

Recent U.S. Sanctions Programs Triggered by Russian Hostilities Against Ukraine

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The United States, primarily through Presidential action under the statutory authority of the International Emergency Economic Powers Act (“IEEPA”), has empowered the U.S. Department of the Treasury and its Office of Foreign Asset Control (“OFAC”), to impose embargos on certain governments, countries, companies, industries and individuals (each, an “Embargo Target”). U.S. Persons are obligated to understand and comply with all U.S. sanctions programs (“Sanctions” or “Sanction Laws”, as applicable). Most Sanction Laws prohibit U.S. Persons from transacting with Embargo Targets in U.S. products, technology or technical data, or the financing thereof. Additionally, a number of Sanctions Laws have mechanisms designed to encourage non-U.S. persons to refrain from transacting with Embargo Targets by implementing secondary sanctions that in sum require the non-U.S. person to choose between conducting business with the U.S. or the Embargo Target; U.S. secondary sanctions usually block the non-U.S. person access to U.S. monetary systems and U.S. Dollars if they transact with an Embargo Target.

Most Sanction Laws include (i) general licenses that, among other things, permit humanitarian aid and legal representation to defend against embargos, and (ii) the ability to apply for specific licenses that otherwise prohibited transactions after OFAC review and approval. For instance, a bank may apply for specific license to permit the unwinding of a transaction that the bank entered into with an Embargo Target prior to enactment of a Sanction or the addition of the Embargo Target to the Sanction’s list. U.S. Sanctions and export controls have become an increasingly important, if not primary, regulatory device to encourage behavior that is consistent with U.S. foreign policy.

New Sanctions programs against Russia are rapidly evolving. Banks, insurers and other companies with cross-border businesses need to stay abreast of these changes. Interested parties can access the U.S. Department of Commerce’s [Consolidated Screening List](#) to identify persons, companies and countries on the Embargo Lists. [U.S. sanctions and embargo programs](#) are set forth on the U.S. Treasury’s website.

Numerous other nations have coordinated efforts with the U.S. to implement sanctions against Russia and Belarus for their unprovoked attacks on Ukraine and its people. Similar sanctions programs have been enacted by U.S. allies, including the European Union, the United Kingdom, Australia, Japan, Canada, South Korea, Switzerland, Singapore, New Zealand, and Taiwan.

We expect additional programs may be triggered by NATO meetings and actions by other foreign actors. Specifically, the U.S. and its allies are in regular communication with China regarding its interactions with Russia. We also note that other allies such as Israel and India have as of this date have not taken a position on the subject of Russia and Ukraine.

In reaction to the U.S. and its allies’ sanctions programs, Russia has implemented numerous countersanction programs that likely will put multinational businesses in the cross-hairs of one side or the other. For instance:

- Russia's Edict No. 95, On Temporary Procedures for Discharging Obligations to Certain Foreign Creditors (Edict 95), limits Russian debtors payments to creditors from unfriendly states in Rubles through special limited-use type "S" accounts opened (including by the debtor itself) in the relevant creditor's name. Edict No. 95 identifies unfriendly states as Australia, Albania, Andorra, the United Kingdom (including Jersey, Anguilla, the British Virgin Islands and Gibraltar), the European Union member states, Iceland, Canada, Lichtenstein, Micronesia, Monaco, New Zealand, Norway, the Republic of Korea, San Marino, North Macedonia, Singapore, the United States, Taiwan, Ukraine, Montenegro, Switzerland and Japan).
 - Edict No. 79 of the President of the Russian Federation (28 February 2022) prohibits Russian legal entities from providing loans to foreign entities (in any countries) in any foreign currency.
 - Edict No. 79 removes restrictions on Russian companies' repurchases of shares (ostensibly to repurchase foreign ownership for no or low value).
 - Edict No. 79 also bans transactions that give title to Russian securities and immovable property to persons from unfriendly countries.
 - Government Decree No. 299 of 6 March 2022, authorizes Russian users to forego payment of compensation to holders of patents from unfriendly countries if the patents are used without holder consent.
 - For future concern, Russia is threatening to nationalize assets of foreign businesses that cease operations in Russia.

We summarize material points of the new U.S. sanctions programs below:

Following the Russian Federation's recognition of two Ukrainian territories occupied by Russian separatists as "independent republics", President Biden on February 21, 2022 issued Executive Order 14065 ["Blocking Property on Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts To Undermine the Sovereignty and Territorial Integrity of Ukraine"](#) ("EO 14065"). In summary, EO 14065 prohibits U.S. Persons from, among other things, investing in or trading with certain blocked persons or governments ("Specially Designated Nationals" or "SDNs") in the Donetsk and Luhansk regions of Ukraine ("Covered Regions").

In conjunction with EO 14065, OFAC issued the following six general licenses:

- [General License 17](#): Temporarily authorizes transactions ordinarily incident and essential to the wind-down of transactions involving the Covered Regions through March 23, 2022.
- [General License 18](#): Authorizes specific exports and reexports of agricultural, commodities, medicine, medical devices, replacement parts, and certain COVID-19 related transactions to the Covered Regions.
- [General License 19](#): Authorizes the continuation of transactions pertaining to mail services and telecommunications, but not shipment of equipment.

- [General License 20](#): Authorizes official business of specifically identified international organizations and entities (e.g., the United Nations and the International Committee of the Red Cross).
- [General License 21](#): Authorizes noncommercial, private remittances and the operation and closure of personal accounts.
- [General License 22](#): Authorizes the exportation and re-exportation of specific services and software incident to the exchange of personal communications over the internet (e.g., instant messaging, chat and email, social networking, web browsing, and blogging).
- [General License 23](#): Authorizes certain transactions in support of non-governmental organizations' activities.
- [General License 24](#): Authorizes certain transactions related to the provision of maritime services.
- [General License 25](#): Authorizes journalistic activities and establishment of news bureaus Covered Regions.

On February 22, 2022, OFAC also issued Russia-related Directive 1A ([“Prohibitions Related to Certain Sovereign Debt of the Russian Federation”](#)) under Executive Order 14024 (“EO 14024”) [“Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation”](#), which unless otherwise permitted by law or authorized by OFAC, prohibits U.S. Persons from: (i) trading in or lending against bonds issued after June 14, 2021 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation; or (ii); as of March 1, 2022, participating in the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation. As a result of the issuance of Directive 1A, the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation were designated to the Non-SDN Menu-Based Sanctions List (“NS-MBS”), a list of entities that are subject to OFAC’s Directives.

On February 24, 2022, OFAC issued Russia-related Directive 2 ([“Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions”](#)) and Directive 3 ([“Prohibitions Related to New Debt and Equity of Certain Russia-related Entities”](#)) under EO 14024. Russia-related Directive 2 prohibits, unless authorized by law or OFAC, opening, maintaining or transacting for correspondent or payable-through accounts for or on behalf of blocked foreign financial institutions

Russia-related Directive 3 prohibits U.S. Persons and other persons within the United States from investing in new debt of longer than 14 days maturity or new equity where such new debt or new equity is issued on or after March 26, 2022 of entities listed in Annex 1 of Directive 3 (e.g., Alfa-Bank, Credit Bank of Moscow, Sberbank of Russia, and Russian Agricultural Bank).

Also on February 24, the U.S. Commerce Department’s Bureau of Industry and Security (“BIS”) issued [new export control measures](#) under the Export Administration Regulations (“EAR”) against

Russia. These new measures primarily target Russia's defense, aerospace, and maritime sectors with the intention of curtailing Russia's ability to access technologies and other items that Russia needs to sustain its military capabilities. BIS also 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 food and medicine designated as EAR 99 and certain other items so long as those items are not for Russian "government end users" or state-owned enterprises.

On February 26, 2022, the United States, the European Commission, France, Germany Italy, Japan, the United Kingdom and Canada [announced](#) they will commit to ensuring that a certain number of Russian banks are removed from the Society for Worldwide Interbank Financial Telecommunication (SWIFT) international payments system. On March 2, 2022, the European Union in coordination with its international partners including the U.S. and the United Kingdom, [identified seven Russian banks](#) that would be excluded from the SWIFT messaging system in an action that would take effect March 12. This measure will effectively cut Russia out of the world's most important financial messaging system and undermine the Kremlin's ability to use its Central Bank reserves to blunt the impact of other Sanctions currently imposed and any future Sanctions too.

To prevent the Central Bank of Russia from deploying its international reserves in ways that could undermine the impact of Sanctions, on February 28, 2022, OFAC issued Russia-related Directive 4 ("[Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation](#)") under EO 14024, which, subject to certain general licenses designed to facilitate pre-existing business and allow humanitarian efforts, prohibits U.S. Persons from engaging in 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.

Since issuance of the newly implemented Russian-related Sanctions, OFAC added SDN designations to a number of Russian individuals, including powerful Russian oligarchs and their family members, Russian President Vladimir Putin, Foreign Minister Sergei Vitorovic Lavrov, and certain members of Russia's Security Council, and certain Russian entities including the State Corporate Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB), Promsvyazbank Public Joint Stock Company, PJSC Bank Financial Corporation Otkritie, JSC Bank Novikombank, and VTB Bank Public Joint Stock Company) as SDNs, which means that their U.S. and dollar denominated assets must be frozen and blocked.

In response to Belarus' support and facilitation of Russia's invasion of Ukraine, on February 24, 2022, OFAC issued targeted Sanctions against several Belarusian entities and individuals, including the state-owned Bank Dabrabyt and Belarussian Bank of Development and Reconstruction Belinvestbank. Sanctions against Belarus may just be the first, as the U.S. and its allies may target other countries that directly or indirectly support Russia's actions against Ukraine, including countries, like China, that continue to trade with Russia.

The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued an [alert](#) on March 7, 2022 to all financial institutions to be vigilant against efforts to evade the expansive Russia-related sanctions and other restrictions imposed in connection with the invasion of Ukraine.

On March 8, 2022, President Biden issued Executive Order 14066 “[Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine](#)” (“EO 14066”), which prohibits the importation of Russian Federation oil, natural gas and other energy products into the United States, as well as new investment in the Russian Federation’s energy sector by a U.S. person. EO 14066 also prohibits any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a U.S. person or within the United States, as well as and any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of or attempts to violate any of the prohibitions of EO 14066.

On March 11, 2022, President Biden expanded EO 14066, by issuing Executive Order 14068 “[Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression](#)” (“EO 14068”), which prohibits the importation into the United States of the following: fish, seafood, and preparation thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian Federation origin as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State and Secretary of Commerce. In addition, EO 14068 prohibits: new investment in any sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, by a U.S. person, wherever located; the transfer, directly or indirectly, of U.S. dollar-denominated banknotes from the United States or by a U.S. person, wherever located, to the government of the Russian Federation or any person located in the Russian Federation; any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited by EO 14068 if performed by a U.S. person or within the United States; and any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of or attempts to violate any of the prohibitions of EO 14068.

In conjunction with EO 14024, EO 14066, and EO 14068, OFAC issued the following general licenses:

- [General License 2](#): Authorizes certain serving transactions involving VEB.
- [General License 3](#): Authorizes the certain serving transactions involving VEB.
- [General License 4](#): Authorizes the wind down of transactions involving VEB.
- [General License 5](#): Authorizes activities of certain identified international organizations.
- [General License 6a](#): Authorizes specific exports or re-exports of medicine, medical devices, agricultural commodities to, and certain COVID-19 related transactions involving Covered Regions.
- [General License 7](#): Authorizes overflight payments, emergency landings, and air ambulance services.
- [General License 8A](#): Authorizes certain transactions related to the energy-sector.

- [General License 9A](#): Temporarily authorizes transactions related to dealings in certain debt or equity.
- [General License 10A](#): Temporarily authorizes certain transactions related to derivative contracts.
- [General License 11](#): Temporarily authorizes the wind down of transactions involving certain blocked persons identified in this license.
- [General License 12](#): Authorizes U.S. persons to reject certain transactions involving certain parties, including PJSC Bank Financial Corporation Otkritie and VTB Bank Public Joint Stock Company.
- [General License 13](#): Temporarily authorizes certain administrative transactions prohibited by Directive 4 under EO 14024.
- [General License 14](#): Authorizes certain clearing and settlement transactions prohibited by Directive 4 under EO 14024.
- [General License 15](#): Authorizes transactions involving certain blocked entities owned by Alisher Burhanovich Usmanov.
- [General License 16](#): Temporarily authorizes transactions related to certain imports prohibited by EO 14066.
- [General License 17a](#): Temporarily authorizes transactions related to certain imports prohibited by EO 14068.
- [General License 18](#): Authorizes U.S. dollar-denominated banknote non-commercial, personal remittances prohibited by EO 14068.
- [General License 19](#): Authorizes transactions related to personal maintenance of U.S. individuals located in the Russian Federation.
- [General License 20](#): Authorizes certain fund transfers of third-country diplomatic or consular missions located in the Russian Federation.

President Biden [announced](#) on March 11, 2022, that the United States, along with G7 nations and the EU, will dramatically downgrade its trade status with Russia, which would revoke the “most favored nation” status for Russia. U.S. Congressional approval is required for this to happen. On March 17, 2022, the U.S. House of Representatives passed legislation, [The Suspending Normal Trade Relations with Russia and Belarus Act](#), suspending normal trade relations with Russia and Belarus. The bill now heads to the U.S. Senate where it is expected to be taken up quickly and sent to President Biden to be signed into law. The legislation directs the U.S. Trade Representative to pressure other nations to revoke trade privileges for Russia and Belarus, push to suspend Russia’s participation at the World Trade Organization, and give President Biden the authority until 2024 to increase tariffs on Russian and Belarusian goods, such as steel, aluminum and plywood.

OFAC has published new and amended [FAQs](#), which expand upon and clarify the Russia-related sanctions, as well as issued new and amended [general licenses](#) that permit certain transactions, whether for a fixed period or ongoing, that would otherwise be prohibited.

Given this is an extremely fluid situation, we anticipate additional measures to be issued by the U.S. government and its allies and plan to closely monitor and update this information as material changes occur.

Prior U.S. Sanctions Against Russia.

Prior to the invasion of Ukraine, the U.S. already had an active Sanctions program directed at the Russian Federation ([U.S. Sanctions Regarding the Russian Federation](#)) including the following:

- [Election Interference](#). In April 2021, the Biden administration added a raft of new Sanctions against Russian persons and entities that the U.S. deemed responsible for interference with 2020 U.S. elections.
- [Ukraine-/Russia-Related Sanctions](#). The current Ukraine/Russia-related Sanctions program implemented by OFAC began on March 6, 2014, when President Obama, through Executive Order 13660 “Blocking Property of Certain Persons Contributing to the Situation in Ukraine” (“EO 13660”), declared a national emergency to deal with the threat posed by the actions and policies of certain persons who had undermined stability, security, and democratic processes and institutions in Ukraine.
- See also [CAATSA](#), [Magnitsky Sanctions](#), [Cyber-Related Sanctions](#), and [Foreign Interference in a United States Election Sanctions](#).

Additional Potential Russian Sanctions

Banks and Financial Institutions. While the U.S. and its allies have already sanctioned several Russian banks and financial institutions and cut Russia’s Central Bank from undertaking transactions in U.S. dollars, the U.S. could sanction additional Russia’s banks and financial institutions that have yet to be sanctioned, impose Sanctions against Russian banks that would not put them on the SDN List but rather only restrict such banks from certain transactions, freeze U.S. dollar accounts and expand on the prohibition of Russia’s access to U.S. dollars. Banks could have assets frozen and be subject to limitations on certain transactions, borrowing and access to capital. Penalties could also be applied to some mostly domestic-facing banks that have been used to circumvent previous Sanctions. While it is not clear which Russian banks will be blocked from the SWIFT network, the U.S. and its allies could further tighten those restrictions and block access to all Russian banks to SWIFT. Such Sanctions could mirror similar Sanctions targeting Iranian banks. If OFAC designates Russian banks on the SDN List, U.S. and non-U.S. entities globally would be required to cease conducting business with such sanctioned banks, which would create significant impacts on companies globally complying with such Sanctions. The U.S. could also combine with other NATO allies to coordinate Sanctions to restrict Russia’s access to Euro and GBP accounts and currencies. Since the Dollar is the standard unit of trade for many commodities, limiting access to U.S. dollars could have a severe impact on Russia’s access to necessary commodities.

The United States could also impose more restrictive measures that could prevent the Russian Central Bank from deploying its international reserves in ways that undermine the impact of Sanctions. Such measures would likely paralyze Russia's Central Bank assets and freeze its transactions, making it futile to liquidate its assets.

Secondary Sanctions. The U.S. could add secondary Sanctions to encourage non-U.S. persons and governments throughout the world to support U.S. Sanctions. For instance, secondary Sanctions could prevent circumvention of primary U.S. Sanctions by requiring non-U.S. financial institutions to choose between transacting with Russian SDN counterparties or the Western financial system.

Energy, Mining, Mineral, and Shipping. Beyond the U.S. banning the import of Russian oil, Germany terminating Nord Stream 2 pipeline's certification and the SDN designation of several Russia-flagged oil tankers and container ships, the United States could impose additional Sanctions targeting Russia's energy, mining, and mineral and shipping sector similar to those inflicted on Russian banks. Sanctions that limit Russia's ability to export oil and gas would be by far the most powerful weapon against the Russian economy. For instance, Sanctions against Russia's energy sector could mirror the Sanctions program involving Venezuela. However, many European allies are dependent on Russian energy so alternatives would need to be thought through in advance of such actions.

U.S. and its allies may also consider Sanctions that prohibit or further limit Russian metals sales of steel, aluminum, iron and chemicals. For example, in April 2018, OFAC added Russian oligarch Oleg Deripaska, Russian President Putin's close friend, to the SDN List. Mr. Deripaska owned Rusal, the world's second-largest aluminum producer. That designation, however, caused a surge in global aluminum prices. In reaction to the price surge, OFAC lifted Sanctions on many Rusal companies that December.

President Biden announced on March 1, 2022, President Biden that the U.S. will ban Russian aircraft from U.S. airspace, joining a growing number of countries who are also closing their airspace, such as Canada, and the European Union. This ban includes scheduled passenger flights as well as cargo and charter flights.

Russian Companies. The U.S. might consider denying access to U.S. equities markets for Russian companies in a manner similar to those imposed against Chinese Military-Industrial Complex Companies. Dozens of Russian domiciled businesses list securities (primarily ADRs) on U.S. and London stock exchanges. Cutting off access to U.S. capital, along with secondary Sanctions on potential trading partners, could have a significant, detrimental impact on Russian cross-border business and access to liquidity.

Individuals. While the U.S. and its allies have already imposed Sanctions targeting the assets of oligarchs and other senior Russian government officials close to Russian President Putin, additional Russian oligarchs and government officials could be designated. Sanctions could ban travel and trade, and freeze assets owned by Russian oligarchs and state-owned enterprises that facilitate aggression against Ukraine. The U.S. has taken similar steps against CNOOC, a Chinese energy exploration company, that the U.S. claims "acts as a bully for the People's Liberation Army to intimidate China's neighbors."

Technology, Defense, Aviation, Maritime, and Automobiles. While the U.S. has taken certain measures that limit Russia's access to the U.S. technology, defense, aviation, maritime and automobile sector through economic Sanctions and export controls, more severe Sanctions and export controls (such as those in place for North Korea) could be imposed on these and other sectors of the Russian economy, such as a total outright ban. These measures have the ability to prevent Russia from importing consumer electronics, and key aircraft and automobile components to U.S. allies and others who depend on U.S. technology and finance.

Russian Embargo. While it may be considered an extreme measure, the U.S. could impose a total financial embargo on Russia, which would bar Americans from exporting to or importing from Russia goods, services or technologies. Instead of a full embargo, the U.S. could also issue an investment ban barring U.S. individuals and entities from investing in Russia.

Expanding on Existing Sanctions. In addition to new Sanctions, the U.S. and its allies could bolster or augment existing Sanctions programs that impact the Russian Federation and its partners.

Preparing For Possible Additional Russian Sanctions

All U.S. Persons should review their interactions with customers, investors and vendors, as well as their key management and beneficial owners (to determine ownership threshold for compliance with OFAC's 50% ownership rule), for any connection to Russian Federation associated individuals or entities. This includes review of non-U.S. subsidiaries' businesses. Since possible Sanctions could include individuals, entities and financial instruments, U.S. Persons should review customers, investors and vendors who have any connection to Russia and Russian politically exposed persons ("PEPs"). We would also suggest reviewing all financial instruments for counterparty credit risk and negative news searches in English and local languages for all persons identified as being associated with Russian Federation PEPs.

Conduct an assessment of your business to determine whether any import or export goods or technology involve Russia or Russian associated individuals or entities; also determine if any of your products or technology are "made in the Russian Federation." Exporting can include providing goods or technology to a foreign person in the U.S.

Review all employees, consultants and contractors to determine whether they are foreign persons (e.g., Russian Federation nationals).

Review agreements with or associated with Russian entities or individuals for clauses that may result in the termination of such agreement due to Sanctions. Financial institutions should review foreign correspondent banking agreements with banks designated as high risk due to their minimal compliance programs and connection with Russia. This also includes subjecting transactions of high risk customers to enhanced reviews for the extent of this predicament.

Based on the results from the above assessments, determine the impact of possible Russian Sanctions on your business and whether changes should be implemented to limit the potential impact of potential Sanctions on the Russian Federation or its companies and persons.

Review, and update as necessary, your anti-money laundering, Sanctions and export controls compliance policies and procedures, as well as internal controls. This includes ensuring you have

proper and updated screening tools to screen all applicable individuals and entities against relevant Sanctions lists when or if such Sanctions lists are updated. Sanctions violations are based on strict liability (held liable even if you did not have any knowledge or have reason to know you were engaging in a transaction with a sanctioned person, entity or government) and OFAC may impose civil penalties.

Prepare communication to applicable personnel on possible Russian Sanctions that may have an impact and remind all firm personnel of their responsibilities to ensure compliance with Sanctions.

U.S. Persons and non-U.S. persons should prepare to act due to the potential for primary and secondary Sanctions, including cessation of business activities with individuals or entities identified on the SDN List, as companies are not warned ahead of time of the names designated on the SDN List.

As we have in the past, we will continue to monitor these issues and will provide future client updates. This information is for guidance only and is not intended to be a substitute for specific legal advice.

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