

February 26, 2022

The Biden Administration's First Week of Sweeping Sanctions on Russia/Ukraine

This memorandum updates the memorandum we originally published on February 23, 2022.

For weeks, the Biden Administration has warned that Russian escalation in Ukraine would result in significant costs in the form of sanctions. Starting on Monday, February 21, 2022, the Administration put in place sweeping new sanctions and export controls relating to Russia/Ukraine. Each day this week, additional sanctions followed. Specifically:

On Monday, February 21, 2022, in response to Russian President Putin's announcement that Russia would be recognizing the so-called Donetsk and Luhansk People's Republics (the "DNR" and "LNR" regions of Ukraine, respectively) as "independent," President Biden issued an executive order, Executive Order 14065 (the "EO") targeting the DNR and LNR with comprehensive economic sanctions.¹ The sanctions that the EO imposes with regard to these regions are very similar to the 2014 sanctions imposed on the Crimea region and effectively create an embargo of these regions.

On Tuesday, February 22, 2022, in response to President Putin's recognition of the DNR and LNR as well as his announcement that Russia would deploy troops to these regions, President Biden announced a "first tranche" of additional sanctions targeting Russia and stated that the United States and its allies are prepared to impose additional sanctions in response to further actions that may be taken by Russia in Ukraine.² This first tranche of sanctions included: the imposition of blocking sanctions on two major Russian financial institutions (*i.e.*, adding these entities to OFAC's SDN List), expanded prohibitions on U.S. financial institutions' ability to deal in Russian sovereign debt, and blocking sanctions targeting several prominent high-profile Russians and members of their families. President Biden also announced that the Secretary of the Treasury has determined that any institution in the financial services sector of the Russian economy is now a potential target for future tranches of sanctions.

Further, on Wednesday, February 23, 2022, OFAC added Nord Stream AG 2, the Swiss company building the Nord Stream 2 pipeline, and its Chief Executive Officer to the SDN List.³ The Biden Administration characterized these designations as "another piece" of the "initial tranche of sanctions" in response to Russia's actions in Ukraine.⁴

¹ The White House, "Executive Order to Impose Costs for President Putin's Action to Recognize So-Called Donetsk and Luhansk People's Republics" (Feb. 21, 2022), available [here](#).

² The White House, "Fact Sheet: United States Imposes First Tranche of Swift and Severe Costs on Russia" (Feb. 22, 2022), available [here](#).

³ These sanctions were imposed pursuant to the Protecting Europe's Energy Security Act ("PEESA") passed in 2021.

⁴ The White House, "Statement by President Biden on Nord Stream 2," (Feb. 23, 2022), available [here](#).

On Thursday, February 24, 2022, in response to Russia's invasion of Ukraine, President Biden announced a sweeping package of sanctions and heightened export control restrictions targeting Russia and Belarus.⁵ This package included the prohibition of U.S. correspondent banking for Sberbank, Russia's largest bank, and 25 of its subsidiaries; imposing blocking sanctions on VTB Bank and three other major Russian financial institutions and their subsidiaries; restricting the ability of U.S. persons to deal in new debt or equity of 13 major Russian companies; adding additional high-profile Russian individuals, as well as Belarusian individuals and entities, to the SDN List; adding a number of entities in the defense sector of Russia's economy to the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") Entity List; and imposing a number of new export control restrictions prohibiting the export of a wide variety of U.S.-origin items (including software and technology) to Russia through, among other things, a licensing policy of denial for Russia for a number of export control classifications and the adoption of additional "foreign direct product" rules specific to Russia. Notably there are significant OFAC general licenses for, among other things, energy-related transactions involving certain designated financial institutions.

Finally, in an extremely rare move for a country that is not the target of comprehensive sanctions, on Friday, February 25, 2022, OFAC announced the designation of President Putin to the SDN List, along with Sergei Lavrov, the Minister of Foreign Affairs of Russia, Sergei Shoigu, the Minister of Defense of Russia, and Valery Gerasimov, the Russian General of the Army.⁶ OFAC noted that "[i]t is exceedingly rare for Treasury to designate a head of state" and that President Putin now joins Kim Jong Un of North Korea, Alyaksandr Lukashenka of Belarus, and Bashar al-Assad of Syria, as a head of state on the SDN List.⁷ As a result of this designation, all of their property and interests in property in the possession of U.S. persons must be blocked and virtually all U.S.-nexus transactions involving these persons are now prohibited by U.S. sanctions.

Below we provide more detail on these U.S. government actions and their implications. The situation is rapidly evolving and additional sanctions may be forthcoming.

Sanctions Imposed by Monday's EO

Monday's EO very closely follows the model of Executive Order 13685 of December 19, 2014, which imposed comprehensive sanctions on the Crimea region of Ukraine in response to Russia's annexation of that region. The new EO likewise imposes comprehensive sanctions on the DNR and LNR regions of Ukraine, prohibiting virtually all U.S.-nexus transactions or dealings with these regions.⁸ A U.S.-nexus transaction can include transactions involving U.S. persons, the use of U.S. dollars (or other currencies) that flow through the U.S. financial system, and U.S.-origin products. Following this EO, the list of comprehensive U.S. sanctioned countries and regions is now as follows: Cuba, Iran, North Korea, Syria, and three regions of Ukraine (Crimea, DNR, and LNR).

In addition to targeting these regions, the EO provides a framework for the expansion of regions targeted by these comprehensive sanctions if the Secretary of the Treasury, in consultation with the Secretary of State, deems that additional

⁵ The White House, "Fact Sheet: Joined by Allies and Partners, the United States Imposes Devastating Costs on Russia," (Feb. 24, 2022), available [here](#).

⁶ OFAC, "U.S. Treasury Imposes Sanctions on Russian Federation President Vladimir Putin and Minister of Foreign Affairs Sergei Lavrov," (Feb. 25, 2022), available [here](#).

⁷ President Maduro of Venezuela, who the U.S. government does not recognize as the valid President of Venezuela is also included on the SDN List.

⁸ The EO prohibits the following, which taken together constitutes a comprehensive sanctions regime targeting the regions:

- New investment in the DNR or LNR region by a U.S. person, wherever located;
- The importation into the United States, directly or indirectly, of any goods, services, or technology from the DNR or LNR regions;
- The exportation, reexportation, sale, or supply, direct or indirectly, from the United States or by a U.S. person, wherever located, of any goods, services, or technology to the DNR or LNR regions; and
- Any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of a transaction by a non-U.S. person where the transaction by that non-U.S. person would be covered by these prohibitions if performed by a U.S. person or within the United States.

regions in Ukraine should be subject to the same prohibitions. As a practical matter, this will enable the U.S. government to quickly impose these same level of comprehensive sanctions on additional regions in Ukraine, should Russia recognize them as “independent” or send troops to occupy them.

OFAC has issued six general licenses, which permit the following activities notwithstanding the comprehensive sanctions on the DNR and LNR regions:

- *Wind Down Transactions.* General License 17 authorizes certain transactions ordinarily incident and necessary to the wind down of transactions involving the DNR and LNR regions, including the divestiture or transfer to a non-U.S. person of a U.S. person's share of ownership in any pre-February 21, 2022 investment located in the DNR and LNR regions, and permitting the winding down of operations, contracts, or other agreements in effect prior to February 21, 2022 involving the exportation, reexportation, sale, or supply of goods, services, or technology to, or importation of any goods, services or technology from, the DNR or LNR regions of Ukraine through 12:01 am eastern daylight time on March 23, 2022.⁹
- *Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates.* General License 18 authorizes the export and reexport to the DNR and LNR regions of certain agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices, as well as certain transactions related to the prevention, diagnosis, or treatment of COVID-19.¹⁰
- *Telecommunications, International Organizations, Non-Commercial Remittances, Internet-Based Communications* Consistent with authorizations in other comprehensive sanctions programs, OFAC issued generally licenses authorizing certain telecommunications and mail transactions,¹¹ certain official business of specified international humanitarian organizations,¹² certain non-commercial personal remittances and related operation of financial accounts,¹³ and the exportation of certain services and software incident to internet-based communications.¹⁴

Additionally, the EO authorizes OFAC to impose blocking sanctions on persons that are determined to meet certain criteria specified in the EO. These criteria include, for example, operating or having operated since the date of the EO in the DNR or LNR regions; being a leader, official, senior executive officer, or board member of an entity operating in the DNR or LNR regions; being owned or controlled or acting on behalf of a person blocked under the EO; or materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of any persons blocked under the EO.

The “First Tranche” of Sanctions Targeting Russia

Following President Biden's speech announcing the “first tranche” of sanctions targeting Russia as a result of its recent activities in and around Ukraine, on February 22, 2022, OFAC announced¹⁵ the following additional sanctions:

- Pursuant to Executive Order 14024, “Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation” (issued April 15, 2021; “EO 14024”), the Secretary of the Treasury, in consultation with the Secretary of State, determined that section 1(a)(i) of EO 14024 applies to the financial services sector of the Russian

⁹ OFAC, “Ukraine General License Number 17,” (Feb. 21, 2022), available [here](#).

¹⁰ OFAC, “Ukraine General License Number 18,” (Feb. 21, 2022), available [here](#).

¹¹ OFAC, “Ukraine General License Number 19,” (Feb. 21, 2022), available [here](#).

¹² OFAC, “Ukraine General License Number 20,” (Feb. 21, 2022), available [here](#).

¹³ OFAC, “Ukraine General License Number 21,” (Feb. 21, 2022), available [here](#).

¹⁴ OFAC, “Ukraine General License Number 22,” (Feb. 21, 2022), available [here](#).

¹⁵ OFAC, “U.S. Treasury Imposes Immediate Economic Costs in Response to Actions in the Donetsk and Luhansk Regions,” (Feb. 22, 2022), available [here](#).

economy, and therefore persons determined to operate or have operated in this identified sector can be the target of U.S. sanctions. This action has no legal impact on the financial services sector as a whole, but instead authorizes OFAC to sanction any company or individual that operates or has operated in Russia's financial services sector (including the two banks that were designated on the SDN List as a part of this tranche of sanctions).

- Adding two Russian banks, the Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank ("VEB") and Promsvyazbank Public Joint Stock Company ("PSB"), along with 42 of their subsidiaries, to the SDN List. The Biden Administration stated these financial institutions collectively "hold more than \$80 billion in assets and finance the Russian defense sector and economic development," and that these measures would, among other things, "shut them out of the global financial system, and foreclose access to the U.S. dollar."
- Adding several "elites and families close to Putin" to the SDN List (although some of these individuals had already been designated, such that their addition under this new basis is largely symbolic).
- Increasing restrictions on U.S. financial institutions' dealings in Russia's sovereign debt. Specifically, OFAC issued Russia-related Directive 1A under EO 14024, "Prohibitions Related to Certain Sovereign Debt of the Russian Federation" (the "Russia-related Sovereign Debt Directive"), amending and superseding Directive 1 under EO 14024. The prior Directive 1 imposed prohibitions on U.S. persons' participation in the primary market for ruble or non-ruble denominated bonds issued by, or the lending of ruble or non-ruble denominated funds to, the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation. Directive 1A expands upon the existing prohibitions to also prohibit, as of March 1, 2022, U.S. persons' participation in the secondary market for ruble or non-ruble denominated bonds issued by these entities¹⁶ after March 1, 2022.¹⁷

On February 23, 2022, the Biden Administration added Nord Stream AG 2, the Swiss company building the Nord Stream 2 pipeline and its Chief Executive Officer, Matthias Warning, to the SDN List pursuant to Executive Order 14039, "Blocking Property with Respect to Certain Russian Energy Export Pipelines." OFAC issued related General License 4, authorizing the wind down of certain transactions involving Nord Stream AG 2 through 12:01 am eastern standard time, March 2, 2022. This action is consistent with Germany's February 22, 2022 decertification of the Nord Stream 2 pipeline (which had previously been the target of sanctions bills in the U.S. Congress), an \$11 billion pipeline which was completed in 2021 and which links Germany and Russia.¹⁸

The "Second Tranche" of Sanctions Targeting Russia

On February 24, 2022, the White House, OFAC¹⁹, and BIS²⁰ announced a sweeping package of sanctions and export control restrictions targeting Russia and, with regard to sanctions, Belarus.

- Prohibiting U.S. correspondent and payable-through account access for Sberbank, Russia's largest financial institution, and 25 of its subsidiaries;

¹⁶ To effect this prohibition, OFAC added the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation to its non-SDN Menu Based Sanctions List in connection with Directive 1A.

¹⁷ OFAC FAQ 965, available [here](#).

¹⁸ Melissa Eddy, "Germany Puts a Stop to Nord Stream 2, a Key Russian Natural Gas Pipeline," THE NEW YORK TIMES (Feb. 22, 2022), available [here](#).

¹⁹ OFAC, "Russia-related Designations; Belarus Designations; Issuance of Russia-related Directive 2 and 3; Issuance of Russia-related and Belarus General Licenses; Publication of new and updated Frequently Asked Questions," (Feb. 24, 2022), available [here](#).

²⁰ U.S. Dep't of Commerce, "Commerce Implements Sweeping Restrictions on Exports to Russia in Response to Further Invasion of Ukraine," (Feb. 24, 2022), available [here](#).

- Imposing blocking sanctions (*i.e.*, designating on the SDN List) VTB Bank, Russia's second largest financial institution, and 20 of its subsidiaries, as well as three other major Russian financial institutions (Bank Otkritie, Sovcombank OJSC, and Novikombank) and 34 of their subsidiaries;
- New restrictions on U.S. persons' transactions and dealings in new debt and new equity of 13 major Russian companies²¹;
- Imposing blocking sanctions on a number of high-profile Russians and their family members;
- Imposing blocking sanctions on 24 Belarusian individuals and entities, including two state-owned banks, nine defense firms, and seven individuals associated with the Belarusian government.
- Adding 47 Russian entities, including the entirety of the Russian Armed Forces, to the BIS Entity List, broadly restricting the ability of persons to export, reexport, or transfer any items subject to the U.S. Export Administration ("EAR") to these entities without a BIS export license;
- Revamping and expanding a number of portions of the EAR to impose a "Russia-wide denial of exports of sensitive technology, primarily targeting the Russian defense, aviation, and maritime sectors."

In the sections below, we discuss these actions in greater detail.

Russia Sanctions

OFAC announced a range of actions as a part of Thursday's sanctions package targeting Russia. These included the second-ever²² use of the Correspondent and Payable-Through Account ("CAPTA") sanctions program to target Sberbank, Russia's largest financial institution, and the addition of designation of four of Russia's largest financial institutions onto the SDN List.

CAPTA Sanctions Targeting Sberbank

On Thursday, OFAC issued Directive 2 under EO 14024 ("EO 14024 Directive 2") targeting Sberbank and 25 of its subsidiaries.²³ This directive prohibits U.S. financial institutions from (i) opening or maintaining a correspondent account or payable-through account for or on behalf of any Sberbank entity identified in EO 14024 Directive 2 and (ii) processing transactions involving the Sberbank entities identified in EO 14024 Directive 2. EO 14024 Directive 2 takes effect at 12:01 am eastern daylight time on March 26, 2022. OFAC noted in an FAQ that EO 14024 Directive 2 also applies to any entity owned 50 percent or more by Sberbank.²⁴

The CAPTA sanctions targeting Sberbank effectively prohibit its ability to deal in U.S. dollar denominated transactions, however, the CAPTA sanctions are not blocking sanctions and therefore the funds Sberbank may currently have in such U.S. financial institution correspondent or payable-through accounts will not be subject to blocking. OFAC also issued an FAQ clarifying that the CAPTA sanctions apply to U.S. financial institutions (including their non-U.S. branches) with respect to any currency, meaning that, for example, a non-U.S. branch of a U.S. financial institution is prohibited from opening or maintaining a correspondent

²¹ These entities are: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways.

²² Previously the CAPTA sanctions had only been used to target the Bank of Kunlun and a number of its associated entities.

²³ OFAC, "Directive 2 Under Executive Order 14024" (Feb. 24, 2022), available [here](#).

²⁴ OFAC, "Frequently Asked Question 969," (Feb. 24, 2022), available [here](#).

account on behalf of an entity targeted by EO 14024 Directive 2 even if that account is denominated in a currency other than U.S. dollars, such as euros.²⁵

Additional non-U.S. financial institutions may be sanctioned by OFAC pursuant to EO 14024 Directive 2 in the future. In that instance, the directive's prohibitions will apply to those entities 30 days after the date OFAC makes such a determination.

Blocking Sanctions on Four Major Russian Financial Institutions

On Thursday, pursuant to EO 14024, OFAC designated VTB Bank, Russia's second-largest bank, which, according to OFAC, holds nearly 20 percent of banking assets in Russia, on the SDN List. As a result, virtually all U.S.-nexus dealings with VTB Bank are prohibited and U.S. persons in possession of the property or interests in property of VTB Bank must block any such property in their possession. OFAC noted that VTB Bank is one of the largest financial institutions that has ever been added to the SDN List. OFAC also added 20 VTB Bank subsidiaries to the SDN List.

Pursuant to EO 14024, OFAC also added three other major Russian financial institutions (Bank Otkritie, Sovcombank OJSC, and Novikombank) and a combined total of 34 of their subsidiaries to the SDN List. Novikombank had previously been subject to certain debt-related sanctions restrictions pursuant to Directive 3 of OFAC's sectoral sanctions program. OFAC noted that Novikombank's parent company, Rostec, remains subject to the debt-related sanctions of Directive 3 of the sectoral sanctions program.

Under OFAC's 50 percent rule, any other entities owned 50 percent or more by VTB Bank, Bank Otkritie, Sovcombank OJSC, and Novikombank are also subject to the same blocking sanctions, even if not identified on the SDN List by OFAC.

On Thursday, OFAC issued General License 11, which permits transactions involving VTB Bank, Bank Otkritie, and Sovcombank OJSC, that are "ordinarily incident and necessary to the wind down of transactions" involving these entities until 12:01 am eastern daylight time on March 26, 2022.²⁶ While this limitation is not included in General License 11 itself, OFAC noted in a FAQ that "wind down" activities do not include "the continued processing of funds transfers, securities trades, or other transactions involving a blocked person that were part of ongoing business activities prior to the imposition of sanctions, unless separately authorized."²⁷

Restrictions on U.S. Persons' Dealings in the New Debt or New Equity of 13 Major Russian Companies

On Thursday, OFAC issued Directive 3 under EO 14024 ("EO 14024 Directive 3").²⁸ This directive prohibits U.S. persons from engaging in any transactions or dealings in new debt of longer than 14 days maturity or new equity of the 13 identified Russian companies identified in EO 14024 Directive 3, where such new debt or new equity is issued on or after 12:01 am eastern daylight time on March 26, 2022. These 13 identified Russian companies are: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways.²⁹ Similar to EO 14024 Directive 2, EO 14024 Directive 3 maintains a mechanism under which if OFAC identifies additional companies as being the target of EO 14024 Directive 3, the prohibitions of EO 14024 Directive 3 will take effect at 12:01 am eastern standard time on the date that is 30 days after the date of OFAC's identification.

In an FAQ, OFAC clarified that for purposes of EO 14024 Directive 3: (i) the term "debt" includes "bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial paper," and (ii)

²⁵ OFAC, "Frequently Asked Question 971," (Feb. 24, 2022), available [here](#).

²⁶ OFAC, "General License 11," (Feb. 24, 2022), available [here](#). General Licenses 3 and 11 do not apply to Promsvyazbank Public Joint Stock Company or Joint Stock Commercial Bank Novikombank.

²⁷ OFAC, "Frequently Asked Question 975," (Feb. 24, 2022), available [here](#).

²⁸ OFAC, "Directive 3 Under Executive Order 14024," (Feb. 24, 2022), available [here](#)

²⁹ OFAC noted that six of these entities were also targeted by directives of OFAC's sectoral sanctions program.

“equity” includes “stocks, share issuances, depositary receipts, or any other evidence of title or ownership.”³⁰ In a separate FAQ, OFAC confirmed that its 50 percent rule applies to the entities targeted by EO 14024 Directive 3 and therefore U.S. persons are also prohibited from dealing in the new debt of longer than 14 days maturity or new equity of any entity that is owned 50 percent or more by any entity identified in EO 14024 Directive 3.³¹

Additional High-Profile Russians Added to SDN List

On Thursday, pursuant to EO 14024, OFAC also designated several high-profile Russians who OFAC determined to be close to President Putin or senior financial institution executives in Russia. As a result, virtually all U.S.-nexus transactions involving these persons are prohibited and U.S. persons are required to block any property or interests in property of these persons in their possession.

OFAC Guidance Regarding Risks of Non-U.S. Persons Being Sanctioned for Engaging in Activities with Newly Sanctioned Persons

OFAC issued an FAQ that discussed the risk of a non-U.S. person being sanctioned by OFAC for engaging in activities with persons sanctioned pursuant to EO 14024.³² OFAC noted that it evaluates a range of factors when developing sanctions targets, consistent with foreign policy and national security goals. OFAC stated that non-U.S. persons who engaged in activities with persons that are the target of blocking sanctions imposed under EO 14024 “may be exposed to sanctions risk” in relation to such activities. OFAC specifically referred to the basis for designation in EO 14024 for persons who have “materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, certain activities” involving persons blocked pursuant to EO 14024.

However, with regard to persons targeted for less broad sanctions under the directives of EO 14024, OFAC noted that non-U.S. persons “generally do not risk exposure to U.S. blocking sanctions under [EO 14024] for engaging in transactions with persons subject to the prohibitions of the directives” of EO 14024. OFAC also clarified that it will not view “efforts by non-U.S. persons to comply with U.S. sanctions by replacing sanctioned suppliers or service providers (including financial institutions) with non-sanctioned persons” as attempts to evade or avoid U.S. sanctions.

Additional General Licenses

On Thursday, OFAC also issued several additional general licenses regarding the sanctions imposed pursuant to EO 14024, some of which have been discussed in the sections above. We summarize some of the more notable general licenses below:

- *General License 8* – Permits transactions that would otherwise be prohibited by EO 14024 with (i) VEB, (ii) Otkritie, (iii) Sovcombank, (iv) Sberbank, (v) VTB Bank, or (vi) any entity owned 50 percent or more by one or more of (i)-(v) so long as the transactions are “related to energy.”³³ As defined in the general license and a related FAQ,³⁴ “related to energy” means “the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.” Notably the General License does not extend to energy “exploration” and it is unclear whether that omission was intentional. OFAC clarified that General License 8 does not permit the opening or maintaining of a correspondent account or payable through account on behalf of any person that is the target of EO 14024 Directive 2.

³⁰ OFAC, “Frequently Asked Question 986,” (Feb. 24, 2022), available [here](#).

³¹ OFAC, “Frequently Asked Question 985,” (Feb. 24, 2022), available [here](#).

³² OFAC, “Frequently Asked Question 980,” (Feb. 24, 2022), available [here](#).

³³ OFAC, “General License 8,” (Feb. 24, 2022), available [here](#).

³⁴ OFAC, “Frequently Asked Question 977,” (Feb. 24, 2022), available [here](#).

- *General License 9* – Permits transactions that would otherwise be prohibited by EO 14024 with regard to dealings in the debt or equity of listed entities issued prior to February 24, 2022 (“covered debt or equity”), provided that “any divestment or transfer of, or facilitation of divestment or transfer of such covered debt or equity must be to a non-U.S. person.³⁵ The entities to which General License 9 applies are: (i) VEB, (ii) Otkritie, (iii) Sovcombank, (iv) Sberbank, (v) VTB Bank, and (vi) any entity owned 50 percent or more by one or more of (i)-(v). The license notes that it also permits all transactions “ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity.” The transactions are permitted by General license 9, so long as they occur prior to 12:01 eastern daylight time on May 25, 2022. OFAC clarified that General License 9 does not permit the opening or maintaining of a correspondent account or payable through account on behalf of any person that is the target of EO 14024 Directive 2.
- *General License 10* – Permits all transactions that would otherwise be prohibited by EO 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into before 4:00pm eastern standard time February 24, 2022, that (i) include one of the following entities (the “Covered Entities”) as a counterparty or (ii) are linked to debt or equity of a Covered Entity, are authorized through 12:01am eastern daylight time on May 25, 2022, provided that any payments to a blocked person are made into a blocked account.³⁶ The Covered Entities are: (i) VEB, (ii) Otkritie, (iii) Sovcombank, (iv) Sberbank, (v) VTB Bank, or (vi) any entity owned 50 percent or more by one or more of (i)-(v). General License 10 also authorizes debits to accounts on the books of U.S. financial institutions of the Covered Entities to the extent ordinarily incident and necessary to effect these authorized transactions. OFAC clarified that General License 10 does not permit the opening or maintaining of a correspondent account or payable through account on behalf of any person that is the target of EO 14024 Directive 2.
- *General License 12* – Permits U.S. persons to reject (instead of blocking) any transaction prohibited by EO 14024 relating to the following blocked persons until 12:01 am eastern daylight time March 26, 2022: (i) Otkritie, (ii) Sovcombank, (iii) VTB Bank, or (iv) any entity owned 50 percent or more by one or more of (i)-(iii).³⁷
- *Various Other General Licenses* – OFAC also issued relatively standard general licenses permitting: (i) transactions related to the official business of certain international organizations³⁸; (ii) transactions related to the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, software updates, or the prevention, diagnosis, or treatment of COVID-19³⁹; (iii) overflight payments, emergency landings, and air ambulance services.⁴⁰

Belarus Sanctions

As a part of Thursday’s sweeping sanctions package, OFAC imposed blocking sanctions on 24 Belarusian individuals and entities due to “Belarus’s support for, and facilitation of, the invasion [of Ukraine].”⁴¹ These designations onto the SDN List targeted persons active in Belarus’s defense and financial sectors, which OFAC noted as sectors where Belarus has especially close ties with Russia. OFAC also described its expectation that the sanctions targeting Russia that were imposed as a part of this package

³⁵ OFAC, “General License 9,” (Feb. 24, 2022), available [here](#).

³⁶ OFAC, “General License 10,” (Feb. 24, 2022), available [here](#).

³⁷ OFAC, “General License 12,” (Feb. 24, 2022), available [here](#).

³⁸ OFAC, “General License 5,” (Feb. 24, 2022), available [here](#). Note that EO 14024 section 9 exempts transactions that are for the conduct of the official business of the United Nations (including its specialized agencies, programs, funds, and related organizations) by employees, grantees, or contractors thereof.

³⁹ OFAC, “General License 6,” (Feb. 24, 2022), available [here](#).

⁴⁰ OFAC, “General License 7,” (Feb. 24, 2022), available [here](#).

⁴¹ OFAC, “U.S. Treasury Targets Belarusian Support for Russian Invasion of Ukraine,” (Feb. 24, 2022), available [here](#).

will also have “significant downstream effects” in Belarus due to its close ties with the major Russian financial institutions designated pursuant to the package.

OFAC designated two state-owned banks in Russia, Belinvestbank and Bank Dabrabyt (and certain of their subsidiaries), which OFAC described as two of the most significant banks in Belarus, pursuant to Executive Order 14038 (“EO 14038”), which authorized sanctions targeting entities that are owned or controlled by, or having acted or purported to act, on behalf of the government of Belarus. OFAC also added 13 individuals and entities in the Belarusian defense sector to the SDN List, pursuant to the separate authority in EO 14038 for OFAC to designate entities that are operating or have operated in the defense and related materiel and transportation sectors of the economy of Belarus. OFAC also added three Belarus government officials, including the Belarusian Minister of Defense, to the SDN List.

Export Control Actions

BIS announced a number of actions, which will be implemented through changes to the EAR via a final rule effective February 24, 2022,⁴² to tighten U.S. export control restrictions for exports, reexports, and transfers (“exports”) of items subject to the EAR to Russia.⁴³ These new measures targeting Russia include:

- New export license requirements for a wide variety of U.S.-origin items listed on the Commerce Control List (“CCL”), including a license requirement for the export of any items specified in an export control classification number (“ECCN”) in categories 3, 4, 5, 6, 7, 8, or 9 of the CCL;
- Adding two new “foreign direct product” rules specific to Russia and Russian “military end users;”
- Imposing a broad license review policy of denial with respect to applications for licenses pursuant to these newly implemented rules;
- A significant restriction on the use of EAR license exceptions with respect to Russia;
- Expanding export controls for Russian “military end use” or “military end user” exports to cover all items subject to the EAR (other than certain exceptions for food and medicine for such entities that are not Russian government entities);
- Transferring 45 Russian entities, including the entire Russian Armed Forces, from the Military End-User List (and adding two previously unlisted new entities) to the Entity List, which will broadly prohibit the ability of these listed entities to receive any items that are subject to the EAR;
- Making corresponding changes to the EAR to effect the comprehensive embargo targeting the DNR and LNR regions.

A detailed discussion of all of the changes BIS has made to the EAR via this new rule is beyond the scope of this alert; however, the combined effect of these changes will make Russia a significantly restricted destination for most ECCNs. For ECCNs of higher control, particularly those with potential end uses in the defense, aviation, and maritime sectors of the Russian economy or those which relate to semiconductors or encryption security, the rule effectively makes Russia a prohibited destination. Notably,

⁴² There is a savings clause in the rule with regard to (i) the new license requirements imposed under § 748.8 of the EAR with regard to (a) new license requirements for items in categories 3, 4, 5, 6, 7, 8, or 9 of the CCL and (b) the two new “foreign direct product” rules that apply to Russia; and (ii) items removed from eligibility for an EAR license exception that “were en route aboard a carrier to a port of export, reexport, or transfer (in-country), on March 26, 2022” can continue to their destination/end user. For all other changes in the rule, the savings clause only covers those that were en route on the date the rule was filed for public inspection, *i.e.*, February 24, 2022.

⁴³ U.S. Dep’t of Commerce, “Commerce Implements Sweeping Restrictions on Exports to Russia in Response to Further Invasion of Ukraine,” (Feb. 24, 2022), available [here](#); Commerce Dep’t, “Implementation of Sanctions Against Russia Under the Export Administration Regulations (Feb. 24, 2022), available [here](#).

under the two new “foreign direct product” rules (and the EAR’s preexisting *de minimis* rule⁴⁴) a range of specified items created outside of the United States that are produced by a plant or a “major component” of a plant that is the “direct product” of U.S.-origin technology and software are also subject to significant export control restrictions “when it is known that the foreign-produced item is destined to Russia” or will be used in a part or component produced in or destined to Russia.

Implications

The U.S. sanctions targeting Russia as a result of its recognition of the DNR and LNR regions as “independent” states and President Putin’s ordering of Russian troops to invade Ukraine were made in parallel with actions taken by U.S. allies, including Germany’s actions against the Nord Stream 2 pipeline and the EU’s sanctioning of a number of high-profile Russian government officials and business leaders.⁴⁵ Media reports have indicated that the Biden Administration has continued to consider potentially taking additional sanctions measures beyond those in the first two tranches that could potentially include: designating additional major Russian financial institutions and companies as SDNs or removing their ability to have correspondent banking relationships with U.S. banks; potentially ejecting Russia from SWIFT; designating additional Russian oligarchs as SDNs; and potential expansion of recent sanctions to target the Russian energy sector (although this is particularly controversial).⁴⁶ Whether future tranches of U.S. sanctions will be imposed will depend on the situation on the ground in Ukraine, which is highly dynamic and challenging to predict.

U.S. and non-U.S. companies with business in or exposure to Russia and Ukraine would be well advised to closely monitor the situation on the ground, as there is still the potential for a further increase in sanctions and export controls targeting Russia and regions of Ukraine. Additionally, companies should consider the following:

- Companies should review and update their sanctions screening and IP or geolocation blocking procedures to ensure they reflect the new comprehensive sanctions targeting the DNR and LNR regions, similar to the approach taken with respect to the Crimea embargo.
- As sanctions continue to intensify, companies should evaluate their potential touchpoints to Russia and Ukraine and whether any general licenses allow related business to continue and whether a wind down period applies. OFAC’s general licenses should be examined with care to determine if certain transactions are licensed; if so, steps should be taken to adhere to the terms of the applicable general license and maintaining appropriate documentation.
- Sanctions filters should also of course be updated to reflect the newly sanctioned parties and their majority owned subsidiaries.
- Prior OFAC enforcement actions have shown that OFAC not only expects that companies will screen customers’ and counterparties’ names against lists of sanctioned persons, including the SDN List, but also that companies will perform screening of other information about customers and counterparties that companies receive during the normal course of their business, including information that would make a company aware of the country or region in which their customer or counterparty is located.⁴⁷ As a result, companies should consider adding to their sanctions filters place names (such as cities,

⁴⁴ The EAR’s *de minimis* rule states that items created outside of the United States which contain more than a *de minimis* amount of controlled U.S.-origin content are subject to the EAR. The threshold of what is a “*de minimis*” amount of content varies depending on the level of control of such content and, in some cases, the destination country or end user.

⁴⁵ Jeremy Herb and Phil Mattingly, “How Significant are the U.S. Sanctions on Russia,” CNN (Feb. 25, 2022), available [here](#).

⁴⁶ Alexandra Alper and Karen Freifeld, “EXCLUSIVE U.S. Plans to Cut Ties with Targeted Russian Banks if Ukraine is Invaded – Sources,” REUTERS (Feb. 21, 2022), available [here](#).

⁴⁷ See Paul, Weiss “OFAC Enforcement Action against U.S. Payments Company Shows the Importance of Robust Sanctioned Person and Location Screening” (Aug. 13, 2021), available [here](#).

regions, ports, airports, and common alternative spellings of the same), as well as postal codes, associated with the DNR and LRN regions.⁴⁸

- Following the U.S. government's embargo on Crimea, OFAC issued an advisory warning of practices to evade sanctions. These practices included the partial or complete omission from wire messages of address information of individuals or entities located in Crimea.⁴⁹ Also, trade documentation or agreements may list Crimea-located counterparties as being located in "Russia." Companies should consider this advisory and its recommended actions with reference to the new DNR and LRN region sanctions.
- Non-U.S. companies should consider, even if engaged in only non-U.S.-nexus transactions, whether they may be dealing with companies that are target of sanctions under the recent tranches of sanctions targeting Russia or otherwise dealing with sensitive sectors of the Russian economy (such as the defense or intelligence sector) that could potentially raise the risk of sanctions being imposed on such non-U.S. companies by the U.S. government or the government(s) of U.S. ally nations. As noted above, OFAC has specifically warned that non-U.S. persons who engaged in activities with persons that are the target of blocking sanctions imposed under EO 14024 "may be exposed to sanctions risk" in relation to such activities. OFAC specifically referred to the basis for designation in EO 14024 for persons who have "materially assisted, sponsored, or provided financial, material, or technological support for, or goods and services in support of, certain activities" involving persons blocked pursuant to EO 14024.
- U.S. and non-U.S. companies should consider the ECCNs that are applicable to the items (including software and technology) in which they deal and, if they engage in any export, reexports, or transfers to Russia or Russian end users, whether the enhanced controls imposed as a part of these actions by BIS may affect the ability to continue to make such exports.
- Non-U.S. companies in particular, especially those operating in the global tech manufacturing sector, would be well-advised to consider whether any of their products may be within the scope of the new Russia-specific "foreign direct product" rules and therefore subject to export control restrictions with regard to exports, reexports, or transfers of such products to Russia or Russian end users.

We will continue to monitor actions taken by the U.S. government with respect to the situation in and around Ukraine and provide further updates as appropriate.

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⁴⁸ See OFAC, "OFAC Settles with Amazon.com, Inc. with Respect to Potential Civil Liability for Apparent Violations of Multiple Sanctions Programs," (Jul. 8, 2020), available [here](#) (OFAC faulted a screening filter that did not flag transactions involving, among other things, cities in Crimea or alternate spellings of Crimea such as "Krimia").

⁴⁹ See OFAC, "Crimea Sanctions Advisory: Obfuscation of Critical Information and Trade Transactions Involving the Crimea Region of Ukraine," (Jul. 31, 2015), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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