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Key Developments in US Sanctions

Contributing Partners

Jamie L. Boucher / Washington, D.C.

Eytan J. Fisch / Washington, D.C.

Counsel

Khalil N. Maalouf / Washington, D.C.

Associate

Joseph M. Sandman / Washington, D.C.

In 2018, the United States continued to expand its sanctions programs and increase enforcement. While President Donald Trump's decision to re-impose nuclear-related sanctions on Iran has perhaps drawn the most attention, key developments have taken place in other areas as well. Notably, the U.S. imposed sanctions on certain prominent Russian oligarchs, launched new sanctions programs with respect to Nicaragua and interference in U.S. elections, implemented for the first time compliance commitments in the context of a settlement agreement with the Office of Foreign Assets Control (OFAC) and took its first sanctions-related actions in the digital currency space.

The U.S. also has continued vigorous sanctions enforcement and appears increasingly to be targeting individuals for criminal prosecution. We expect that economic sanctions will remain a robust central instrument of U.S. foreign policy in 2019.

Iran Nuclear Sanctions Re-Imposed

Trump's announcement in May 2018 that the U.S. was withdrawing from its participation in the Joint Comprehensive Plan of Action (JCPOA) marked a split with the other P5+1 partners (China, France, Russia, the United Kingdom and Germany), which are still committed to the 2015 agreement with Iran to limit that country's nuclear activities in exchange for sanctions relief. (See our May 14, 2018, August 28, 2018, and November 13, 2018, client alerts.)

Even under the JCPOA, the comprehensive U.S. embargo against Iran remained in place, and with very limited exceptions, U.S. persons remained prohibited from doing business with Iran or its government. As a result, from a primary sanctions perspective (*i.e.*, transactions with a U.S. nexus), the changes were relatively narrow.

The U.S. also re-imposed the sweeping nuclear-related secondary sanctions that previously targeted broad sectors of Iran's economy, including banking, finance and insurance; energy and petrochemicals; shipping, shipbuilding and ports; automotive; semifinished and precious metals; and certain software. Secondary sanctions are a set of measures that principally target foreign individuals and entities for engaging in enumerated activities that may have no U.S. jurisdictional nexus. Unlike a violation of primary sanctions, a non-U.S. party that engages in conduct that is subject to secondary sanctions can itself be subject to various sanctions by the U.S. government. Although OFAC provided 90- and 180-day wind-down periods, those periods have now expired, and the Trump administration has signaled that it will fully enforce the sanctions now in effect.

Russian Oligarchs Sanctioned

On April 6, 2018, OFAC announced Russia-related sanctions against seven oligarchs, 12 companies they owned or controlled, 17 senior government officials, and a state-owned weapons-trading company and its bank subsidiary. (See our April 11, 2018, client alert.) The sanctions

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Four Times Square
New York, NY 10036
212.735.3000

were implemented under Ukraine- and Russia-related executive orders and give rise to both primary and secondary sanctions risks.

The oligarchs that OFAC targeted are more integrated into the global economy than many other designated individuals or entities, and OFAC issued general licenses and accompanying guidance to minimize immediate disruptions to U.S. persons, partners and allies as the agency negotiated the terms of delisting with certain sanctioned companies. The general licenses allow some otherwise prohibited transactions and activities necessary to maintain or wind down existing dealings with, or divest interests in, specific sanctioned companies. OFAC has revised and extended some of these authorizations several times.

On December 19, 2018, OFAC notified Congress that it plans to remove three of the sanctioned companies from the List of Specially Designated Nationals and Blocked Persons (SDN List): En+ Group plc, UC Rusal plc and JSC EuroSibEnergo. OFAC explained that it had added the three companies to the SDN List because they were owned or controlled, directly or indirectly, by Oleg Deripaska, who was sanctioned the same day. In its notification to Congress, OFAC announced that it had reached a deal with the companies to reduce Deripaska's direct and indirect ownership stake, along with other commitments. Unless Congress intervenes, OFAC is expected to remove the three companies from the SDN List as soon as January 18, 2019.

New Sanctions Programs Launched

In recent months, the U.S. launched new sanctions programs with respect to both Nicaragua and interference in U.S. elections. These new programs, along with increased sanctions on Venezuela and Cuba (see our November 8, 2018, client alert), are part of what appears to be a broader, albeit uneven, trend of targeting with sanctions individuals and entities that threaten democracy and human rights.

On November 27, 2018, Trump signed Executive Order 13851, which created a list-based Nicaragua sanctions program to address the violent response by the Nicaraguan government to the protests that began on April 18, 2018, as well as the Daniel Ortega regime's dismantling and undermining of democratic institutions and the rule of law, its use of violence and repressive tactics against civilians, and its destabilizing corruption. The president issued the executive order less than a month after National Security Advisor John R. Bolton gave a speech in which he denounced Cuba, Venezuela and Nicaragua as the "Troika of Tyranny" and signaled a renewed U.S. campaign against left-wing authoritarian governments in the Western Hemisphere. As of January 7, 2019, OFAC had sanctioned Nicaragua's first lady and vice president under the new program.

On September 12, 2018, the president signed Executive Order 13848, which created a sanctions program to target individuals and entities that interfere with or undermine public confidence in U.S. elections, including through the unauthorized accessing of election and campaign infrastructure or the covert distribution of propaganda and disinformation. On December 19, 2018, OFAC used several authorities to sanction individuals and entities involved in interfering with political and electoral systems, including the nine Russian intelligence officers under indictment in connection with interference in the 2016 U.S. presidential election.

Compliance Commitments in OFAC Settlement Agreement

On December 20, 2018, OFAC announced a settlement agreement with St. Louis, Missouri-based carbon fiber manufacturer Zoltek Companies and its subsidiaries involving apparent violations of the Belarus Sanctions Regulations. Significantly, the agreement is OFAC's first incorporating compliance commitments; they included those regarding management, risk assessment, internal controls, testing and audit, training, and annual certification. These commitments constitute a substantial and lengthy undertaking, with compliance and reporting required for years into the future. Looking ahead, companies should consider the risk of being asked to accept similar compliance commitments as part of any settlement with OFAC.

Digital Currencies

On November 28, 2018, OFAC for the first time included digital currency addresses as identifying information when it announced cyber sanctions-related designations of two Iranian men who allegedly helped exchange digital currency ransom payments into the Iranian rial on behalf of Iranian malicious cyber actors. In its announcement, OFAC emphasized that regardless of whether a transaction is denominated in a digital currency or traditional fiat currency, OFAC compliance obligations are the same. We expect continued activity in this space, particularly as malicious actors increasingly turn to digital currencies to evade traditional means of detection.

Robust Enforcement Activity

The U.S. has continued robust sanctions enforcement over the past year. Notably, following the OFAC, Department of Justice and Department of Commerce penalties in 2017 against Chinese technology giant ZTE Corporation related to shipments to Iran and North Korea, the Department of Commerce's Bureau of Industry and Security (BIS) activated its suspended denial order against ZTE "in response to ZTE falsely informing the U.S. Government that it would or had disciplined numerous employees responsible for the violations that led to the March 2017 settlement agreement," according to the Department of Commerce. Ultimately, BIS reached a new settlement agreement with ZTE, and the company was required to pay an additional $1.4 billion in fines and submit to monitoring, among other requirements.

Although substantially smaller in scale, OFAC pursued thematically similar enforcement actions against non-U.S. companies that exported or re-exported U.S.-origin goods to countries subject to comprehensive U.S. sanctions. The past year also saw the return of major sanctions enforcement actions against non-U.S. financial institutions, with the November 2018 settlement between various U.S. authorities and Société Générale.

The U.S. also has continued to target individuals for criminal prosecution in sanctions-related cases. Mehmet Hakan Atilla, the deputy general manager for international banking at Halkbank, a Turkish state-owned bank, was convicted in January 2018 of conspiring to violate U.S. sanctions law, and he was sentenced to 32 months in prison in May 2018. Canadian authorities also recently arrested Meng Wanzhou, the chief financial officer of Huawei Technologies Co., Ltd., at the request of the United States, and she likely faces charges in the U.S. relating to business with Iran. These actions may become more common in the years ahead as the U.S. increasingly focuses on individual accountability for sanctions violations. (See "Enhanced US Export Controls and Aggressive Enforcement Likely to Impact China.")

Conclusion

U.S. sanctions expanded considerably over the past year. With respect to Iran and Russia, U.S. sanctions now target a broader range of individuals and entities, including through secondary sanctions. OFAC simultaneously launched new sanctions programs to target new categories of malign actors, and it brought compliance commitments into its settlement process for the first time and emphasized that its existing sanctions programs and authorities extend even to novel areas, such as cryptocurrency. We expect that the Trump administration will continue to favor sanctions as a tool to implement U.S. foreign policy and that enforcement activity will increase in the year ahead.

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