

Taking Control: How the Barker Plan Permanently Removes Oleg Deripaska from Control of En+ and Rusal

The OFAC Plan will end Deripaska's control of this global business while ensuring he personally remains under tough US sanctions.

The Board will be two-thirds/ one third independent of Deripaska, Deripaska will not receive any dividends for as long as he remains subject to sanctions, and the Company and its operations will remain under the scrutiny of U.S. regulators. The agreement will allow the world's second largest producer of aluminum to stay out of Russian state or Chinese ownership.

Killing this agreement would snatch defeat from the jaws of victory. The alternative to the Barker Plan is the Putin Plan or the Xi Plan, because this strategic asset would likely fall into the hands of the Russian government or China.

Voting down the plan would mean plants in Ireland, Sweden and Jamaica would be shuttered, workers laid off. European market would be destabilized and US consumer prices would rise.

The Barker Plan is not perfect, but it is the one solution that protects U.S. jobs, U.S. interests and U.S. influence for as long as Deripaska remains subject to sanctions.

Background: After months of negotiations, the Treasury Department announced December 19 that it had reached an agreement with the independent chairman of En+ to affect a major restructuring of the company's corporate governance and ownership structure to comply with U.S. policy goals. Specifically, the agreement calls for sanctioned Russian oligarch Oleg Deripaska to be removed from his control of En+, forcing him to divest his majority stake in the company and constituting a new board of directors dominated by an independent group that will include six distinguished U.S. and U.K. nationals who have been vetted by the U.S. Treasury Department.

The bottom line: The Treasury Department's agreement will permanently eliminate Deripaska's control while forcing him to take significant financial losses under continuing aggressive sanctions from the U.S. government.

Severing Deripaska's Control – The Specifics

- Deripaska's shareholding in En+, the holding company for RUSAL, **falls from 70% to 44.95%. A further 10% of Deripaska's holdings are vested in an independent trust approved by OFAC. His tangible voting rights are reduced to 35%.**
- **Independent directors vetted by OFAC will make up 8 of 12 seats** on a newly constituted board, including six U.S. or U.K. citizens.
- **The number of independent directors will increase to eight from three.**
- **Two-thirds of the company's voting rights will be held by independent trustees or minority shareholders.**
- **Any dividends or potential revenue from transferred shares will never be provided to Deripaska for as long as he remains sanctioned.**

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- Voting rights for additional shares – those held by VTB Bank and any Deripaska family member or related party – are similarly vested in one of three independent U.S. trustees.

Further Protections for the United States

- OFAC's plan is **designed to cement enduring changes at En+ and RUSAL.**
- The binding agreement requires the companies to submit to **unprecedented ongoing transparency with Treasury, including extensive and regular auditing, certification and reporting requirements.**
- Any breach of the agreement by En+ or RUSAL would result in the companies being immediately sanctioned again.
- **All of Deripaska's property will remain blocked and he will remain on the SDN list.** His investments in En+ and RUSAL are frozen, and **he cannot obtain cash either in return for his shares or from future dividends issued by these companies.**
- As Treasury has stated, **"These companies will be subject to ongoing compliance and will face severe consequences if they fail to comply."**

Alternatives?

- **If sanctions are not removed, the U.S. Government will lose its ability to eliminate Mr. Deripaska's control of EN+ and Rusal.**
- **Moreover, these companies and their affiliates, including operating companies in Europe, the United States and Jamaica, will lose their ability to operate in a manner consistent with U.S. sanctions law and policy, creating the likelihood that the companies will either be nationalized by Russia or purchased by the Chinese.**

Other Positives

- Deripaska remains blocked as do all other entities in which he has 50 percent or more ownership, in a manner that is entirely consistent with long-established OFAC policy, practice and precedent.
- Aluminum customers/suppliers (including number in US - such as chemical suppliers for aluminum production, those using aluminum) will benefit.
- Sends strong signal re: seriousness of USG sanctions in that relief only given if key elements of oligarch ownership and control are surrendered under USG oversight.
- Provides credible pathway for others to follow suit and at same time make oligarchs pay for support to Putin. Conversely,, overturning this decision would undermine OFAC's ability to secure this type of concession/reduction in future (and there are other sanctions targets and entities looking at this as they decide what to do).

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