

Review of Sanctions and Export Controls Imposed in Response to Russia's Invasion of Ukraine

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For the latest Russia sanctions update from Foley Hoag, please click [here](#).

Key Takeaways:

- The initial wave of sanctions targeted Russian banks and the financial industry plus individual “inner circle” elites, with more sanctions likely to follow in the coming weeks as events unfold.
- Broad restrictions on debt and equity transactions with certain entities in the Russian financial, energy, and infrastructure sectors.
- Expanded export controls, including foreign-direct product rule restrictions, new license requirements, and Entity List designations impact a wide range of exports to Russia.

As we had reported in our [earlier client alert](#) and [2022 Year in Preview](#), Russia's invasion of Ukraine has resulted in a new wave of sanctions and export controls on Russia, including sanctions on key sectors of the Russian economy and individuals close to Russian President Vladimir Putin. The international response to Russia's invasion has been immediate and multi-lateral, with the U.S., EU, UK, Australia, New Zealand, Japan, and Canada, among others, all issuing sanctions against Russia. China, notably, has not so far participated in the international response, which could increase the chances of additional trade restrictions being imposed on China by the U.S. and allies.

While the latest tranche of U.S. sanctions, as of the publication of this alert, focuses heavily on Russian banks and the financial sector, the Biden administration has made it clear that additional sanctions will be forthcoming. In addition, the new export control restrictions are broad in scope, but there is a possibility they could still be extended further. Foley Hoag will continue to apprise clients if any additional sanctions or export controls are imposed.

I. Initial Sanctions Following Russia's Recognition of the so-called Donetsk People's Republic and Luhansk People's Republic

a. Comprehensive Sanctions on Separatist-Held Regions

On February 21, 2022, following Russia's recognition of the so-called Donetsk People's Republic and Luhansk People's Republic as independent from Ukraine, President Biden issued Executive Order 14065 imposing comprehensive sanctions on these regions, similar to the ones imposed on the Crimea region following its annexation by Russia. These sanctions prohibit U.S. persons from making new investments in, importing from, or exporting to these regions. The U.S. Department of the Treasury's Office of Foreign Assets Control (“OFAC”) also issued several general licenses in tandem, including to allow a wind-down of operations and contracts involving the two regions by March 23, 2022, and to authorize the continued export of agricultural commodities, medicine and medical devices to the regions.

b. SDN List Designations

The next day, on February 22, 2022, President Biden described Russia's actions as “the beginning of a Russian invasion of Ukraine” and

imposed [comprehensive sanctions](#) on two Russian banks with ties to the defense industry (State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank and Promsvyazbank Public Joint Stock Company) along with 42 named subsidiaries. In addition, several individuals associated with Putin’s “inner circle” and their family members were added to OFAC’s Specially Designated Nationals and Blocked Persons List (“SDN List,” and such designated persons, “SDNs”). U.S. persons are generally prohibited from engaging in most transactions with SDNs, absent a specific or general license, and all U.S. assets of SDNs are “blocked” and must be reported to OFAC. Designated natural persons are also subject to a travel ban, and all entities 50% or more owned by an SDN are treated as if they were also on the SDN List (known as the “50% rule”). Along with announcing these sanctions, OFAC issued a [General License](#) authorizing wind-down transactions involving State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank for a 30-day period until March 24, 2022.

c. Expansion of Sovereign Debt Restrictions

OFAC also published [Directive 1A under Executive Order 14024](#), Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation (“E.O. 14024”), which supersedes the prior Directive 1. Directive 1A adds restrictions on U.S. participation in the secondary market for ruble or non-ruble denominated bonds issued 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 to the previous restrictions on participation in the primary market for such instruments.

II. U.S. Responses to Russia’s Invasion of Ukraine: Sanctions

On February 23, 2022, President Putin announced that Russia was undertaking a “special military operation” in Ukraine. President Biden, along with EU Commission President Ursula von der Leyen and other world leaders, condemned Russia’s actions and assessed that this was the start of a full Russian invasion. Sanctions and export controls swiftly followed.

a. SDN List Designations

On February 23, 2022, Nord Stream 2 AG (“Nord Stream 2”) and its managing director, Matthias Warnig, [were added to the SDN List](#) in response to Russia’s deployment of troops to the Ukrainian border. Nord Stream 2, a Swiss entity that is wholly-owned by Gazprom, is responsible for the planning, construction, and operation of the Nord Stream 2 pipeline, which supplies natural gas between Russia and Germany. OFAC also issued a [general license](#), which authorizes certain winding-down transactions with Nord Stream 2 until March 2, 2022.

On February 24, 2022, four major Russian financial institutions and their named subsidiaries, along with 15 individuals who are members of the Russian political elite and have close ties to President Putin [were added to the SDN List](#).

Thus far, OFAC has not sanctioned additional companies operating in the Russian energy, aerospace, and defense sectors. Designations of companies in these sectors will likely follow as additional sanctions are imposed in the coming weeks.

i. SDN-Designated Financial Institutions

On February 22, 2022, the Secretary of Treasury [issued a determination](#) pursuant to E.O. 14024 that authorizes sanctions against persons that operate or have operated in the financial services sector of the Russian Federation economy. While this did not result immediately in blanket sanctions on all Russian financial institutions, several of the largest Russian banks and numerous subsidiaries were promptly added to the SDN List. Others could follow in the coming weeks. The entities designated on February 24, 2022 include:

- VTB Bank Public Joint Stock Company (“VTB”) and 20 of its subsidiaries. VTB is the second-largest financial institution in Russia, which holds nearly 20 percent of banking assets in Russia. VTB was already listed on OFAC’s Sectoral Sanctions Identifications (“SSI”) List pursuant to Directive 1 under Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine (“E.O. 13662”), which prohibits certain dealings in new debt or new equity, but the new SDN designation adds blocking restrictions for almost all transactions between U.S. persons and VTB.
- Public Joint Stock Company Bank Financial Corporation Otkritie (“Otkritie”) and 12 of its subsidiaries. Otkritie is a Russian state-owned credit institution and Russia’s seventh largest financial institution.
- Open Joint Stock Company Sovcombank (“Sovcombank”) and 22 of its subsidiaries. Sovcombank is the third largest privately owned financial institution in Russia by total assets, and Russia’s ninth largest bank overall.
- Joint Stock Commercial Bank Novikombank (“Novikombank”), which is among the 50 largest financial institutions in Russia and

primarily operates in the Russian defense sector. This bank serves as the core financial institution for Russian defense company Rostec, which was earlier listed on the SSI List pursuant to Directive 3 under E.O. 13662.

ii. “Inner Circle” Elites and President Putin

On February 24, 2022, 15 Russian individuals who are “financial sector elites” with senior positions at state-owned banks, government officials, or members of families close to President Putin were added by OFAC to the SDN List. The following day, President Vladimir Putin and Foreign Minister Sergey Lavrov, along with the Russian Minister of Defense Sergei Shoigu, and Chief of the General Staff of the Russian Armed Forces Valery Gerasimov were sanctioned by the U.S. in concert with the EU. The UK also imposed similar sanctions on Russian government officials and elites, with the exclusion of Sergei Shoigu, who may likely be designated in a future round of UK actions

iii. Belarus Sanctions

In addition to sanctioning Russian individuals and entities, on February 24, 2022, OFAC added [24 Belarusian individuals and entities](#) to the SDN List due to Belarus’s support and facilitation of Russia’s actions in Ukraine. The sanctions are on two Belarusian state-owned banks, as well as many entities operating in the Belarusian defense sector. In addition, senior Belarusian officials including the Minister of Defense and the State Secretary of the Security Council of Belarus were also designated. As with the Russian sanctions discussed above, the “50%” rule applies, which means that entities directly or indirectly owned 50% or more in the aggregate by one or more sanctioned persons are also deemed sanctioned. In addition, all property and interest in property held by the designated individuals in the U.S. is blocked.

b. Directives Targeting Banks and Major Companies

In addition to adding certain Russian entities and financial institutions to the SDN List, on February 24, 2022, OFAC issued two new directives, [Directive 2](#) and [Directive 3](#), pursuant to E.O. 14024 that prohibit certain types of transactions. Both directives incorporate the “50% rule,” so these restrictions also flow down to entities 50% or more owned or controlled by an entity designated by either directive.

i. Directive 2

This directive prohibits U.S. financial institutions from (1) opening or maintaining a correspondent account or payable-through account for or on behalf of foreign financial institutions subject to Directive 2 or their property; and (2) processing transactions involving foreign financial institutions subject to Directive 2 or their property. This directive takes effect on March 26, 2022, and currently applies to Public Joint Stock Company Sberbank (“Sberbank”) and 25 of its subsidiaries. As reported in the Department of the Treasury [press release](#), Sberbank is the largest financial institution in Russia and is majority-owned by the Russian government. It holds the largest market share of savings deposits in the country and is the main creditor of the Russian economy. Sberbank was earlier included on OFAC’s SSI List pursuant to Directive 1 under E.O. 13662, and as a result is also subject to certain restrictions on dealings in new debt or equity.

As a result of the Directive 2 determination, Sberbank and its identified affiliates have been added to OFAC’s List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (“CAPTA List”). The CAPTA List contains identifying information of foreign financial institutions for which the opening or maintaining of a correspondent account or a payable-through account in the U.S. is prohibited or subject to severe restrictions. As the “50%” rule applies, all foreign financial institutions owned 50% or more, directly or indirectly, by Sberbank are covered by Directive 2, even if not explicitly identified on the CAPTA List.

ii. Directive 3

This directive prohibits U.S. persons from engaging in all transactions or dealings involving new debt of longer than 14 days maturity or new equity of major Russian entities determined to be subject to the directive. The prohibitions are effective beginning on 12:01 a.m. eastern daylight time, March 26, 2022 for entities listed in Annex 1 to the directive, or their property or interests in property. For entities subsequently determined to be subject to the prohibitions of Directive 3, the prohibitions are effective 12:01 a.m. eastern time 30 days following such determination.

As of February 24, 2022, there are 13 Russian entities subject to Directive 3, which includes (1) **major financial institutions** such as Sberbank (also subject to Directive 2, as described above), Credit Bank of Moscow Public Joint Stock Company, and Joint Stock Company Alfa-Bank; (2) **energy companies** such as Public Joint Stock Company Gazprom, the world’s largest natural gas company, Public Joint Stock Company RusHydro, a hydroelectricity company and one of Russia’s largest power companies, and Public Joint Stock Company Transneft, which manages Russia’s network of petroleum-related pipelines; and (3) companies operating in the **infrastructure sector**, such as Public Joint Stock Company Rostelecom, Russia’s largest telecommunications company, Joint Stock Company Sovcomflot,

Russia's largest maritime and freight shipping company, and Open Joint Stock Company Russian Railways, one of the world's largest railroad companies. Additionally, Directive 3 applies to Public Joint Stock Company Alrosa, the world's largest diamond mining company, which is responsible for 90% of Russia's diamond mining and 28% globally.

Given the continued escalation in Ukraine, we expect that additional entities will become subject to this directive in the future. Additionally, entities that are currently subject to a directive may be added to the SDN List in a future wave of sanctions—as was the case with VTB.

c. New General Licenses

OFAC also issued several general licenses on February 24, 2022 related to the sanctions on Russia ([General License 5](#), [General License 6](#), [General License 7](#), [General License 8](#), [General License 9](#), [General License 10](#), [General License 11](#), and [General License 12](#)) and Belarus ([General License 6](#) and [General License 7](#)) which allow a specific limited range of transactions that would otherwise be prohibited absent a specific license from OFAC. These licenses provide certain authorizations related to (1) international organizations and entities; (2) agricultural and medical commodities and the COVID-19 pandemic; (3) overflight and emergency landings; (4) energy; (5) dealings in certain debt or equity; (6) derivative contracts; (7) the wind-down of transactions involving certain blocked persons; and (8) the rejection of transactions involving certain blocked persons. OFAC also published new guidance in the form of [Frequently Asked Questions](#) (“FAQs”).

III. U.S. Responses to Russia's Invasion of Ukraine: Export Controls

On February 24, 2022, the Bureau of Industry and Security (“BIS”) of the U.S. Department of Commerce amended the Export Administration Regulations (“EAR”) to impose new restrictions on exports to Russia. The main industries targeted are the Russian defense, aerospace, and maritime sectors. BIS intends that these restrictions will significantly impair those key industrial sectors. The main features of the new controls are:

1. New license requirement for exports to Russia for items classified under any Export Control Classification Number (“ECCN”) in Categories 3 through 9 of the Commerce Control List (“CCL”), with a policy of denial except for certain “case-by-case” reviews of exports related to flight safety, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, government-to-government activities, and exports where the end-user is a specified Western subsidiary or joint venture. The review will be based on whether the item would benefit the Russian government or defense sector. This captures many items, which previously did not require a license for export to Russia and are considered crucial for Russia's military and defense sectors, including aircraft parts, vessel components, and electronic items.
2. Russian Foreign Direct Product Rule (“FDP Rule”). This new rule restricts the export of a wide range of foreign-produced items that are not designated EAR99 and are the “direct product” of U.S.-origin technology or software subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL. The rule also applies if the foreign-produced item is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3, 4, 5, 6, 7, 8, or 9 of the CCL. These products will require a license for export if it is known that the foreign-produced item is destined to Russia or will be incorporated into or used in the production or development of parts, components, or equipment produced in or destined to Russia. This applies to all exports and re-exports when the exporter has “knowledge” that the product will ultimately be intended for end-users in Russia, raising the stakes for exporters’ end-user certification and diligence processes.
3. Russian Military End-Users Foreign Direct Product Rule (“MEU FDP Rule”). Similar to the FDP Rule, the MEU FDP Rule establishes a new license requirement to re-export, export from abroad, or transfer (in-country) to or within any destination any foreign-produced item subject to the EAR other than food or medicine or ECCN 5A992.c and 5D992.c (unless for Russian “government end users” and Russian state-owned enterprises) when the foreign-produced item will be incorporated into or used in the production or development of parts, components, or equipment produced, purchased, or ordered by any entity with a new “Footnote 3” designation in the license requirement column of the BIS Entity List. These “Footnote 3” entities are Russian entities that previously had been included on the BIS Military End-User List (“MEU List”), described in Section 6 below.
4. Expanded Scope of MEU Restrictions. Controls on “military end-use” and “military end-users” in Russia now apply to all items “subject to the EAR” except food and medicine designated EAR99 and items classified under ECCNs 5A992.c or 5D992.c (unless exported for use by Russian “government end users” and Russian state-owned enterprises (“SoEs”).

5. Addition of Russia to Country Group D:5. BIS added Russia to Country Group D:5 of Supplement No. 1 to Part 740 of the EAR. This action aligns with the U.S. Department of States' addition of Russia to Part 126.1 of the International Traffic in Arms Regulations ("ITAR") on March 18, 2021. As a Group D:5 country, Russia is classified as a "U.S. Arms Embargoed Country" and subject to heightened export controls, including with respect to exports with *de minimis* percentages of U.S.-origin content, license exception availability, and licensing policies. However, D:5 is not the most restrictive country group. BIS could still move Russia to Country Group E, which includes Iran, Cuba, North Korea, and Syria, if the conflict in Ukraine continues to escalate.

6. Changes to the Entity List. Forty-five Russian entities have been moved from the Military End-User List ("MEU List") in Supplement No. 7 to part 744 of the EAR and added to the Entity List and two new Russian entities have been added, which means that a license is required for the export of all items subject to the EAR to these 47 designated end-users. These additions have widespread impact in the Russian aerospace and defense industries and their suppliers and business partners around the world.

Exporters should be aware that the updates to the EAR were effective immediately (on February 24, 2022). Companies who conducted unauthorized exports because they were unable to stop impacted transfers should consider submitting a voluntary disclosure to BIS.

IV. Removal of Select Russian Banks from SWIFT

After much speculation as to whether Russia would be denied access to SWIFT, on February 26, 2022, the U.S., the European Commission, France, Germany, Italy, the UK, and Canada issued a joint statement announcing that "select" Russian banks will be removed from the SWIFT messaging system. SWIFT stands for the "Society for Worldwide Interbank Financial Telecommunication" and is a secure messaging system used by banks and other financial institutions to exchange information, such as details regarding money transfers. Without access to SWIFT, the "selected" Russian banks will effectively be cut off from participating in the global economy. The names of the initial banks which will be barred from SWIFT have not yet been published, though the Biden administration has indicated the banks that have already been sanctioned the EU and the U.S. will be the first ones considered. Similar to the "drum beat" approach to SDN designations, it is likely that, after this first wave, additional Russian financial institutions will be denied access if the conflict in Ukraine continues. The only country to date to be completely barred from the SWIFT platform is Iran.

Individuals and companies who have banking relationships with impacted Russian banks or who need to send or receive funds from an impacted bank should assess whether there are alternative banking relationships available to maintain operations.

In addition, the joint statement also announced forthcoming actions to "prevent the Russian Central Bank from deploying its international reserves in ways that undermine the impact of our sanctions." The scope of these actions has not yet been published. The joint statement concludes by stating that beyond what has already been published, allied countries are prepared to take further measures to hold Russia accountable. As Russia so far has not shown signs of de-escalation, additional sanctions and restrictions are all but guaranteed.

V. EU and UK Responses to Russia's Invasion of Ukraine

The U.S. has not acted in isolation— as with the joint statement regarding SWIFT, sanctions on Russia have been strategically coordinated with actions taken by the EU and UK, among others, for maximum economic impact. While each sanction's regime varies somewhat, the U.S., EU, and UK have all focused sanctions on Russian financial institutions, government officials, and oligarchs.

On February 23, 2022, the Council of the European Union issued a series of [implementing regulations](#) imposing sanctions (called "restrictive measures") on Russia. These sanctions include freezing the assets of the members of the National Security Council of the Russian Federation, certain Russian media organizations, and large banks (Bank Rossiya, State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank, and Promsvyazbank Public Joint Stock Company); along with the assets of 351 members of the Russian parliament who voted in favor of recognizing the independence of the so-called Donetsk People's Republic and Luhansk People's Republic. The EU has also [imposed restrictions](#) on the direct or indirect provision of investment services for, or assistance in the issuance of, or any dealings with transferable securities and money-market instruments to the government of Russia, the Russian Central Bank, and any entity acting on behalf of the Russian Central Bank.

As discussed above, on February 25, 2022, the EU and UK froze the assets of President Putin and other senior government officials. The EU [also announced](#) that there will be forthcoming sanctions in response to Russia's continued military aggression in Ukraine. These sanctions will apply to the finance, energy, transport, and technology sectors, and will include a travel ban for designated individuals.

The UK has also implemented its own sanctions on Russia in several waves. The UK first amended its Russia-related sanctions program on

February 10, 2022, in order to expand the scope of its asset-freezing sanctions. On February 22, 2022, the UK then designated several large Russian banks: Rossiya Bank, PJSC Promsvyazbank, JSC Genbank, and JSC Black Sea Bank Development and Reconstruction. On February 24, 2022, the UK designated additional Russian entities, including aerospace, manufacturing, and defense companies such as JSC Research and Production Corporation Uralvagonzavod, United Aircraft Corporation, United Shipbuilding Corporation, Rostec, and VTB. As a result of the designations, these entities are now subject to UK asset-freezing sanctions. While the U.S. also added VTB to the SDN List on February 24, the U.S. has not yet broadly sanctioned Russian aerospace and defense companies, although many have been added to export controls lists maintained by the Department of Commerce, discussed below.

The UK has also announced that additional sanctions are forthcoming in tandem with the EU.

VI. Impact on U.S.-China Relations

China remains one of the few countries that so far has rejected describing Russia's actions in Ukraine as an "invasion" and has indicated that they will continue to engage in trade with Russia, including by lifting regional restrictions on the import of Russian wheat. This likely will inflame already tense U.S.-China relations, and potentially result in further export controls and foreign investment restrictions on Chinese individuals and entities. Currently, Congress is considering the America COMPETES Act of 2022, which has been passed by the House and would impose a "whole-of-government screening process for outbound investments and the offshoring of critical capacities and supply chains." If signed into law, the U.S. government would have the authority to deny certain U.S. investments in China if deemed to threaten national security. While this bill initially seemed unlikely to pass given the lack of bipartisan support, China's growing ties to Russia could be an impetus for the U.S. embracing stronger controls against China.

Companies with questions about these actions or how to ensure compliance with U.S. sanctions and export control regulations should contact a member of Foley Hoag's [Trade Sanctions & Export Controls practice](#).

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