

OFAC Expands Authorization for Wind-Down, Maintenance and Divestment Transactions to Further Address Challenges Posed By Sanctions Targeting Russian Oligarchs

By [John B. Reynolds](#), [Jeanine P. McGuinness](#), [Will Schisa](#) & [Britt Mosman](#) on May 2, 2018

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On May 1, 2018, the Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued two amended Ukraine/Russia related General Licenses ("GLs"): GL 12B, "Authorizing Certain Activities Necessary to Maintenance or Wind Down of Operations or Existing Contracts" and GL 13A, "Authorizing Certain Transactions Necessary to Divest or Transfer Debt, Equity, or Other Holdings in Certain Blocked Persons". Both GLs entirely replace and supersede the prior versions. As we previously reported, these GLs are intended to minimize immediate disruptions to U.S. persons, partners, and allies resulting from OFAC's April 6, 2018 designation of various Russian oligarchs and the companies they own or control. The amended GLs expand and, in the case of GL 13A, extend the duration of, existing authorizations to address concerns raised primarily by those seeking to divest debt, equity, and other holdings in certain blocked companies and their subsidiaries, and by U.S. companies that have been blocked under OFAC's 50 percent rule as a result of the April 6 designations.

Most significantly, GL 13A expands and extends the authorization permitting U.S. persons to divest, or facilitate the divestment of, debt, equity or other holdings in certain sanctioned entities. As amended, GL 13A authorizes all transactions and activities otherwise prohibited by the Ukraine-Related Sanctions Regulations, 31 C.F.R. part 589 ("URSR"), that are ordinarily incident and necessary (i) to divest or transfer, in each case to a non-U.S. person, debt, equity, or other holdings in (a) certain blocked persons (EN+ Group, GAZ Group, and United Company RUSAL

PLC) or (b) entities in which those persons own, directly or indirectly, a 50 percent or greater interest that were issued by Irkutskenergo, GAZ Auto Plant, or Rusal Capital Designated Activity Company, or (ii) to facilitate the transfer of debt, equity, or other holdings in these blocked persons by a non-U.S. person to another non-U.S. person.

Additionally, and as noted in new FAQ 584, the amended GL 13A now makes clear that U.S. persons are permitted to engage in certain intermediate purchases of or investments in debt, equity or other holdings that are ordinarily incident and necessary to divestment authorized by GL 13A (such as buy to cover transactions to close out a short position). GL 13A also extends the expiration date of the license to 12:01 am EDT on June 6, 2018.

To facilitate authorized maintenance and wind-down transactions by U.S. subsidiaries of certain sanctioned entities, GL 12B now permits originating and intermediary U.S. financial institutions to process funds transfers incident to authorized transactions that would otherwise be blocked to an account held by a blocked U.S. person at a U.S. financial institution. GL 12B also clarifies that funds held in such accounts, including funds originating from payments received on or after April 6, 2018, may be used for maintenance or wind-down activities authorized by the GL. As noted in OFAC's new FAQ 583, this amendment was intended to address difficulties such blocked U.S. subsidiaries have experienced accessing funds needed for authorized maintenance and wind-down activities. GL 12B continues to authorize transactions through 12:01 am EDT on June 5, 2018.

In addition, OFAC published three new FAQs relating to the amended GLs, and made technical revisions to four existing FAQs – specifically, FAQs 570, 571, 578, and 582 – to reflect the scope of the amended GLs 12B and 13A. In addition to the new FAQs discussed above, new FAQ 585 clarifies that in circumstances where one or more blocked persons holds, individually or in the aggregate, a minority ownership interest, U.S. persons generally are not prohibited from engaging in transactions with the foreign company, unless the transaction is otherwise prohibited (for example, because the transaction “specifically involves” a blocked person). Likewise, foreign persons, including foreign financial institutions, engaging in transactions permissible by a U.S. person under the GLs are not engaging in “significant” transactions for the purposes of a sanctions determination under applicable secondary U.S. sanctions. The FAQ does not, however, clarify the

circumstances in which OFAC might consider transactions involving such foreign companies to “specifically involve” their blocked minority shareholders.

These latest OFAC modifications and related clarifications to the recent sanctions demonstrate that that U.S. persons should continue to engage with OFAC to discuss issues and uncertainties they are experiencing as they try to comply with the sanctions.