanctions, Counter Terrorism Sanctions, Cyber-Related Sanctions, Foreign Interference In U.S. Elections Sanctions, Global Magnitsky Sanctions, Noon-Proliferation Sanctions, Rough Diamond Trade Sanctions and Transnational Crime Sanctions.

¹⁸ The designations were for human rights violations under the Global Magnitsky Human Rights Accountability Act and Executive Order 13818.

¹⁹ See OFAC SDN designation February 15, 2019.

²⁰ See OFAC SDN designation November 27, 2018.

²¹ See OFAC SDN designation November 28, 2018.

²² See OFAC SDN designation November 27, 2018.

²³ See OFAC SDN designation August 17, 2018.

²⁴ The 38 parties were designated under Executive Orders 13661 and 13662 pursuant to CAATSA as well as Executive Order 13582, following the Treasury Department's issuance of the CAATSA Section 241 Report regarding senior foreign political figures and oligarchs in the Russian Federation under CAATSA §231 in January 2018.

²⁵ On December 19, 2018 OFAC submitted its Notification to Congress of its intention to terminate sanctions imposed on United Company Rusal plc, EN+ Group plc and JSC EuroSibEnergO after thirty days as the individual party identified on the SDN List that owned 50% of such entities had restructured his ownership and reduced his holdings in such entities below 50%. On January 27, 2019 OFAC removed United Company Rusal plc, EN+ Group plc and JSC EuroSibEnergO from the SDN List.

²⁶ Technically, designation of a party as an SDN does not impose direct legal requirements on the targeted party, rather it imposes obligations on U.S. persons (and possibly other foreign parties) to not engage in transactions with such party and to block such party's assets.

²⁷ These include restrictions on certain transactions regarding Iran's shipping, shipbuilding and port operation sectors.

²⁸ These include graphite, raw or semi-finished metals such as aluminum and steel, and coal.

²⁹ These include restrictions on certain activities including the sale, supply or transportation of certain goods/services used in connection with Iran's automotive sector and associated services.

³⁰ These include: (i) transactions with specified Iranian financial institutions and other major Iranian companies; (ii) transactions involving the Iranian rial or maintaining funds or accounts outside of Iran denominated in Iranian rial; (iii) providing U.S. bank notes to the Government of Iran; (iv) purchase, subscription to or facilitation of the issuance of Iranian sovereign debt and government bonds; and (v) financial messaging services.

³¹ Generally the U.S. secondary sanctions under U.S. nuclear sanctions were lifted however certain sanctions remained in place under human rights, terrorist and weapons of mass destruction sanctions.

³² After the 90-day wind down period ended on August 6, 2018 the U.S. government re-imposed the following sanctions: (i) Sanctions on the purchase or acquisition of U.S. dollar banknotes by the Government of Iran; (ii) Sanctions on Iran's trade in gold or precious metals; (iii) Sanctions on the direct or indirect sale, supply, or transfer to or from Iran of graphite, raw, or semi-finished metals such as aluminum and steel, coal, and software for integrating industrial processes; (iv) Sanctions on significant transactions related to the purchase or sale of Iranian rials, or the maintenance of significant funds or accounts outside the territory of Iran denominated in the Iranian rial; (v). Sanctions on the purchase, subscription to, or facilitation of the issuance of Iranian sovereign debt; and (vi) Sanctions on Iran's automotive sector. Following the 180-day wind-down period ending on November 4, 2018, the

U.S. government re-imposed the following sanctions that were lifted pursuant to the JCPOA, including sanctions on associated services related to the activities below: (i) Sanctions on Iran’s port operators, and shipping and shipbuilding sectors, including on the Islamic Republic of Iran Shipping Lines (IRISL), South Shipping Line Iran, and their affiliates; (ii) Sanctions on petroleum-related transactions with, among others, the National Iranian Oil Company (NIOC), Naftiran Intertrade Company (NICO), and National Iranian Tanker Company (NITC), including the purchase of petroleum, petroleum products, or petrochemical products from Iran; (iii) Sanctions on transactions by foreign financial institutions with the Central Bank of Iran and designated Iranian financial institutions under Section 1245 of the National Defense Authorization Act for Fiscal Year 2012 (NDAA); (iv) Sanctions on the provision of specialized financial messaging services to the Central Bank of Iran and Iranian financial institutions described in Section 104(c)(2)(E)(ii) of the Comprehensive Iran Sanctions and Divestment Act of 2010 (CISADA); (v) Sanctions on the provision of underwriting services, insurance, or reinsurance; and (vi) Sanctions on Iran’s energy sector.

³³ On March 15, 2016 President Obama issued Executive Order 13722 which authorized a broad array of N. Korean sanctions including, among other provisions, the blocking of assets of any party (including non-Korean companies) that traded with N. Korea in certain industrial products including metal, graphite, coal and software where the revenues benefited the N. Korean Government. Similarly on September 20, 2017 President Trump issued Executive Order 13810 which authorized sanctions on foreign companies which have engaged in “at least one significant importation from or exportation to North Korea of any goods, services or technology.” Executive Order 13810 also authorized the imposition of sanctions on foreign financial institutions that “knowingly conducted or facilitated any significant transaction in connection with trade with N. Korea” or “knowingly conducted or facilitated any significant transaction on behalf of” certain persons who have been designated for sanctions.

³⁴ See, *eg.*, Beijing Chengxing Trading Co., Ltd. and Dandong Jinxiang Trade Co., Ltd, added to the SDN List on January 24, 2018.

³⁵ See, *eg.*, Yuk Tung Energy Private Limited and Kingley Won International Co., Ltd., added to the SDN List on February 23, 2018 and Independent Petroleum Company, added to the SDN List in 2017.

³⁶ See, *eg.*, Chang An Shipping & Technology and Chonmyong Shipping Co., added to the SDN List on February 23, 2018.

³⁷ See, *eg.*, Jong Man Bok, representative of Ryonbong Bank in Dandong, China and Ri Tok Jin, representative of Ryonbong in Ji’an, China, added to the SDN List on January 24, 2018.

³⁸ See, *eg.*, Hua Fu (Panama-flagged), Oriental Treasure (Comoros-flagged) and Dong Feng 6 (Tanzania-flagged), added to SDN List on February 23, 2018.

³⁹ See discussion of these sanctions designations in Section 2.B. above.

⁴⁰ See also Executive Order 13661 (Russia/Ukraine), Executive Order 13582 (Syria), Executive Order 13772 (N. Korea) and Executive Order 13810 (N. Korea) which contain similar provisions.

⁴¹ The OFAC Foreign Sanctions Evader’s List (“FDE List”) is a list of foreign individuals and entities determined to have violated, attempted to violate, conspired to violate, or caused a violation of U.S. sanctions on Syria or Iran pursuant to Executive Order 13608. The FSE List also lists foreign persons who have facilitated deceptive transactions for or on behalf of persons subject to U.S. sanctions. The FSE List is not part of the Specially Designated Nationals (SDN) List, however parties on the FSE List may also appear on the SDN List.

⁴² Under Section 231 of CAATSA the U.S. State Department issued guidance (the “Section 231 List”) identifying Russian entities determined to be part of or operating on behalf of Russia’s defense and intelligence sectors. This section provides further that any parties (including non-U.S. parties) that knowingly engage in “significant transactions” with parties on the Section 231 List could be subject to retaliatory sanctions imposed by the U.S. On September 20, 2018 the State Department imposed retaliatory sanctions on the Chinese entity Equipment Development Department and its director, Li Shangfu, for engaging in “significant transactions” with the Russian entity Rosoboronexport which was listed on the Section 231 List. The sanctions imposed included listing such parties on the SDN List, prohibition of transactions with the U.S financial system, a visa ban and denial of export licenses.

⁴³ OFAC has provided limited guidance regarding what constitutes a “significant transaction” – see *eg.*, OFAC FAQ 545.

⁴⁴ See Treasury Department Press Release August 15, 2018.

⁴⁵ Under Section 4(b) sanctions may be imposed to: (i) prohibit the opening and prohibit or impose strict conditions on the maintenance of correspondent accounts or payable-through accounts in the United States; or

(ii) block all property and interests in property that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of any United States person of such foreign financial institution, and provide that such property and interests in property may not be transferred, paid, exported, withdrawn, or otherwise dealt in.

⁴⁶ For example, Executive Order 13846, which is the authority for the re-imposition of the Iran sanctions in 2018, provides a number of consequences for violation of the Iran secondary sanctions, including the following:

- Under §1 companies that have “materially assisted, sponsored or provided financial, material or technological support for, or goods and services in support of” parties involved in certain financial or energy transactions in Iran are subject to asset freezes and being placed on the SDN List. Similarly a party that “knowingly provides significant financial, material, technological, or other support to, or goods or services in support of” certain parties involved in the energy, shipping and port industries in Iran are subject to being placed on the SDN List.
- Under §2 if a foreign financial institution “knowingly conducted or facilitated any significant financial transaction” identified in § 2 Treasury may prohibit the opening, and prohibit and impose strict conditions on the maintaining in the U.S., of a correspondent account or a payable-through account by such foreign financial institution.
- Under §3 persons who “knowingly engage in significant transactions” involving the automotive, petroleum and petrochemical sectors in Iran can be subject to any of the sanctions listed in §§ 4 or 5 of the Executive Order including denial of visas and the right to enter the U.S., denial of export credit by the U.S. Export-Import Bank, denial of export licensees, denial of the right to sell products or services to U.S. government agencies and other options.

⁴⁷ See Justice Department press release at: <https://www.justice.gov/usao-sdny/pr/manhattan-united-states-attorney-announces-charges-against-owner-and-director-singapore>

⁴⁸ See Justice Department release: <https://www.justice.gov/usao-dc/pr/united-states-files-complaints-forfeit-more-11-million-companies-allegedly-laundered>

⁴⁹ For example, following the designation of 24 Russian individuals and entities for election interference and cybersecurity actions on March 13, 2018, Special Prosecutor Robert Muller, III also issued indictments for many of such parties for their efforts to disrupt U.S. elections. Similarly, in the well-known sanctions enforcement case involving the Chinese company ZTE Corporation, in addition to simultaneous investigations by OFAC, BIS and the Justice Department, BIS designated ZTE on the Entity List which precluded companies from supplying products, technologies and software that are subject to the EAR to ZTE.

⁵⁰ This is not a complete list of the U.S. sanctions programs nor the requirements under such programs; a list of the OFAC sanctions programs in effect on the date of this article is in Exhibit A.