

U.S. Responds to Russian Invasion of Ukraine with Costly Sanctions

In the wake of Russia's incursion into Ukraine, the United States has over the past several days imposed a series of unprecedented economic sanctions and export controls designed to prevent President Vladimir Putin from raising capital to fund its invasion of the country as well as demonstrate support for the people of Ukraine. The newly issued sanctions target Russian financial institutions, Russian elites, Russian state-owned business, several of Russia's industrial sectors, Belarus, and the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) regions of Ukraine.

As this situation evolves, this alert will be updated or supplemented to include further developments.

Executive Order

On February 21, 2022, President Biden issued Executive Order 14065. The EO prohibits U.S. persons from engaging in certain transactions involving the two separatist regions in Ukraine — the DNR and the LNR. These transactions include but are not limited to:

- new investment by a U.S. person, wherever located, in the DNR or LNR or other regions of Ukraine as may be determined by the Secretary of the Treasury (the covered regions);
- importation into the United States, directly or indirectly, of any goods, services, or technology from the covered regions;
- exportation, re-exportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of any goods, services, or technology to the covered regions; and
- 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 this section if performed by a U.S. person or within the United States.

Additionally, the EO blocks all property and interests in property that are in the United States, later come within the United States, or come within the possession or control of any U.S. person (including any foreign branch) when such property belongs to certain blocked persons associated with the LNR and DNR.

The U.S. Department of the Treasury Office of Foreign Assets Control (OFAC) has issued several general licenses to authorize activities that would otherwise be prohibited under EO 14065, which, if applicable, allow all U.S. persons to engage in certain activities without needing to apply for a specific license.

OFAC Sanctions

Beginning on February 22, 2022, OFAC imposed new sanctions on Russian entities and individuals in response to Russian aggression in Ukraine pursuant to Executive Order 14024 (April 15, 2021).

Directives

OFAC issued a series of directives prohibiting U.S. persons and/or U.S. financial institutions from engaging in certain transactions with sanctioned entities that have been "designated" by OFAC. Further, all entities owned 50 percent or more, directly or indirectly, by a designated entity are also blocked, even if not identified on an OFAC sanctions list. The directives include the following:

- **Sovereign Debt Restrictions:** Under Directive 1A, OFAC extended existing sovereign



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Related Practice Areas

- Trade Regulation, Export Controls & Sanctions
- Transportation & Trade

debt prohibitions to cover participation in the secondary market for 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.

- **Sberbank and VTB:** Under *Directive 2*, OFAC imposed sanctions on all correspondent and payable-through account transactions with Public Joint Stock Company Sberbank of Russia (Sberbank) and 25 of its subsidiaries as well as VTB Bank Public Joint Stock Company (VTB Bank) and 17 of its subsidiaries.
- **Debt-Equity Prohibitions:** OFAC expanded Russia-related debt and equity restrictions under *Directive 3* to prohibit transactions by U.S. persons or within the United States in new debt of longer than 14 days maturity and new equity with respect to 13 major Russian state-owned enterprises, entities that operate in the financial services sector of the Russian Federation economy, and other entities determined to be subject to *Directive 3*.
- **Certain Bank Transactions:** Under *Directive 4*, U.S. persons are prohibited 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.

SDN Designations

OFAC has also added designated individuals and other entities to its sanctions lists. U.S. individuals and entities are prohibited from doing business with such individuals and institutions unless authorized by OFAC.

- **Russian Direct Investment Fund:** OFAC designated three entities critical to managing one of Russia's key sovereign wealth funds: Russian Direct Investment Fund (RDIF), its management company Joint Stock Company Management Company of the Russian Direct Investment Fund (JSC RDIF), and one of the managing company's subsidiaries, Limited Liability Company RVC Management Company (LLC RVC).
- **VRB and PSB:** OFAC sanctioned "two financial institutions that are crucial to financing the Russian defense industry," the Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB) and Promsvyazbank Public Joint Stock Company (PSB), along with 42 of their subsidiaries.
- **Otkritie, Novikom, and Sovcom:** OFAC blocked three major Russian financial institutions: Otkritie and 12 subsidiaries, Novikom, and Sovcom, along with 22 of its subsidiaries.
- **Russian Elites and Families Close to Putin:** OFAC designated as SDNs certain Russian elites for their association with President Putin as well as several associated corporate entities.

Russian Harmful Foreign Activities Sanctions Regulations

OFAC issued the Russian Harmful Foreign Activities Sanctions Regulations on March 1, 2022, codified at 31 CFR Part 587. Under these regulations, all transactions prohibited pursuant to EO 14024 are prohibited pursuant to the regulations, among other restrictions.

General Licenses

In order "to ensure that these sanctions and prohibitions have an impact on the intended targets and to minimize unintended consequences on third parties," OFAC has also issued [general licenses](#) authorizing certain transactions, including but not limited to those involving agricultural and medical commodities and the COVID-19 pandemic; overflight and emergency landings; and certain dealings in certain debt or equity; among others.

Bureau of Industry and Security Export Controls/Sanctions

Russia EAR Sanctions

The Bureau of Industry and Security (BIS), which administers the Export Administration Regulations (EAR), issued a final rule titled "Implementation of Sanctions Against Russia Under the Export Administration Regulations (EAR)." The rule imposes new restrictions on certain dealings with Russia and Russian end-users.

- **Commerce Control List (CCL)-Based License Requirements:** BIS imposed new

license requirements for all Export Control Classification Numbers (ECCNs) in Categories 3-9 of the CCL, which covers items such as microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, and aircraft components.

- **Policy of Denial:** While BIS will accept applications for the export, report, or transfer (in-country) of items that require a license, BIS will employ a policy of denial for such applications. Certain categories will be reviewed on a case-by-case basis, including those related to flight or maritime safety, humanitarian needs, government space cooperation, and government-to-government activities, among others.
- **Military End Use/User Expansion:** BIS expanded existing restrictions on Russian “military end users” and “military end uses” to cover all items subject to the EAR with exceptions for: (i) food and medicine designated as EAR99; and (ii) items classified as ECCN 5A992.c or 5D992.c, provided those items are not for Russian “government end users” or Russian state-owned enterprises.
- **Russia Foreign Direct Product Rule/Military End User Direct Product Rule:** BIS implemented new controls whereby certain foreign products items located outside the United States are subject to the EAR when the items meet “product scope” and “destination scope” requirements. The rule does not apply to foreign-produced items that would be designated as EAR99. Such items are subject to additional requirements if an export is destined for certain Russian entities.
- **DNR/LNR License Requirements:** A license is required to export, re-export, or transfer within the DNR or LNR any item subject to the EAR other than food and medicine designated as EAR99 or “software necessary to enable the exchange of personal communications over the internet,” as defined in the regulations.
- **Oil Refinery Sector Sanctions:** BIS expanded existing sanctions against the Russian oil refinery sector designed to “further limit revenue that could support the military capabilities of Russia.” The rule adds a new general prohibition that applies to additional Harmonized Tariff Schedule (HTS)-6 codes and Schedule B numbers for all exports, re-exports, and transfers (in-country) to or within Russia.
- **Limited EAR License Exceptions:** Limited license exceptions are available for Russia exports, re-exports, and in-country transfers otherwise prohibited under the new EAR.

Belarus EAR Sanctions

Under the final rule titled “Imposition of Sanctions Against Belarus Under the Export Administration Regulations,” BIS also amended the EAR to implement new license requirements and review policies for Belarus, subjecting Belarus to the same sanctions restrictions imposed on Russia and that are described above.

Conclusion

The sanctions regulations and directives issued by OFAC and BIS are sweeping and changing rapidly by the day. Companies should be prudent in ensuring they understand the sanctions and export control developments that may apply to them and their businesses and take steps to reduce any potential liability for violations of U.S. sanctions and export control laws. It is important to note that the sanctions announced to date do not amount to a comprehensive embargo against Russia. Companies may continue conducting business in or with Russian entities, but must now review such transactions carefully in light of the new regulations. Additionally, even if business conduct is not itself sanctioned under these new developments, companies may still have difficulty conducting transactions if Russian banks or financial institutions are involved in the payment chain. Sanctions analysis requires a case-by-case reviewed to determine whether particular export is permitted, so companies should consult with legal counsel if there is uncertainty as to compliance.
