

KIRKLAND ALERT

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U.S. Department of the Treasury Identifies Russian Political Leadership and Oligarchs, Though Ultimate Implications Remain Forthcoming

On January 29, 2018, the U.S. Department of the Treasury (“Treasury”) released the *Report on Senior Foreign Political Figures and Oligarchs in the Russian Federation* (“Report”) pursuant to Section 241 of the Countering America’s Adversaries Through Sanctions Act of 2017 (“CAATSA”).¹ Congress mandated this Report to seek to expose the power structures within the Russian government and those otherwise considered close to Russian President Putin. For now, Treasury has emphasized that identification in the Report does not mean that the named parties are sanctioned or that U.S. persons are now prohibited from doing business with them. However, Treasury Secretary Mnuchin also indicated that those identified could become sanctions targets in the future. Transactions with such parties could also now become subject to closer scrutiny, warranting greater due diligence before engaging in business with them.

The View from Washington

CAATSA and the Report demonstrate that controversy over the concerns surrounding Russia’s apparent interference in the 2016 presidential election continues to persist. Congress passed CAATSA with virtually unanimous bipartisan majorities, in part out of concern that the Trump Administration was not doing enough to tighten sanctions on Russia.² Upon [signing CAATSA](#) into law in August 2017, the President objected on the basis that the Executive Branch has historically had authority over U.S. economic sanctions, including discretion in their application.

More recently, Congress has expressed frustration that the Trump Administration has not followed through on implementing new Russia sanctions pursuant to CAATSA’s enactment. In a January 30, 2018, [letter to Secretary of State Tillerson](#), several senators stated that the Administration’s inaction “magnifies a concern that the Trump administration’s policies on Russia do not fully reflect the clear congressional intent described in the legislation.”³ Thus, Section 241 and the Report are endemic of a broader struggle between Congress and the White House over U.S. sanctions policy.

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The Section 241 Report

The Section 241 [Report](#) consists of three parts:

- “Senior political figures,” who are members of Russia’s presidential administration, cabinet of ministers and other senior political leaders;
- “Oligarchs,” who are Russian nationals with an estimated net worth of \$1 billion or more; and
- “Parastatal entities,” which are companies owned 25% or more by the Russian government and with 2016 revenues of approximately \$2 billion or more.

There was criticism that the “oligarchs” list simply mirrored public information, including a 2017 issue of *Forbes* magazine, rather than resulting from actual determinations by Treasury. At the same time, the “parastatal entities” were identified in a classified annex, so those names were not revealed and it is not clear if or when they will be.

Simultaneous with the Report’s issuance, Treasury’s Office of Foreign Assets Control (“OFAC”) pointed out that the Report itself did not trigger the imposition of sanctions on the parties identified. It issued a [press release](#),⁴ as well as an “FAQ,” stating in pertinent part:

The report is not a “sanctions list.” While some persons mentioned in the report may have been sanctioned pursuant to other authorities, the inclusion of individuals or entities in this report, its appendices, or its classified annex does not and in no way should be interpreted to impose sanctions on those individuals or entities.⁵

Thus, unlike being named to a sanctions list, such as the List of Specially Designated Nationals (“SDN List”), being identified in the Report does not impose any restrictions on, or otherwise block, dealings or transactions with the named individuals and entities. Also, unlike being named to the more Russia-specific Sectoral Sanctions Identification List (“SSI List”), identification in the Report also does not mean, e.g., that there are restrictions on issuing these parties debt, extending them credit, or on collaborating with them in certain projects, such as in the Russian energy sector. When OFAC identifies parties on sanctions lists, there is a process for “de-listing,” by which to make a submission requesting removal.⁶ However, as being identified in the Report in and of itself currently does not have a sanctions impact, it is unclear there would be a corresponding mechanism for removal, and OFAC has not indicated as such.

Notwithstanding the current situation, the prospect remains that parties identified in the Report could become targets of sanctions or other restrictions. As indicated above, it appears Congress will continue to apply pressure on the Trump Administration to impose sanctions pursuant to CAATSA. Also, the administration itself has hinted at

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this possibility. Specifically, on January 30, 2018, Treasury Secretary Mnuchin [testified before the Senate Banking Committee](#), that “[t]here will be sanctions that come out of this [R]eport,” potentially laying the groundwork for further action.⁷

Key Takeaways

- Notwithstanding issuance of the Report, companies should continue to rely on formal sanctions lists, such as the SDN List, to determine which parties are considered restricted by the U.S. government.
- Identification in the Report may still have the effect of “naming and shaming” those parties identified, such that financial institutions and regulators generally will apply closer scrutiny to their activities.
- Companies and investors engaging in transactions with parties named in the Report should make sure to conduct additional due diligence, including for issues beyond sanctions, such as corruption and money laundering.
- Given the political climate in Washington and the fact that the mechanisms in CAATSA are starting to take effect, it would be advisable to prepare for the possibility that additional Russia sanctions may be forthcoming.

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¹ *Report to Congress Pursuant to Section 241 of the Countering America’s Adversaries Through Sanctions Act of 2017 Regarding Senior Foreign Political Figures and Oligarchs in the Russian Federation and Russian Parastatal Entities*, U.S. Dep’t of Treasury (Jan. 29, 2018) available at https://www.kirkland.com/files/alerts/CAATSA_Section_241_Russia_Report.pdf.

- ² See “President Trump Signs Sanctions Bill Targeting Russia, North Korea and Iran,” *Kirkland Alert*, Aug. 4, 2017, available at https://www.kirkland.com/siteFiles/Publications/President_Trump_Signs_Sanctions_Bill_Targeting_Russia_North_Korea_and_Iran.pdf; see also “As Investigations Continue in Washington, U.S. State Department Issues Sanctions Guidance on Russia’s Defense and Intelligence Sectors,” *Kirkland Alert*, Oct. 31, 2017, available at https://www.kirkland.com/siteFiles/Publications/US_State_Dept_Issues_Sanctions_Guidance_on_Russia_Defense_and_Intelligence_Sector.pdf.
- ³ See Dianne Feinstein, Letter to Secretary of State Rex Tillerson, U.S. Senate, Jan. 30, 2018, available at https://www.feinstein.senate.gov/public/_cache/files/c/6/c65f01c5-9fea-4dc1-a942-03d09cb7e8b1/F7FA4D966D1508FC313DF9B4634944F0.tillerson-letter.pdf.
- ⁴ Press Release, *Treasury Releases CAATSA Reports, Including on Senior Foreign Political Figures and Oligarchs in the Russian Federation*, U.S. Dep’t of Treasury, Jan. 29, 2018, available at <https://home.treasury.gov/news/press-releases/sm0271>.
- ⁵ Publication of new Ukraine-/Russia-related CAATSA Frequently Asked Question, U.S. Dep’t of Treasury, Jan. 30, 2018, available at https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180130_33.aspx. Those named in the Report that are already sanctions targets are denoted by an asterisk (“*”) next to their names.
- ⁶ See 31 CFR 501.807, Procedures governing delisting from the Specially Designated Nationals and Blocked Persons List.
- ⁷ Saleha Mohsin, “Mnuchin Says Russia Sanctions Coming After ‘Oligarchs’ Report,” *Bloomberg News*, Jan. 30, 2018, available at <https://www.bloomberg.com/news/articles/2018-01-30/mnuchin-say-russia-sanctions-coming-after-oligarchs-report>.

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