

Litigation Alert

March 2022

US Sanctions on Russia, Separatist Regions and Belarus Go Into Effect

Beginning on Feb. 22, 2022, the United States imposed a series of sanctions in response to escalating Russian aggression against Ukraine. These sanctions include regional embargoes against the breakaway regions of Donetsk and Luhansk, blocking sanctions on a number of Russia's largest financial institutions, export restrictions and individual sanctions against Russian President Vladimir Putin, Minister of Foreign Affairs Sergei Lavrov and other Russian elites. The United States also imposed sanctions against Belarus in response to Belarus' support and facilitation of the Russian invasion of Ukraine, including sanctions against major Belarusian financial and defense firms as well as individual Belarusian defense officials.

Broadly, the sanctions imposed by the U.S. government prohibit U.S. persons (United States citizens; lawful permanent residents; entities organized under the laws of the United States or any jurisdiction within the United States, including foreign branches; or any person in the United States) from engaging in certain types of transactions with key Russian institutions, including many of Russia's largest banks and many of Russia's business and governmental elite.

There is, however, a wind-down period (generally 30 days), during which affected individuals and businesses may withdraw from any transactions with sanctioned parties.

This is an evolving situation, and therefore new events or sanctions may warrant additional updates or new guidance.



Banking

The United States Treasury's Office of Foreign Assets Control (OFAC) has sanctioned many of Russia's largest financial institutions by placing them on its List of Specially Designated Nationals and Blocked Persons. Individuals and entities on the SDN list have their assets blocked or frozen in the United States, and U.S. persons are generally prohibited from dealing with them unless specifically exempted.

Additionally, under OFAC's "50% Rule," any entity that is owned 50% or more by an individual or entity on the SDN list is subject to the same sanctions as the underlying sanctioned entity, even if that subsidiary entity is not specifically identified as a specially designated national or blocked person.

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LITIGATION ALERT

On Feb. 22, OFAC sanctioned two major Russian financial institutions relating to aggression in Ukraine:

- State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB). VEB finances Russian domestic development projects. Blocking sanctions were placed on VEB and 25 of its subsidiaries.
- Promsvyazbank Public Joint Stock Company (PSB). PSB is a state-owned financial institution that was designated as a supporting bank of the Russian defense sector. Full blocking sanctions were placed on PSB, along with 17 of its subsidiaries.

On Feb. 24, OFAC sanctioned two additional Russian financial institutions:

- Public Joint Stock Company Sberbank of Russia (Sberbank). While Sberbank was not added to the SDN list, Directive 2 of Executive Order (E.O.) 14024 imposes correspondent and payable-through account sanctions on Sberbank, Russia's largest financial institution. By March 26, all U.S. financial institutions must close any Sberbank correspondent or payable-through accounts and reject any future transactions involving Sberbank or its foreign financial institution subsidiaries. These sanctions also apply to 25 Sberbank subsidiaries.
- VTB Bank Public Joint Stock Company (VTB Bank). Full blocking sanctions were implemented against VTB Bank, Russia's second-largest financial institution, as it was added to the SDN list. Accordingly, U.S. persons are generally prohibited from engaging in any transactions with VTB Bank and its subsidiaries, subject to certain exemptions, and they may be required to block or freeze any property or property interests that come into their possession. OFAC also specifically enumerated 20 VTB Bank subsidiaries as subject to the same sanctions.

Three other major Russian financial institutions and their subsidiaries were added to the SDN list as well, with full blocking sanctions applied:

- Public Joint Stock Company Bank Financial Corporation Otkritie (Otkritie) and 12 of its subsidiaries
- Open Joint Stock Company Sovcombank (Sovcombank) and 22 of its subsidiaries
- Joint Stock Commercial Bank Novikombank (Novikombank)

Debt and Equity Restrictions

OFAC also imposed additional sanctions on the below Russian financial institutions, prohibiting U.S. persons from engaging in new debt or equity transactions with those institutions after March 26:

- **Sberbank** – Russia's largest financial institution (see above)
- **Gazprombank Joint Stock Company** – Russia's third-largest financial institution, closely affiliated with the energy sector
- **Joint Stock Company Russian Agricultural Bank** – Russia's fifth-largest financial institution, closely affiliated with the agricultural sector
- **Public Joint Stock Company Gazprom (Gazprom)** – the world'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 (Transneft)** – manages Russia's network of petroleum pipelines
- **Public Joint Stock Company Rostelecom (Rostelecom)** – Russia's largest telecommunications company
- **Public Joint Stock Company RusHydro** – a hydroelectricity company and one of Russia's largest power companies
- **Public Joint Stock Company Alrosa** – the world's largest diamond mining company, responsible for 90% of Russia's diamond mining capacity, which accounts for 28% globally
- **Joint Stock Company Sovcomflot** – Russia's largest maritime and freight shipping company
- **Open Joint Stock Company Russian Railways** – one of the world's largest railroad companies
- **Joint Stock Company Alfa-Bank** – Russia's largest privately owned financial institution, and Russia's fourth-largest financial institution overall
- **Credit Bank of Moscow Public Joint Stock Company** – Russia's largest non-state public bank and Russia's sixth-largest financial institution

OFAC concurrently issued eight licenses authorizing specific actions that would otherwise be blocked:

- **Russia General License No. 5** authorizing transactions relating to official business of certain international organizations or entities, including the United Nations and the Red Cross
- **Russia General License No. 6** authorizing transactions related to the exportation or re-exportation of agricultural commodities, medicine, medical devices, replacement parts and components or software updates, or to the COVID-19 pandemic
- **Russia General License No. 7** authorizing overflight payments, emergency landings and air ambulance services in Russia
- **Russia General License No. 8** authorizing through June 24 transactions relating to energy involving VEB, Otkritie, Sovcombank, Sberbank and VTB Bank, and their subsidiaries (this license was amended to include the Central Bank of the Russian Federation after the Central Bank was sanctioned on Feb. 28)
- **Russia General License No. 9** authorizing certain transactions relating to the wind-down of debt or equity holdings of VEB, Otkritie, Sovcombank, Sberbank and VTB Bank, and their subsidiaries
- **Russia General License No. 10** authorizing certain transactions relating to the wind-down of derivative contracts involving VEB, Otkritie, Sovcombank, Sberbank and VTB Bank, and their subsidiaries
- **Russia General License No. 11** authorizing the wind-down of transactions involving Otkritie, Sovcombank and VTB Bank, and their subsidiaries until March 26
- **Russia General License No. 12** authorizing U.S. persons to reject certain transactions involving Otkritie, Sovcombank and VTB Bank, and their subsidiaries

Central Banking and Sovereign Debt

On Feb. 28, OFAC issued Directive 4 of E.O. 14024, which sanctioned the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation and the Ministry of Finance. Directive 4 prohibits U.S. persons from any transaction involving those institutions, including any transfer of assets or any foreign exchange transaction on their behalf.

Additionally, OFAC sanctioned three entities critical to Russia's sovereign wealth, as well as the CEO of one of those entities, by adding them to the SDN list:

- The Russian Direct Investment Fund (RDIF)
- Joint Stock Company Management Company of the Russian Direct Investment Fund (JSC RDIF) – RDIF's management company
- Limited Liability Company RVC Management Company (LLC RVC) – a key subsidiary of JSC RDIF that operates in deposit banking, management of investment funds, unit investment trusts, insurance and private pension funds
- Kirill Aleksandrovich Dmitriev, the CEO of RDIF and JSC RDIF

Donetsk and Luhansk

In response to the Russian recognition of the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) of Ukraine, President Biden signed E.O. 14065 on Feb. 21.

E.O. 14065 closely mirrors E.O. 13685, which was signed by then-President Barack Obama in response to Russia's 2014 invasion of Ukraine. E.O. 14065 prohibits:

- New investment in the DNR or LNR region of Ukraine by U.S. persons or businesses
- The importation into the United States, directly or indirectly, of any goods, services or technology from DNR or LNR
- Any approval, financing, facilitation or guarantee by a United States 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 United States person or within the United States
- The transfer of property within the United States of persons designated by the Secretary of the Treasury, in consultation with the Secretary of State, deemed to act or operate in DNR or LNR, including those who serve as a leader, official, senior executive officer or member of the board of directors of an entity operating in DNR or LNR and those who materially assist them or operate on their behalf

Alongside E.O. 14065, OFAC issued six licenses authorizing specific actions that would otherwise be blocked by the terms of the order:

- **Ukraine General License No. 17** authorizing the wind-down of otherwise prohibited transactions in DNR and LNR until March 23
- **Ukraine General License No. 18** authorizing transactions related to the exportation or re-exportation of agricultural commodities, medicine, medical devices, replacement parts and components or software updates or to the COVID-19 pandemic
- **Ukraine General License No. 19** authorizing transactions that are ordinarily incident and necessary to the receipt or transmission of telecommunications or mail
- **Ukraine General License No. 20** authorizing activities of certain international organizations, including the United Nations and the Red Cross
- **Ukraine General License No. 21** authorizing noncommercial, personal remittances
- **Ukraine General License No. 22** authorizing the export of certain services and software incident to internet-based communication to DNR and LNR Russian Elites and Political Leaders

On Feb. 22 and 24, OFAC added or re-added the following individuals and their adult family members to the SDN list pursuant to E.O. 14024: Aleksandr Vasilievich Bortnikov, Denis Aleksandrovich Bortnikov, Petr Mikhailovich Fradkov, Sergei Vladilenovich Kiriyenko, Vladimir Sergeevich Kiriyenko, Sergei Borisovich Ivanov, Sergei Sergeevich Ivanov, Nikolai Platonovich Patrushev, Andrey Patrushev, Igor Ivanovich Sechin, Ivan Igorevich Sechin, Alexander Aleksandrovich Vedyakhin, Andrey Sergeyevich Puchkov, Yuriy Alekseyevich Soloviev and Galina Olegovna Ulyutina. In addition, Limited Liability Company Atlant S and Limited Liability Company Inspira Invest A, two companies affiliated with Andrey Sergeyevich Puchkov, were added to the SDN list.

On Feb. 25, OFAC added Russian President Vladimir Putin and Minister of Foreign Affairs Sergei Lavrov to the SDN list, along with high-ranking government officials Valentina Matviyenko, Sergei Naryshkin, Vyacheslav Volodin, Sergei Ivanov, Nikolai Patrushev, Vladimir Kolokoltsev, Alexander Bortnikov, Igor Krasnov, Igor Shchegolev, Vladimir Ustinov and Viktor Zolotov.

Export Restrictions

On Feb. 24, the Bureau of Industry and Security (BIS), a division of the Department of Commerce, instituted restrictions on exports to Russia in response to the invasion of Ukraine. These restrictions severely limit the types of software and technology that can be exported to Russia, with the stated intent of limiting Russian development of aerospace and defense technology:

- BIS has added new Commerce Control List (CCL)-based licensing requirements for certain technologies — including microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment and aircraft components for Russia — subject to Export Administration Regulations (EAR).
- Under the above CCL scheme, BIS has adopted a review policy of denial for license applications for exports, re-exports or transfers within Russia.
- BIS has expanded the scope of the existing Russia “military end use” and “military end user” control to include all items subject to the EAR, with a few exceptions, including food and medicine not for direct use by the Russian government or state-owned enterprises. Additionally, BIS greatly expanded the number of entities designated as military end users to include aviation, maritime and industrial production companies.
- BIS adopted two new rules regarding Foreign Direct Products (FDP) specifically to Russia and Russian military end users, including control over foreign-produced items that are the direct product of certain U.S.-origin software or technology subject to the EAR or 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. Certain partner countries are excluded from this rule.

These regulations are specifically designed to apply to technologies that would aid in the development or advancement of Russian military, defense and aerospace technologies, and BIS has stated that they are not intended to affect the ability of ordinary Russian citizens to obtain consumer goods.

Belarus

On Feb. 24, the OFAC added to the SDN list a number of Belarusian financial and defense entities and their leaders as well as key defense officials, including:

- **Belarusian Financial Institutions:** 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 Industry:** Minsk Wheeled Tractor Plant, Aliaksei Ivanavich Rymasheuski, Aliaksandr Piatrovich Vetsianeovich, 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 Initiativy, OKB TSP Scientific Production Limited Liability Company, LLC Synesis, LLC 24x7 Panoptes and Aliaksandr Yauhenavich Shatrou

Additionally, Belarusian defense officials Viktor Gennadievich Khrenin and Aleksandr Grigorievich Volfovich, and Lukashenko ally Aliaksandr Mikalaevich Zaitsau and his company OOO Sokhra were added to the SDN list. Belarusian President Alexander Lukashenko had been added to the SDN list by then-President George Bush under E.O. 13405 in June 2006.

Concurrently, the OFAC issued two general licenses authorizing specific actions that would otherwise be blocked:

- **Belarus General License No. 6** authorizing certain transactions related to the official business of the United States government
- **Belarus General License No. 7** authorizing certain transactions relating to the official business of international organizations and entities

Impact on the United States

Given the above, any U.S. person or entity doing business in Russia or Belarus should be aware that any transactions with sanctioned businesses or entities in those jurisdictions may be blocked and could expose such U.S. person or entity to legal jeopardy. Thus, it may be prudent for any such U.S. person/entity to perform a diligence check to ensure that they are not exposed, seek legal advice as to whether they can continue with their business relationship(s) in those jurisdictions, and/or take appropriate steps to wind down those business relationships within the specified period.

As the war in Ukraine continues, additional rounds of sanctions on major Russian and Belarusian entities and individuals may be implemented. Loeb & Loeb continues to closely monitor the events in Ukraine and is ready to advise clients on any potential impacts on their business.

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