

State Department Identifies Parties Operating in Defense and Intelligence Sectors of Russian Federation

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On October 27, 2017, the US Department of State issued public guidance on the implementation of Section 231 of the Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA). CAATSA requires the imposition of certain sanctions on persons who have knowingly engaged in a significant transaction, on or after August 2, 2017, with a person that is part of or operating for or on behalf of the defense or intelligence sectors of the Government of the Russian Federation. The guidance specifies 39 entities that the State Department determined are part of, or are operating for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation.¹

Beginning on or after January 29, 2018, the President will be required to impose certain secondary sanctions (selected from a menu of potential measures provided in Section 235 of CAATSA) on persons who have knowingly engaged in a significant transaction on or after August 2, 2017 with any of the entities identified in the guidance. Secondary sanctions can be imposed upon non-US persons for engaging in certain activities outside of the United States that have been deemed "sanctionable" by the US government. Secondary sanctions can be imposed even where activities have no connection to the United States.

¹ <https://www.state.gov/t/isn/caatsa/275116.htm>

State Department Guidance

The State Department determined that the following entities operate for or on behalf of the defense sector of the Government of the Russian Federation:

- Admiralty Shipyard JSC
- Almaz-Antey Air and Space Defense Corporation JSC
- Dolgoprudny Research Production JSC
- Federal Research and Production Center Titan Barrikady JSC (Titan Design Bureau)
- Izhevsk Mechanical Plant (Baikal)
- Izhmash Concern JSC
- Kalashnikov Concern JSC
- Kalinin Machine Building Plant JSC (KMZ)
- KBP Instrument Design Bureau
- MIC NPO Mashinostroyeniya
- Molot Oruzhie
- Mytishchinski Mashinostroitelny Zavod
- Novator Experimental Design Bureau
- NPO High Precision Systems JSC
- NPO Splav JSC
- Oboronprom OJSC
- Radio-Electronic Technologies (KRET)
- Radiotechnical and Information Systems (RTI) Concern
- Research and Production Corporation Uralvagonzavod JSC
- Rosoboronexport OJSC (ROE)
- Rostec (Russian Technologies State Corporation)
- Russian Aircraft Corporation MiG
- Russian Helicopters JSC
- Sozvezdie Concern JSC
- State Research and Production Enterprise Bazalt JSC
- Sukhoi Aviation JSC
- Tactical Missiles Corporation JSC
- Tikhomirov Scientific Research Institute JSC
- Tupolev JSC
- United Aircraft Corporation
- United Engine Corporation
- United Instrument Manufacturing Corporation
- United Shipbuilding Corporation

In addition, the State Department determined that the following entities operate for or on behalf of the intelligence sector of the Government of the Russian Federation:

- Autonomous Noncommercial Professional Organization/Professional Association of Designers of Data Processing (ANO PO KSI)
- Federal Security Service (FSB)
- Foreign Intelligence Service (SVR)
- Main Intelligence Directorate of the General Staff of the Russian Armed Forces (GRU)
- Special Technology Center
- Zorsecurity

Many of these entities appear to have been designated previously on the US Department of the Treasury Office of Foreign Assets Control's (OFAC) List of Specially Designated Nationals and Blocked Persons (SDN List) under the Ukraine-/Russia-related sanctions and Cyber-related sanctions. US persons² are prohibited from dealing in any property or interests in property of these parties. Additionally, a number of these entities appear to have been designated previously on OFAC's Sectoral Sanctions Identifications List (SSI List) under Directive 3 of the Ukraine-/Russia-related sectoral sanctions. These sanctions prohibit US persons from dealing in new debt with a maturity of greater than 30 days for parties designated under Directive 3.

² US persons include US citizens and permanent residents, wherever located, entities organized under US law (including foreign branches), and parties located within the United States.

Sanctions Measures

Section 231 of CAATSA requires the President to impose, on January 29, 2018 and thereafter, five or more of the following sanctions measures on persons who have knowingly engaged in a significant transaction with any of the above listed entities on or after the date of enactment of CAATSA (August 2, 2017):

- **Denial of Export-Import Bank financing.** The President may direct the Export-Import Bank of the United States not to give approval to the issuance of any guarantee, insurance, extension of credit, or participation in the extension of credit in connection with the export of any goods or services to the sanctioned person.
- **Export Sanctions.** The President may order the United States Government not to issue any specific license and not to grant any other specific permission or authority to export any goods or technology to the sanctioned person under the Export Administration Act of 1979, the Arms Export Control Act, the Atomic Energy Act of 1954, or any other statute that requires the prior review and approval of the United States Government as a condition for the export or reexport of goods or services.
- **Loans from US financial institutions.** The President may prohibit any United States financial institution from making loans or providing credits to the sanctioned person totaling more than \$10,000,000 in any 12-month period unless the person is engaged in activities to relieve human suffering and the loans or credits are provided for such activities.
- **Loans from international financial institutions.** The President may direct the United States executive director to each international financial institution to use the voice and vote of the United States to oppose any loan from the international financial institution that would benefit the sanctioned person.
- **Prohibitions on financial institutions.** The following prohibitions may be imposed against the sanctioned person if that person is a financial institution:
 - *Prohibition on designation as a primary dealer.* Neither the Board of Governors of the Federal Reserve System nor the Federal Reserve Bank of New York may designate, or permit the continuation of any prior designation of, the financial institution as a primary dealer in United States Government debt instruments.
 - *Prohibition on service as repository for government funds.* The financial institution may not serve as agent of the United States Government or serve as repository for United States Government funds.
- **Procurement sanction.** The United States Government may not procure, or enter into any contract for the procurement of, any goods or services from the sanctioned person.
- **Foreign exchange.** The President may, pursuant to such regulations as the President may prescribe, prohibit any transactions in foreign exchange that are subject to the jurisdiction of the United States and in which the sanctioned person has any interest.
- **Banking transactions.** The President may, pursuant to such regulations as the President may prescribe, prohibit any transfers of credit or payments between financial institutions or by, through, or to any financial institution, to the extent that such transfers or payments are subject to the jurisdiction of the United States and involve any interest of the sanctioned person.
- **Property transactions.** The President may, pursuant to such regulations as the President may prescribe, prohibit any person from (1) acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the jurisdiction of the United States and with respect to which the sanctioned person has any interest; and (2) dealing in or exercising any right, power, or privilege with respect to such property; or conducting any transaction involving such property.
- **Ban on investment in equity or debt of such person.** The President may, pursuant to such regulations or guidelines as the President may prescribe, prohibit any United States person from investing in or purchasing significant amounts of equity or debt instruments of the sanctioned person.
- **Exclusion of corporate officers.** The President may direct the Secretary of State to deny a visa to, and the Secretary of Homeland Security to exclude from the United States, any alien that the President determines is a corporate officer or principal of, or a shareholder with a controlling interest in, the sanctioned person.
- **Sanctions on principal executive officers.** The President may impose on the principal executive officer or officers of the sanctioned person, or on persons performing similar functions and with similar authorities as such officer or officers, any of the sanctions under this subsection.

Transactions subject to sanctions

As noted above, Section 231 provides for the imposition of sanctions only where a person engages in a “significant transaction” relating to the Russian defense or intelligence sectors. The term “significant transaction” is not expressly defined in the Act. The State Department’s guidance notes that, in determining whether a transaction is “significant” for purposes of Section 231, it will consider “the totality of the facts and circumstances surrounding the transaction and weigh various factors on a case-by-case basis.”³ The factors considered in the determination may include, but are not limited to:

- The significance of the transaction to US national security and foreign policy interests, in particular whether it has a significant adverse impact on such interests;
- The nature and magnitude of the transaction; and
- The relation and significance of the transaction to the defense or intelligence sector of the Russian government.

The guidance also states that, in the initial implementation stage, the State Department intends to focus on “significant transactions of a defense or intelligence nature with persons named in the Guidance,” and that, if a transaction for goods or services has “purely civilian end-uses and/or civilian end-users, and does not involve entities in the intelligence sector, these factors will generally weigh heavily against a determination that such a transaction is significant for purposes of Section 231.”

The State Department also explained that if a transaction is necessary to comply with rules and regulations administered by the Federal Security Service, or law enforcement or administrative actions or investigations involving the Federal Security Service, including rules and regulations administered by the Federal Security Service for the importation, distribution, or use of information technology products in the Russian Federation and the payment of any fees to the Federal Security Service for such licenses, permits, certification, or notifications, then these factors will weigh heavily against a determination that that such transaction is significant for purposes of this Section 231.

Companies will need to assess whether transactions with these entities could be considered “significant” in light of the factors described above. These assessments will need to be conducted on a case-by-case basis, taking into account any available guidance and enforcement trends in this area.

Companies doing business or looking to do business in Russia should monitor closely any measures imposed by the United States to ensure compliance. Penalties for noncompliance can be severe.

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³ <https://www.state.gov/t/isn/caatsa/275118.htm>