

Russia and Belarus Sanctions and Export Controls Update – May 10, 2022

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Key Takeaways:

- The U.S. restricts the provision of accounting, trust and corporate formation, and management consulting services to Russia
- OFAC publishes general license authorizing certain IP-transactions prohibited by the Russian Harmful Foreign Activities Sanctions Regulations
- Three Russian state-run media television companies are added to the SDN List, along with a Russian state-owned bank and a state-controlled defense company
- BIS implements stricter export controls – only EAR99 items (with some limited exceptions) are now eligible for export from the U.S. to Russia and Belarus without an export license
- Additional sanctions target executives of Sberbank and Gazprombank, Russian state-owned enterprises, the Russian maritime sector, and sanctions evasion network

I. U.S. Persons Prohibited from Providing Accounting, Trust and Corporate Formation, and Management Consulting Services to Russia

On May 8, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") [issued a determination](#) prohibiting the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of accounting, trust and corporate formation, and management consulting services to any person located in the Russian Federation. This determination was issued pursuant to [Executive Order 14071](#), which also prohibits new investment by U.S. persons in the Russian Federation.

In their [press release](#), OFAC noted that "[w]ealthy Russians have relied on U.S. expertise to set up shell companies, move wealth and resources to alternate jurisdictions, and conceal assets from authorities around the world. In addition, Russian companies, particularly state-owned and state-supported enterprises, rely on these services to run and grow their businesses, generating revenue for the Russian economy that helps fund Putin's war machine."

This determination will take effect on June 7, 2022, and OFAC has issued [General License 34](#) to authorize all transactions ordinarily incident and necessary to the wind down of the exportation, reexportation, sale, or supply, directly or indirectly, from the U.S., or by a U.S. person, wherever located, of accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation through 12:01 a.m. eastern daylight time, July 7, 2022.

Additionally, OFAC [has identified](#) the accounting, trust and corporate formation services, and management consulting sectors of the Russian Federation economy pursuant to section 1(a)(i) of [Executive Order 14024](#) ("EO 14024") as subject to additional sanctions on any individual or entity determined to operate or have operated in any of those sectors. Other sectors previously identified by OFAC are the aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors.

OFAC has issued several FAQs in connection with the determination, including [FAQ 1034](#) which clarifies the definitions used in the determination:

- “Accounting services” – includes services related to the measurement, processing, and transfer of financial data about economic entities. Please note that OFAC has issued [General License 35](#) to authorize certain transactions ordinarily incident and necessary to the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of credit rating or auditing services to any person located in the Russian Federation through 12:01 a.m. eastern daylight time, August 20, 2022.
- “Trust and corporate formation services” – includes services related to assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for other persons to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents, or nominee shareholders of legal persons; providing a registered office, business address, correspondence address, or administrative address for legal persons; and providing administrative services for trusts. Please note that all of these activities are common activities of trust and corporate service providers (TCSPs), although they may be provided by other persons.
- “Management consulting services” – includes services related to strategic advice; organizational and systems planning, evaluation, and selection; marketing objectives and policies; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management.
- “Russian person” – an individual who is a citizen or national of the Russian Federation, or an entity organized under the laws of the Russian Federation.

OFAC has also clarified that the following are excluded from the prohibition: (1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person; and (2) any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person. Additional guidance is available in [FAQ 1038](#), [FAQ 1037](#), [FAQ 1036](#), [FAQ 1035](#), and [FAQ 1033](#).

These service prohibitions, and additional sanctions discussed below, were also announced in a [White House press statement](#) after a meeting with President Biden, G7 Leaders (Canada, France, Germany, Italy, Japan, and the United Kingdom) and President Zelensky of Ukraine in which the U.S. and allied partners affirmed their support for Ukraine, which included the entire G7 committing to phasing out or banning the import of Russian oil.

II. Sanctions on Executives of Russian Banks

Also on May 8, OFAC added eight current or recent members of the Executive Board of Public Joint Stock Company Sberbank of Russia (“Sberbank”) to the Specially Designated Nationals and Blocked Persons (“SDN”) List pursuant to EO 14024. As a result of the SDN List designation, almost all transactions with U.S. persons are prohibited, 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 owned 50% or more by an SDN are generally treated as if they were also on the SDN List (known as the “50 Percent Rule”) even if they are not expressly listed. In addition, any person, including a non-U.S. person, may themselves be designated as an SDN for materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of these SDNs.

Sberbank, which was previously designated as an SDN by OFAC on April 6, 2022, is the largest financial institution in Russia and is majority-owned by the Russian Federation. The EU, UK, Canada, Japan, Australia, and New Zealand also have imposed sanctions on Sberbank. Previously, on February 24, 2022, OFAC [designated](#) the First Deputy Chairman of Sberbank as an SDN, and on March 24, OFAC [designated](#) the Chief Executive Officer and Chairman of the Executive Board of Sberbank as an SDN.

In tandem with the Sberbank actions, OFAC designated 27 members of Gazprombank’s Board of Directors as SDNs pursuant to EO 14024. On February 24, 2022, OFAC identified Gazprombank, the third largest bank in Russia, as subject to prohibitions pursuant to [Directive 3](#) under EO 14024. Two of the designated board members, Andrey Igorevich Akimov and Alexey Borisovich Miller, were [previously designated](#) as SDNs on April 6, 2018, pursuant to Executive Order 13661, and are now re-designated under EO 14024.

III. Russian State-Owned or State-Supported Entities Added to the SDN List

OFAC also added the following Russian state-owned or state-supported entities to the SDN List on May 8, 2022 pursuant to EO 14024:

- Joint Stock Company Moscow Industrial Bank (“MIB”), which is a Russian state-owned bank. Ten of MIB’s subsidiaries were also added to the SDN List pursuant to EO 14024.
- Limited Liability Company Promtekhlogiya, which is a private defense company that supplies Russia’s military and intelligence

services with its products and is associated with the Russian government.

- Joint Stock Company Channel One Russia, Television Station Russia-1, and Joint Stock Company NTV Broadcasting Company, which are three of Russia's most highly viewed state-owned television companies. OFAC has also issued [General License 33](#) to authorize all transactions ordinarily incident and necessary to the wind down of operations, contracts, or other agreements involving the sanctioned television companies that were in effect prior to May 8, 2022 through 12:01 a.m. eastern daylight time on June 7, 2022.

IV. State Department Issues New Visa Restrictions and Designations

On May 8, 2022, the State Department announced new actions related to the ongoing war in Ukraine. As summarized in a [Fact Sheet](#), this includes both visa restrictions and sanctions designations.

Visa Restrictions

The visa restrictions implemented pursuant to the Immigration and Nationality Act ("INA") are as follows:

- A new visa restriction policy under Section 212(a)(3)(C) of the INA that applies to Russian Federation military officials and Russia-backed or Russia-installed purported authorities who are believed to have been involved in human rights abuses, violations of international humanitarian law, or public corruption in Ukraine, including in the so-called "Donetsk People's Republic" or "Luhansk People's Republic." Family members of those who fall under the policy will also be ineligible for visas.
- Visa restrictions on 2,596 members of the Russian Federation military and 13 Belarusian military officials pursuant to a policy under Section 212(a)(3)(C) of the INA that applies to those who are believed to have supported, been actively complicit in, or been responsible for ordering or otherwise directing or authorizing actions that threaten or violate the sovereignty, territorial integrity, or political independence of Ukraine.

Sanctions Designations

The State Department designated the following persons and entities, which are then added by OFAC to the SDN List:

- Three Belarusian officials, Dzmitry Paulichenka, Yury Sivakov, and Viktor Sheiman, pursuant to Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2022 for their involvement in a gross violation of human rights.
- Eight Russian maritime-related companies:
 - ▶ Oboronlogistika OOO, a Russian shipping company that provides the Russian Ministry of Defense with services related to the transportation, storage, and production of military and special purpose goods.
 - ▶ SC South LLC, a Russian maritime shipping company that is a subsidiary of Oboronlogistika OOO and delivers cargo for the Russian Ministry of Defense.
 - ▶ Joint Stock Company Northern Shipping Company, a Russian maritime shipping company that performs services for Russia's Ministry of Defense.
 - ▶ Transmorflot LLC, a Russian maritime shipping company that transports weapons for the Government of Russia.
 - ▶ M Leasing LLC, a Russian maritime shipping company that transports weapons for the Government of Russia.
 - ▶ Marine Trans Shipping LLC, a Russian maritime shipping company that transports weapons for the Government of Russia.
 - ▶ Nord Project LLC Transport Company, a Russian maritime shipping company that transports weapons for the Government of Russia.
 - ▶ Obshchestvo S Ogranichennoi Otvetstvennostyu Fertoing, a Russian maritime engineering company that conducts complex marine surveys, navigational, hydrographic and underwater technical support for the construction and operation of facilities for subsea production complexes, offshore, river, and pipeline transport for state-owned entities, and projects on the behalf of the Government of Russia.

Additionally, 69 vessels that the maritime-related companies listed above have an interest in have been added to the SDN List by OFAC.

V. OFAC Issues General License Authorizing IP Transactions

On May 5, 2022, OFAC issued a new [General License 31](#) to authorize the following IP-related transactions that otherwise would be prohibited by the Russian Harmful Foreign Activities Sanctions Regulations (“RuHSR”):

1. The filing and prosecution of any application to obtain a patent, trademark, copyright, or other form of intellectual property protection;
2. The receipt of a patent, trademark, copyright, or other form of intellectual property protection;
3. The renewal or maintenance of a patent, trademark, copyright, or other form of intellectual property protection; and
4. The filing and prosecution of any opposition or infringement proceeding with respect to a patent, trademark, copyright, or other form of intellectual property protection, or the entrance of a defense to any such proceeding.

As IP-related transactions are authorized in other sanctions programs administered by OFAC (including sanctions on Iran, North Korea, and Cuba), the addition of General License 31 to the RuSHR helps align the Russia-related sanctions program with other sanctions programs.

VI. New General License Authorizes Winding-Down Transactions with Amsterdam Trade Bank NV

Also on May 5, 2022, OFAC released [General License 32](#), which authorizes all transactions ordinarily incident and necessary to the wind down of transactions involving Amsterdam Trade Bank NV (“ATB”) and its 50% or more owned subsidiaries through 12:01 a.m. eastern daylight time, July 12, 2022. ATB was [added to the SDN List](#) on April 6, 2022, as a subsidiary of Joint Stock Company AlfaBank (“AlfaBank”). An earlier [winding-down general license](#) for AlfaBank expired on May 6, 2022 and was not renewed by OFAC.

VII. Restrictions Exports of Controlled Items to Russia and Belarus; BIS Publishes New FAQs

On April 9, 2022, the U.S. Department of Commerce’s Bureau of Industry and Security (“BIS”) [amended Section 746.8 of the Export Administration Regulations \(“EAR”\)](#) to restrict the exports of all items that are subject to the EAR and have an Export Control Classification Number (“ECCN”) in all categories of the Commerce Control List (“CCL”). Previously, only items in categories 3-9 of the CCL were subject to licensing requirements for exports to Russia and Belarus. Now, apart from certain, limited license exceptions for items on the CCL, only EAR99 items can be exported to Russia or Belarus without a license, and license applications are subject to a presumption of denial. Even EAR99 items, however, can be subject to a licensing requirement in certain circumstances. In addition to the new restrictions, items that require a license for export also include the following:

- Any item “subject to the EAR,” including EAR99 items, if you have “knowledge” that the item is intended, entirely or in part, for a ‘military end use’ or ‘military end user’ in Russia or Belarus.
- Certain foreign-produced items that (a) have greater than a *de minimis* level of U.S.-origin controlled content; or (b) are the “direct product” of U.S.-origin “technology” or “software” subject to the EAR, or that are produced using items that are the “direct product” of U.S.-origin “technology” or “software” subject to the EAR.
- All items destined to the so-called Donetsk People’s Republic and Luhansk People’s Republic regions of Ukraine that are subject to the EAR, excluding food or medicine designated EAR99 and software necessary to enable personal communications over the Internet.
- Items identified in § 746.5(a)(1) and in supplement no. 4 to part 746 of the EAR, for use in the oil industry sector, even if classified as EAR99.
- Luxury goods identified in supplement no. 5 to part 746 of the EAR that are exported, reexported or transferred (in-country) to Russia or Belarus, and to certain Russian and Belarusian oligarchs and malign actors identified in § 746.10 of the EAR, wherever they are located.

In connection with these changes, on May 2, 2022, BIS published [new FAQs](#) related to licensing requirements related to exports, re-exports, and transfers to Russia and Belarus. The FAQs address (1) what additional items now require a license for export to Russia and Belarus; (2) when EAR99 items require a license for export to Russia and Belarus; (3) whether the download of software that is subject to the EAR and controlled on the Commerce Control List in Russia and Belarus requires a license (answer: generally, yes); and (4) whether a license is needed for the export to Russia of items that are controlled only for anti-terrorism reasons (answer: yes, even if the transaction is made on eBay or other online sales sites).

Assistant Secretary for Export Enforcement Matthew S. Axelrod [reported in remarks delivered on April 21, 2022](#), that since February 24,

2022, BIS has prevented 145 shipments worth nearly \$76 million from being exported to Russia, including a jet valued at \$11.6 million, and has publicly identified 176 airplanes that were illegally exported to Russia and an additional 7 airplanes that were illegally exported to Belarus.

VIII. OFAC Focuses on Facilitation of Russia-Related Sanctions Evasion

On April 20, 2022, OFAC added several individuals and entities to the SDN List for attempting to evade sanctions imposed by the U.S. on Russia. These designations were made pursuant to EO 14024. The designated individuals and entities include:

- Public Joint Stock Company Transkapitalbank (“Transkapitalbank”), a Russian bank that enabled the evasion of Russia-related sanctions by allowing sanctioned persons to conduct transactions in U.S. dollars through its own Internet-based banking system, as an alternative to SWIFT. OFAC issued two general licenses related to Transkapitalbank:
 - ▶ [General License 28](#), which authorizes all transactions involving Transkapitalbank, or its 50% or more owned subsidiaries, that are ultimately destined for or originating from Afghanistan. This general license expires on October 20, 2022, and excludes transactions otherwise prohibited by Directive 2 and Directive 4 under EO 14024.
 - ▶ [General License 29](#), which authorizes transactions ordinarily incident and necessary to the wind down of transactions with Transkapitalbank. This general license expires on May 20, 2022, and excludes transactions otherwise prohibited by Directive 2 and Directive 4 under EO 14024.
- Bitriver AG, a Russian virtual currency mining company which is reportedly the third largest virtual currency mining company in the world, and 10 of its subsidiaries. This is the first time that OFAC has designated a virtual currency mining company. Virtual currency mining companies produce new bitcoin and other virtual currencies by using computers with specialized hardware, which compete to solve complex math problems and, in the process, verify virtual currency transaction information.
- Russian oligarch Konstantin Malofeyev, who had earlier been added to the SDN List in 2014 pursuant to Executive Order 13660, was re-designated by OFAC on April 20, 2022, pursuant to EO 14024. Malofeyev has also been sanctioned by Australia, Canada, the EU, Japan, New Zealand, and the UK. Malofeyev’s son, Kirill Konstantinovich Malofeyev, and several Russian companies owned by his son have also been added to the SDN List pursuant to EO 14024. OFAC also designated over 40 entities and persons which are part of a global network used by Malofeyev to evade sanctions. The network includes entities operating in Africa, Asia, and Cuba that facilitate sanctions evasion for Russian entities.

Earlier, on April 6, 2022, the U.S. government unsealed a [previously-issued criminal Indictment](#) in New York charging Malofeyev with conspiracy to violate U.S. sanctions and violations of U.S. sanctions issued after the Crimea invasion in 2014, in connection with conduct occurring up through 2018.

IX. Fact Sheet and General License on Humanitarian Assistance

On April 19, 2022, OFAC issued a new Fact Sheet, “[Preserving Agricultural Trade, Access to Communication, and Other Support to Those Impacted by Russia’s War Against Ukraine](#).” This guidance outlines the humanitarian and food-related general licenses issued by OFAC in connection with the war in Ukraine. Additionally, OFAC issued a new [General License 27](#) to authorize transactions related to certain activities of NGOs in Russia and Ukraine.

Foley Hoag will continue to provide updates as the situation with respect to Ukraine develops. 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](#).

RELATED PRACTICES

- [Trade Sanctions & Export Controls](#)

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