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Russia/Ukraine Crisis: The Second Tranche of U.S. Sanctions and Export Controls

Note: This alert originally was published on February 25, 2022, and has been supplemented to reflect additional developments.

On February 21-23, in response to escalating Russian aggression towards neighboring Ukraine, the United States imposed a host of sanctions, including, *inter alia*, an effective embargo on the so-called Donetsk People’s Republic (“DNR”) and Luhansk People’s Republic (“LNR”) regions of Ukraine and blocking sanctions on two major Russian financial institutions, Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (“VEB”) and Promsvyazbank Public Joint Stock Company (“PSB”), along with affiliated entities.¹

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Thereafter, Russia launched a significant invasion of Ukraine. In response, on February 24, President Joe Biden announced a new tranche of sanctions and export restrictions, aimed at (1) limiting Russia’s access to the global economy; (2) stopping Russia’s ability to finance and grow its military; (3) impairing Russia’s ability to compete in the 21st century economy; and (4) sanctioning additional Russian financial institutions.

On February 28, following the designation of Russian President Vladimir Putin and additional members of his inner circle to the Specially Designated Nationals And Blocked Persons (“SDN”) List, OFAC imposed additional restrictions on major Russian financial institutions.

As this situation continues to evolve, this alert will be updated or supplemented, as appropriate, in response to further developments or regulatory guidance.

New Sanctions

Restrictions on Major Financial Institutions

The U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) announced new restrictions against Russia’s two largest financial institutions, Public Joint Stock Company Sberbank of Russia (“Sberbank”) and VTB Bank Public Joint Stock Company (“VTB”).

- **Sberbank:** Pursuant to a new Directive 2 issued under Executive Order 14024, OFAC imposed correspondent and payable-through account sanctions on Sberbank. As of March 26, 2022, U.S. financial institutions will be prohibited from (1) opening or maintaining a correspondent account or payable-through account; and (2) processing transactions for or on behalf of Sberbank and its majority-owned subsidiaries (subject to wind-down authorizations described below). The same restrictions will apply to any subsequently identified foreign financial institution 30 days after such designation. Sberbank, 25 of its foreign subsidiaries, and any subsequently designated foreign financial institutions will be added to OFAC’s List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (“CAPTA List”). This action effectively will cut off these institutions from the U.S. financial system.

¹ Please see our prior alert, available [here](#), for a more detailed discussion of the above actions.

- **VTB:** OFAC designated VTB to the SDN List. As a result, U.S. persons will be prohibited from engaging in virtually all transactions involving VTB, and any VTB funds or other property interests within the United States or the control of U.S. persons must be blocked (subject to wind-down authorizations described below).

Concurrently, OFAC designated three additional Russian financial institutions to the SDN List: Public Joint Stock Company Bank Financial Corporation Otkritie (“Otkritie”), Open Joint Stock Company Sovcombank (“Sovcombank”), and Joint Stock Commercial Bank Novikombank (“Novikombank”). Each of the financial institutions will be subject to the same restrictions for U.S. persons as apply to VTB, subject to applicable wind-down authorizations.

Pursuant to OFAC’s 50 Percent Rule, any entity majority-owned by the above financial institutions automatically is subject to the same restrictions. However, in an effort to aid identification of blocked entities, OFAC independently identified 25 subsidiaries of Sberbank, 20 subsidiaries of VTB, 12 subsidiaries of Otkritie, and 22 subsidiaries of Sovcombank (including several subsidiaries located outside of Russia).

On February 28, OFAC imposed additional sanctions aimed at limiting Russia’s access to international financial markets:

- Issuance of Directive 4: New Directive 4, issued pursuant to Executive Order 14024, prohibits “any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities.”
- SDN Designations: OFAC designated to the SDN List Joint Stock Company Management Company of the Russian Direct Investment Fund, Limited Liability Company RVC Management Company, the Russian Direct Investment Fund (“RDIF”), and Kirill Aleksandrovich Dmitriev. Because the RDIF is a significant institutional investor, this designation will have greater impact on U.S. funds and institutional investors than other designations announced to date.

Debt and Equity Prohibitions

OFAC issued a new Directive 3 under Executive Order 14024, prohibiting U.S. persons from transacting in new equity and new debt² issued on or after March 26, 2022 of greater than 14 days maturity of 13 major Russian firms:

- Sberbank;
- Gazprombank Joint Stock Company (Russia’s third largest financial institution, affiliated with Russia’s energy sector);
- Joint Stock Company Russian Agricultural Bank (Russia’s fifth largest financial institution, affiliated with Russia’s agricultural sector);
- Public Joint Stock Company Gazprom (Russia’s largest natural gas company);
- Public Joint Stock Company Gazprom Neft (one of Russia’s largest oil producers and refiners);
- Public Joint Stock Company Transneft (manager of Russia’s petroleum-related pipelines);
- Public Joint Stock Company Rostelecom (Russia’s largest telecommunications company)
- Public Joint Stock Company RusHydro (one of Russia’s largest power companies);

² As interpreted by OFAC, equity includes stocks, share issuances, depository receipts, or any other evidence of title or ownership; and debt includes bonds, loans, extensions of credit (including, potentially, extended payment terms), loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper.

- Public Joint Stock Company Alrosa (Russia’s largest diamond mining company);
- Joint Stock Company Sovcomflot (Russia’s largest maritime and freight shipping company);
- Open Joint Stock Company Russian Railways (one of Russia’s largest railroad companies);
- Joint Stock Company Alfa-Bank (Russia’s largest privately owned financial institution); and
- Credit Bank of Moscow Public Joint Stock Company (Russia’s largest non-state public bank).

The Directive 3 restrictions are akin to the restrictions implemented pursuant to Directive 1 under Executive Order 13662 on certain entities operating financial services sector of the Russian economy starting in 2014.

Additional SDN Designations

OFAC designated or redesignated a range of Russian elites—and their family members—to the SDN List, including Sergei Sergeevich Ivanov, Sergei Borisovich Ivanov, Andrey Patrushev, Nikolai Platonovich Patrushev, Ivan Igorevich Sechin, Igor Ivanovich Sechin, Alexander Aleksandrovich Vedyakhin, Andrey Sergeevich Puchkov,³ Yuriy Alekseyevich Soloviev, and Galina Olegovna Ulyutina.

In addition, for its role in facilitating Russia’s invasion of Ukraine, OFAC designated 24 Belarusian individuals and entities, including:

- Belarusian Financial Institutions and Affiliates: Belarusian Bank of Development and Reconstruction Belinvestbank Joint Stock Company; Limited Liability Company Belinvest-Engineering; CJSC Belbizneslizing; and Bank Dabrabyt Joint Stock Company.
- Belarusian Defense and Security Industries: Minsk Wheeled Tractor Plant; Aliaksei Ivanavich Rymasheuski; Aliaksandr Piatrovich Vetsianevich; State Authority for Military Industry of the Republic of Belarus; Dmitry Aleksandrovich Pantus; Viachaslau Yevgenyevich Rassalai; State Owned Foreign Trade Unitary Enterprise Belspetsvneshtekhnika; OJSC KB Radar-Managing Company Holding Radar System; JSC 558 Aircraft Repair Plant; Public Joint Stock Company Integral; Industrial-Commercial Private Unitary Enterprise Minotor-Service; OOO Oboronnye Initsiativy; OKB TSP Scientific Production Limited Liability Company; LLC Synesis; LLC 24x7 Panoptes; and Aliaksandr Yauhenavich Shatrou.
- Belarusian Defense Officials and Affiliates: Viktor Gennadievich Khrenin; Aleksandr Grigorievich Volfovich; Aliaksandr Mikalaevich Zaitsau; and OOO Sokhra.

Dealings with the above individuals and entities are now generally off-limits for U.S. persons, and may subject non-U.S. persons to sanctions risk.

General Licenses

As is common, OFAC published a range of general licenses, intended to minimize unintended impacts on third parties.

- Russia-Related General License No. 5 authorizes transactions for the conduct of the official business of certain international organizations (as well as a notation indicating that transactions for the conduct of the official

³ Entities affiliated with Puchkov, including Limited Liability Company Atlant S and Limited Liability Company Inspira Invest A, also were designated.

business of the United Nations and its specialized agencies, programs, funds, and related organizations are exempt);

- Russia-Related General License No. 6 authorizes all transactions ordinarily incident to the export or reexport of covered agricultural commodities, medicine, and medical devices (including software and replacement parts), as well as transactions relating to the prevention, diagnosis, or treatment of COVID-19;
- Russia-Related General License No. 7 authorizes transactions ordinarily incident to services rendered in connection with overflights of the Russian Federation or emergency landings in the Russian Federation;
- Russia-Related General License No. 8 authorizes energy-related transactions through June 24, 2022 that involve VEB, Otkritie, Sovcombank, Sberbank, or VTB, or any entity that is 50% or more owned by one of these Russian financial institutions;
 - Note, on February 28, General License No. 8 was amended to include the Central Bank of the Russian Federation, in connection with OFAC’s issuance of Directive 4 (described above).
- Russia-Related General License No. 9 authorizes transactions necessary to divest, to a non-U.S. person, debt or equity of VEB, Otkritie, Sovcombank, Sberbank, or VTB, or any entity that is 50% or more owned by one of these Russian financial institutions, through May 25, 2022;
- Russia-Related General License No. 10 authorizes transactions necessary to wind down derivative contracts entered into prior to 4:00 pm ET on February 24 that (1) include one of VEB, Otkritie, Sovcombank, Sberbank, or VTB, or any entity that is 50% or more owned by one of these Russian financial institutions as a counterparty; or (2) are linked to debt or equity of one of these institutions, through May 25, 2022, provided that any payments to SDNs are made into a blocked account;
- Russia-Related General License No. 11 authorizes a broader wind-down of transactions related to Otkritie, Sovcombank, VTB, or any entity that is 50% or more owned by one of these Russian financial institutions, through March 26, 2022;
- Russia-Related General License No. 12 authorizes U.S. persons to reject (as opposed to block) all transactions involving Otkritie, Sovcombank, VTB, or any entity that is 50% or more owned by one of these Russian financial institutions, through March 26, 2022;
- Belarusian General License No. 6 authorizes all transactions that are for the official business of the United States government; and
- Belarusian General License No. 7 authorizes all transactions that are for the official business of certain international organizations, including the United Nations and its programmes, funds, specialized agencies, and related organizations.

Each of the above general licenses is subject to parameters that must be carefully observed to ensure compliance with U.S. sanctions.

New Export Restrictions

In parallel, the Bureau of Industry and Security (“BIS”), within the U.S. Department of Commerce, announced the following six new categories of export restrictions targeting Russia:

- *First*, BIS added a new license requirement for all Export Control Classification Numbers (“ECCNs”) included in Categories 3 through 9 of the Commerce Control List (“CCL”), which covers a broad swath of technologies subject to the Export Administration Regulations (“EAR”), including microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, and aircraft components. This step dramatically expands the universe of items (58 separate ECCNs) that now require BIS authorization for export to Russia.
- *Second*, BIS adopted a general presumption of denial for all authorization applications for exports, reexports, and transfers (in-country) to or within Russia, subject to limited exceptions described below. As a result, most requests for export-controlled items to Russia will be presumptively denied. BIS adopted a more lenient, case-by-case review policy for applications related to flight safety, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, government-to-government activities, and transactions in support of limited operations of partner country companies in Russia.
- *Third*, BIS expanded the scope of the existing “military end use” and “military end user” rule for Russia to cover all items subject to the EAR, except for (1) food and medicine designated as EAR99 (i.e., not controlled under U.S. export control laws); and (2) items classified as 5A992.c or 5D992.c, so long as those items are not for Russian “government end users” or state-owned enterprises. The expansion of the rule—which imposes licensing requirements where there is knowledge or reason to know that an item may be destined for a military end user or military end use—to virtually all items subject to the EAR imposes additional licensing requirements, and attendant due diligence expectations, even for items that are *subject* to the EAR but not *controlled* under the EAR.
- *Fourth*, BIS created two new Foreign Direct Product (“FDP”) rules specific to Russia. The FDP rule is intended to capture items manufactured outside the United States that are produced using certain controlled U.S. technology. Under the first new Russia-related rule (the “Russia FDP Rule”), controls will apply to foreign-produced items that are (1) the direct product of certain U.S.-origin software or technology subject to the EAR; or (2) produced by certain plants or major components thereof that are themselves the direct product of certain U.S.-origin software or technology subject to the EAR, in cases where there is knowledge or reason to know the item is destined for Russia or will be used in the production or development of an item that will be produced in, or shipped to, Russia. The second new Russia-related rule (the “Russia-MEU FDP Rule”) is broader, establishing a similar control for *all* foreign-produced items that are the direct product of *any* software or technology subject to the EAR that is on the CCL, or that are produced by certain plants or major components thereof that are themselves the direct product of anything listed on the CCL. Such items will be subject to the EAR and require a license if any entity on the Entity List⁴ with a “footnote 3” designation is a party to the transaction, or if there is knowledge or reason to know that such an entity will purchase or order the ultimate technology at issue. Certain countries that have adopted or expressed an intent to adopt substantially similar measures will be exempt from the FDP rules, which are intended to prevent Russia from accessing U.S.-origin technology through items manufactured outside the United States.
- *Fifth*, BIS limited the use of EAR license exceptions for exports, reexports, and transfers (in-country) to or within Russia. Certain exceptions—including with respect to temporary imports and exports for items used by the news media, certain government activities, software updates for certain civil end users, baggage, aircraft flying in and out of Russia, and certain encryption and consumer communication devices—remain available.

⁴ The Entity List is a list of certain foreign parties that are subject to specific licensing requirements for the export, reexport, or transfer (in-country) of any item subject to the EAR.

- *Sixth*, and in connection with the Russia-MEU FDP Rule, BIS (1) transferred 47 entities from its Military End User (MEU) List to the Entity List, designated them with the aforementioned “footnote 3” designation, and clarified that license applications would be reviewed under a policy of presumption of denial in all cases. BIS also added two new Russian military end users to the Entity List, and imposed the same restrictions. This action substantially restricts exports of U.S.-origin technology to the 49 listed entities.

Conclusion

The sweeping sanctions and export restrictions announced over the past week will significantly restrict U.S. persons’ ability to conduct transactions in or with Russia where the transaction would involve a targeted Russian financial institution or items subject to U.S. export controls. In addition, given the restrictions’ extraterritorial application, non-U.S. persons will need to familiarize themselves with the new restrictions—in addition to any subsequent restrictions imposed in their home jurisdictions—to avoid inadvertent violations. Importantly, however, the measures announced to date do not amount to a comprehensive embargo against Russia. Companies may continue conducting business in or with Russia, but should conduct thorough due diligence of any Russia-related transactions to ensure compliance with U.S. regulations, and continue monitoring for further escalation of trade restrictions.