

# **U.S. Imposes Sweeping Sanctions and Export Controls on Russia in Response to Crisis in Ukraine**

By Elsa Manzanares

Over the last month, the U.S. government, in coordination with partner and allied countries, announced a series of unprecedented escalating sanctions targeting Russia in response to the invasion of Ukraine. These actions represent some of the most comprehensive sanctions ever imposed by the U.S. The fast-paced rollout of measures has forced U.S. and non-U.S. companies to conduct an immediate assessment of the U.S. sanctions risks to their business operations in Russia or commercial transactions with touchpoints to Russia and Belarus. We expect additional sanctions on the way as the conflict continues to evolve.

Summarized below are some of the compliance risks that U.S. and non-U.S. businesses should consider as restrictive measures are implemented, followed by a review of the sanctions measures announced to date.

- The U.S. has implemented a comprehensive investment ban and trade embargo on the so-called Donetsk People's Republic (DNR) and Luhansk People's Republics (LNR) in Eastern Ukraine. The 30-day period for U.S. persons to wind down all operations, contracts, or other agreements involving the export, reexport, sale, or supply of goods, services, or technology to, or the import of any goods, services, or technology from, the DNR and LNR regions of Ukraine has expired. With limited exceptions, U.S. persons must immediately implement internal controls to ensure their goods or services are not destined for these regions, either directly or indirectly.
- U.S. persons with existing business relationships in Russia, Belarus, and Ukraine should screen their business partners to ensure compliance with new restrictions on dealings with specified entities recently added to the List of Specially Designated Nationals and Blocked Persons (SDN List). Entities who are owned 50 percent or more, directly or indirectly, by one of these specified entities, even if not identified on the SDN List and regardless of whether they are located in Russia, are similarly blocked. Any future activities will require enhanced due diligence on all parties to the transactions.
- U.S. sanctions imposed required financial institutions to close all correspondent and payable-through accounts for or on behalf of Sberbank and its subsidiaries, and other Russia financial institutions determined to be subject to this prohibition, by March 26, 2022.
- U.S. persons engaged in international trade transactions with Russian customers should consider the impact of new prohibitions on certain debt or equity transactions involving specified entities. For example, new credit terms for the sale of goods or services involving certain entities in Russia cannot exceed 14 days.
- U.S. persons exporting U.S.-origin goods or technologies to Russia and Belarus and non-U.S. persons exporting from abroad foreign-produced items that contain U.S.-origin content or that are developed from U.S.-origin software or technology should carefully

review the significantly expanded export licensing requirements for Russia and Belarus imposed by the U.S. Department of Commerce. Export licenses will be required for commercial goods destined to Russia and Belarus that did not previously require a license and fewer license exceptions are available. The new rules will also make many more items produced outside of the U.S. subject to the extra-territorial jurisdiction of U.S. export controls for these countries. However, the regulations also provide a carve-out from export licensing for countries implementing export controls on Russia and Belarus that are substantially similar to those imposed by the U.S.

- The ban on exports of luxury goods applies to exports from the U.S. as well as reexports by U.S. persons of those goods from abroad to Russia, Belarus, and any Russian or Belarusian oligarch or malign actor *wherever* they may be located.
- The reach of U.S. export controls is broad. The Commerce Department published an advisory reminding U.S. and foreign parties located anywhere in the world and who service any commercial or private aircraft that were exported or transferred to Russia in apparent violation of U.S. export control laws could be liable for civil and criminal penalties. The same prohibition applies to all items subject to the Export Administration Regulations (EAR) that are illegally exported or transferred to Russia or Belarus.

Detailed below are the relevant U.S. sanctions measures in the order in which they were announced.

#### New Executive Order Imposing Investment Ban and Trade Embargo

On February 21, the Biden administration issued a new Executive Order (EO) imposing comprehensive sanctions on the DNR and LNR regions of Ukraine. EO 14065, entitled "Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine" followed President Putin's decision to recognize the DNR and LNR as independent states and to deploy troops to the region. Under the EO, the following activities are prohibited:

- New investment in the so-called DNR or LNR regions of Ukraine by U.S. persons, wherever located
- The importation into the U.S., directly or indirectly, of any goods, services, or technology from the DNR or LNR
- The export, reexport, sale, or supply, directly or indirectly, from the U.S., or by a U.S. person, wherever located, of any goods, services, or technology to the DNR or LNR regions of Ukraine
- 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 EO if performed by a U.S. person or within the U.S.

The prohibitions of EO 14065 replicate the language of Executive Order 13685, which imposed a similar investment ban and trade embargo on the Crimea region of Ukraine in December 2014. The terms of the EO authorize the U.S. Treasury Department, in consultation with the U.S. State Department, to impose similar sanctions in any other region of Ukraine.

Following the announcement of EO 14065, the Treasury Department's Office of Foreign Assets Control (OFAC) issued several general licenses<sup>1</sup> authorizing U.S. persons to engage in certain transactions relating to the DNR and LNR. The general licenses (GLs) authorize the following:

- GL 17: transactions ordinarily incident to the wind down of transactions involving the DNR and LNR, 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 or LNR, and the winding down of operations, contracts, or other agreements in effect prior to February 21, 2022 involving the export, reexport, sale or supply of goods, services, or technology to, or import of any goods, services, or technology from the DNR or LNR regions. This GL expired on March 23, 2022.
- GL 18: transactions ordinarily incident and necessary to: (1) the export or reexport of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to the DNR or LNR; or (2) the prevention, diagnosis, or treatment of COVID-19.
- GL 19: transactions involving the DNR or LNR that are ordinarily incident and necessary to the receipt of transmission of telecommunications.
- GL 20: transactions related to the official business of international organizations, such as the United Nations and the International Committee of the Red Cross.
- GL 21: transactions ordinarily incident to and necessary to the transfer of noncommercial, personal remittances to or from the DNR or LNR.
- GL 22: transactions ordinarily incident and necessary to the export or reexport from the U.S. or by U.S. persons to persons in the DNR or LNR of services incident to the exchange of personal communications over the internet, including software necessary to enable such services, provided that such software is designated EAR99, classified as mass market under ECCN 5D992.c, or not listed under any multilateral export control regime.
- GL 23: transactions ordinarily incident and necessary to the activities by nongovernmental organizations to support humanitarian projects, democracy building projects, education, non-commercial development projects directly benefitting the people, and environmental and natural resource protection in the DNR or LNR regions.
- GL 24: transactions related to the provision or receipt of civil maritime services performed by individuals who are ordinarily resident in the DNR or LNR, provided that such services

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<sup>1</sup> A general license authorizes a certain class of persons to engage in transactions without the need to apply for a license from OFAC, but all the conditions of the general license must be strictly observed.

are performed outside the DNR or LNR (or any other region determined by the Treasury Department in the future) (together, Covered Regions) and are not performed on behalf of any entity located in, or organized under the laws of the Covered Regions.

- GL 25: transactions by U.S. person reporting organizations and journalists relating to certain journalistic activities, such as hiring staff, leasing space, purchasing goods and services in the Covered Regions, and renting and using telecommunications facilities.

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) has also implemented the trade and investment prohibitions of EO 14065 by expanding the restrictions in the Export Administration Regulations (EAR) to apply to export, re-export and in-country transfer transactions involving the DNR and LNR regions of Ukraine.<sup>2</sup> Effective **February 24, 2022**, the EAR imposes a new license requirement for the export and reexport to the DNR and LNR regions of Ukraine of all items subject to the EAR, other than food and medicine designated as EAR99 and certain software for Internet-based personal communications. Some license exceptions are available under the EAR. Any license applications for the export or reexport of items to the DNR and LNR regions of Ukraine (and Crimea) will be reviewed under a policy of denial, except for items authorized under OFAC General License Numbers 17-25 referenced above, which will be reviewed on a case-by-case basis. BIS noted that exporters, reexporters, and transferors of items must ensure that any transaction complies with all applicable requirements under the OFAC regulations and the EAR. For most export transactions, a license will be required from both BIS and OFAC.

#### Blocking Sanctions on State-Owned Financial Institutions

The administration emphasized that the sanctions on the DNR and LNR were "in addition to the swift and severe economic measures being prepared with allies and partners should Russia further invade Ukraine." On February 22, the White House announced it was implementing the "first tranche of swift and severe costs on Russia" with full blocking sanctions on two state-owned financial institutions involved in financing Russia's defense industry, Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB) and Promsvyazbank Public Joint Stock Company (PSB), and 42 of their subsidiaries. VEB and PSB were designated by OFAC pursuant to a separate executive order issued in April 2021, EO 14024, which authorizes sanctions against Russia "for harmful foreign activities," including violating "well-established principles of international law, including respect for the territorial integrity of states." Parties subject to full blocking sanctions are placed on OFAC's List of Specially Designated Nationals and Blocked Persons (SDN List). The assets of SDNs are blocked and U.S. persons, wherever located, are prohibited from engaging in any transactions with them unless authorized by OFAC. All entities owned 50 percent or more, directly or indirectly, by VEB or PSB are also considered SDNs, even if not identified on OFAC's SDN List.

OFAC also issued two general licenses authorizing certain activities involving VEB and PSB:

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<sup>2</sup> This action supplemented existing comprehensive export restrictions under the EAR on the Crimea region of Ukraine.

- GL 2: transactions involving VEB or any entity in which VEB owns, directly or indirectly, a 50 percent or greater interest, that are ordinarily incident and necessary to the servicing of bonds issued before 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.
- GL 3: transactions ordinarily incident and necessary to the wind down of transactions involving VEB, or any entity in which VEB owns, directly or indirectly, a 50 percent or greater interest. GL3 expired on March 24, 2022.

In addition to the blocking sanctions on VEB and PSB, the Treasury Department published a determination under EO 14024 that paves the way for additional designations of persons or entities in the Russian financial services sector. OFAC also placed five Russian elites and their family members on the SDN List.

### *Restrictions on Sovereign Debt*

OFAC also announced on February 22, prohibitions related to certain sovereign debt of the Russian Federation. As of March 1, 2022, Directive 1A ("Prohibitions Related to Certain Sovereign Debt of the Russian Federation") restricts U.S. financial institutions from participation in the secondary markets for ruble or non-ruble denominated bonds issued after March 1, 2022 by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation. Prior to February 22, U.S. financial institutions were already prohibited under a prior version of this directive from participation in the primary market for ruble or non-ruble denominated bonds issued by the entities subject to that directive, and with respect to lending ruble or non-ruble denominated funds to the entities subject to that directive. 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 the Non-SDN Menu-Based Sanctions List (NS-MBS List). Parties on the NS-MBS List are not SDNs and are subject to less than full blocking sanctions.

### Sanctions on Nord Stream 2

On February 23, OFAC announced the imposition of sanctions on the Swiss entity responsible for the development of the Russian Nord Stream 2 pipeline, as well as its chief executive officer. OFAC added Nord Stream 2 AG and Matthias Warnig to the SDN List. In connection with the designations, OFAC also issued the now-expired General License 4, which authorized transactions ordinarily incident and necessary to the wind down of transactions involving Nord Stream 2 AG, or any entity in which Nord Stream 2 AG owns, directly or indirectly, a 50 percent or greater interest, through March 2, 2022.

### Sanctions on Russia's Largest Financial Institutions

Following the Biden Administration's imposition of a first tranche of sanctions on Russia, the White House announced on February 24, 2022 additional "severe and economic costs on Russia in response to Putin's war of choice against Ukraine." As a result, OFAC implemented sanctions measures intended to disrupt the ability of Russia's two largest financial institutions, Public Joint

Stock Company Sberbank of Russia (Sberbank) and VTB Bank Public Joint Stock Company (VTB), to process payments through the U.S. financial system.

*Correspondent and Payable-Through Account Sanctions on Sberbank*

On February 24, OFAC published Directive 2 ("Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions") (the "Russia-related CAPTA Directive"), which prohibits U.S. financial institutions from: (1) maintaining or opening of a correspondent or payable-through account for or on behalf of any entity determined to be subject to the prohibitions of the Russia-related CAPTA Directive, or their property or interests in property; and (2) the processing of transactions involving any such entities determined to be subject to the Russia-related CAPTA Directive, or their property or interests in property.

Directive 2 only applies to U.S. financial institutions, but the term "U.S. financial institution"<sup>3</sup> is broadly defined in Directive 2 to capture U.S. entities (including its foreign branches) engaged in a long list of specified activities, "as well as any U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing."

The prohibitions in Directive 2 apply to the foreign financial institutions listed in Annex 1 to the Directive, which identifies Russia's largest financial institution, Sberbank, and 25 of its subsidiaries. However, the restrictions also apply to any entity otherwise determined by OFAC to be subject to the prohibitions of the Russia-related CAPTA Directive, or their property or their interest in property, which includes financial institutions owned 50% or more owned or controlled by one or more foreign financial institutions determined to be subject to the prohibitions of the Russia-related CAPTA Directive.

Directive 2 required U.S. financial institutions to close any correspondent or payable-through accounts for Sberbank and any of the 25 subsidiaries listed in Annex 1 to the Russia-related CAPTA Directive by March 26, 2022, and thereafter reject any future transactions involving those entities, unless exempt or authorized by OFAC. With respect to the additional foreign financial institutions otherwise determined to be subject to Directive 2, the prohibitions of Directive 2 become effective beginning at 12:01 a.m. eastern time on the date that is 30 days after the date of such determination.

Sberbank and the other entities subject to the Russia-related CAPTA Directive were added to OFAC's List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (CAPTA List). The prohibitions in Directive 2 are not full blocking

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<sup>3</sup> The Russia-related CAPTA Directive defines "U.S. financial institution" as any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money services businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. This term includes those branches, offices, and agencies of foreign financial institutions that are located in the United States, but not such institutions' foreign branches, offices, or agencies.

sanctions and do not require U.S. financial institutions or U.S. persons to block the assets of foreign financial institutions subject to the Russia-related CAPTA Directive.

### *Blocking Sanctions of VTB and Other Financial Institutions*

On the same day OFAC imposed sanctions on Sberbank, it also imposed blocking sanctions on Russia's second largest bank as well as three other financial institutions pursuant to EO 14024 for being owned or controlled by, or for having acted or purported to act for, or on behalf of, directly or indirectly, the Government of Russia, and for operating in the Russian financial services sector, as follows:

- VTB Bank Public Joint Stock Company (VTB) and 20 of its subsidiaries
- PJSC Bank Financial Corporation Otkritie (Otkritie) and 12 of its subsidiaries
- OJSC Sovcombank (Sovcombank) and 22 of its subsidiaries
- JSC Bank Novikombank (Novikombank)

These blocking sanctions apply to any entity owned 50% or more, directly or indirectly, by one or more of the foregoing, even if not identified on the SDN List. The assets of SDNs located in the U.S. (or held by U.S. persons wherever located) are blocked and U.S. persons are prohibited from dealing with SDNs without a license from OFAC.

### *Restrictions on Debt and Equity Transactions Involving Major Russian Entities*

Concurrent with its implementation of sanctions on Sberbank and VTB, OFAC issued Directive 3 ("Prohibitions Related to New Debt and Equity of Certain Russia-related Entities"), which prohibits U.S. persons or persons within the U.S. from engaging in all transactions in, the provision of financing for, and other dealings in new debt of longer than 14 days' maturity or new equity of certain Russian entities where such new debt or new equity is issued on or after March 26, 2022. The restrictions apply to new debt with a maturity of greater than 14 days and new equity whether in U.S. dollars or any other currency.

These restrictions apply to any entity listed in Annex 1 to Directive 3, which include Russian entities identified by OFAC as being owned or controlled by, or having acted or purported to act for or on behalf of, directly or indirectly, the Government of Russia, or for operating or having operated in the financial services sector of Russia, as follows:

- Sberbank
- Gazprombank Joint Stock Company
- Joint Stock Company Russian Agricultural Bank
- Public Joint Stock Company Gazprom
- Public Joint Stock Company GazpromNeft
- Public Joint Stock Company Transneft
- Public Joint Stock Company Rostelecom
- Public Joint Stock Company RusHydro
- Public Joint Stock Company Alrosa
- Joint Stock Company Sovcomflot

- Open Joint Stock Company Russian Railways
- Joint Stock Company Alfa-Bank
- Credit Bank of Moscow Public Joint Stock Company

The prohibitions on entities that are subsequently determined to be subject to Directive 3 become effective at 12:01 am eastern daylight time 30 days following such determination.

The entities on Annex 1 have been added to the NS-MBS List. Entities on the NS-MBS List are not SDNs and are subject to less than full blocking sanctions. However, OFAC's 50% Rule applies to all entities subject to Directive 3. The prohibitions of Directive 3 apply to the entities listed in Annex 1 or to any entity otherwise determined to be subject to Directive 3, or their property or interests in property, which include entities 50% or more owned, directly or indirectly, individually or in the aggregate, by one or more entities determined to be subject to Directive 3.

### *Issuance of General Licenses*

Concurrent with the issuance of Directive 2 and the additions of VTB, Otkritie, Sovcombank, and Novikombank to the SDN List, OFAC released a number of general licenses authorizing specific activities otherwise prohibited by Directive 2 or in connection with the foregoing blocked parties:

- GL 5: transactions for the conduct of official business of specified international organizations and entities.
- GL 6A<sup>4</sup>: transactions related to the export/reexport of agricultural commodities, medicine, medical devices, replacement parts and components or software updates, or items needed to respond to COVID-19.
- GL 7: transactions related to receipt and payment of charges for overflights and emergency landings in Russia by aircraft registered in the U.S. or owned or controlled or chartered to U.S. persons.
- GL 8A<sup>5</sup>: transactions involving VEB, Otkritie, Sovcombank, Sberbank, or VTB (and any entity owned 50% or more, directly or indirectly, by one or more of the foregoing entities) (together, Covered Entities), and the Central Bank of Russia, that are "related to energy"<sup>6</sup> through 12:01 am eastern daylight time, **June 24, 2022**.

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<sup>4</sup> On February 24, OFAC issued GL 6, which was replaced and superseded in its entirety by GL 6A on March 24, 2022.

<sup>5</sup> On February 24, OFAC issued GL 8, which was replaced and superseded in its entirety by GL 8A on February 28, 2022.

<sup>6</sup> "Related to energy" is broadly defined in GL 8A to include "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."



- GL 9A<sup>7</sup>: transactions ordinarily incident and necessary to dealings in debt or equity of one or more Covered Entities, including facilitating, clearing, and settling trades of that debt and equity, that was issued prior to February 24, 2022, through 12:01 am eastern daylight time, **May 25, 2022**, provided that any divestment or transfer of, or facilitation of divestment or transfer of, covered debt or equity must be to a non-U.S. person.
- GL 10A<sup>8</sup>: transactions ordinarily incident and necessary to the wind down of derivative contracts entered into prior to February 24, 2022 that (i) include a Covered Entity or (ii) are linked to debt or equity of a Covered Entity, are authorized through 12:01 am eastern daylight time, **May 25, 2022**. Any payments to an SDN must be made into a blocked account. Debits to accounts on the books of U.S. financial institutions of Covered Entities are likewise authorized to the extent ordinarily incident and necessary to effect authorized transactions under GL 10A.
- GL 11: transactions ordinarily incident and necessary to the wind down of transactions involving Otkrite, Sovcombank, or VTB (and any entity owned 50% or more, directly or indirectly, by one or more of the foregoing entities). GL11 expired on March 26, 2022.
- GL 12: authorizing U.S. persons to reject all prohibited transactions involving Otkrite, Sovcombank, or VTB (and any entity owned 50% or more, directly or indirectly, by one or more of the foregoing entities). GL 12 expired on March 26, 2022.

### *Blocking Sanctions on Belarusian Entities and Individuals*

On February 24, OFAC imposed blocking sanctions on 24 Belarusian individuals and entities pursuant to Executive Order 14038 ("Blocking Property of Additional Persons Contributing to the Situation in Belarus") in connection with Belarus's support for and facilitation of the invasion of Ukraine. The designated entities include two Belarusian state-owned banks, Belarusian defense and security firms and related individuals, Belarusian defense officials, and Belarusian individuals with close ties to President Lukashenka. These blocking sanctions apply to any entity owned 50% or more, directly or indirectly, by one or more of the foregoing, even if not identified on the SDN List. The assets of SDNs located in the U.S. (or held by U.S. persons wherever located) are blocked and U.S. persons are prohibited from dealing with SDNs without a license from OFAC.

### Additional Export Control Restrictions on Russia

Effective February 24, in addition to the comprehensive export restriction on the DNR and LNR regions of Ukraine described above, BIS also implemented additional export licensing restrictions on a broad array of items destined for Russia, including U.S.-origin goods and foreign-produced items that contain or are based on U.S.-origin technology or other technology subject to the EAR.

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<sup>7</sup> On February 24, OFAC released GL 9, which was replaced and superseded in its entirety by GL 9A on March 2, 2022.

<sup>8</sup> On February 24, OFAC released GL 10, which was replaced and superseded in its entirety by GL 10A on March 2, 2022.

BIS expanded these restrictions to Belarus on March 2 in order to prevent diversion of items from Belarus to Russia.

### *New Export License Requirements*

BIS imposed a new license requirement for the export, reexport, or transfer (in-country) to or within Russia or Belarus of any item "subject to the EAR"<sup>9</sup> and specified in Export Control Classification (ECCN) Categories 3, 4, 5, 6, 7, 8, and 9 on the Commerce Control List (CCL) under the EAR.<sup>10</sup> In practical terms, this measure extends a licensing requirement to many commercial items that did not previously require a license for Russia or Belarus. For example, parts and components used in civil aircraft controlled under ECCN 9A991.d or telecommunications equipment under ECCN 5A991 now require a license for export to Russia and Belarus. Some license exceptions are available, but they are limited. If a license application is required, applications for those items will be subject to a policy of denial, with a case-by-case review policy for applications related to flight safety, maritime safety, humanitarian needs, government space cooperation, items destined to certain U.S. subsidiaries and joint ventures, support civil telecommunications infrastructure in certain countries, and government to government activities.

### *New Foreign-Produced Direct Product Rules*

BIS imposed two new foreign direct product rules in the EAR. Both rules will result in many more foreign-produced items being subject to the EAR than under the previous BIS rules. However, the controls on foreign-produced items do not apply if the U.S. determined that a foreign country is committed to imposing substantially similar export controls on Russia and Belarus as the U.S.<sup>11</sup>

The first rule applies to the countries of Russia and Belarus (Russia/Belarus FDP Rule). Broadly speaking, under the Russia/Belarus FDP Rule, foreign-produced items (i.e., items manufactured outside the U.S.) are subject to the EAR if they are the "direct product"<sup>12</sup> of *certain* U.S.-origin technology or software or are produced by any plant or major component of a plant that itself is a direct product of certain U.S.-origin technology or software, when there is knowledge that the foreign-produced item is destined to Russia or Belarus, or will be incorporated into or used in the production or development of any part, component, or equipment produced in or destined to Russia or Belarus. These foreign-produced items are subject to the expanded licensing requirements imposed for Russia and Belarus discussed above. In order to avoid restricting consumer items used by the Russian/Belarusian people, the Russia/Belarus FDP Rule does not apply to foreign-produced items that would be designated as EAR99.

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<sup>9</sup> Under the EAR, items "subject to the EAR" include all items in the United States, all U.S.-origin items wherever located, certain foreign-made commodities, software technology in any quantity or in quantities exceeding certain *de minimis* levels, or certain foreign-produced "direct product" of specified technology and software, as described in the EAR.

<sup>10</sup> Mass market encryption items classified under ECCN 5A992 and 5D992 do not require an export license if they are destined to certain civil end users as specified in the EAR (e.g., wholly owned U.S. subsidiaries).

<sup>11</sup> These countries include most western European countries, as well as Canada, New Zealand, and South Korea.

<sup>12</sup> Under the EAR, "direct product" means the immediate products (including processes and services) produced directly by the use of technology or software.

The second rule is more expansive and targets Russian and Belarusian military end-users (Russia/Belarus-MEU FDP Rule). Under the Russia-MEU FDP Rule, foreign-produced items (including items designated as EAR99) are subject to the EAR if they are the direct product of *any* software or technology specified in an ECCN in *any* category of the CCL, or are produced by a plant or major component of a plant that itself is a direct product of such software or technology, when there is knowledge that the foreign-made items will be incorporated into, or will be used in the production or development of any part, component, or equipment produced, *purchased*, or *ordered* by any entity designated under the EAR as a Russian/Belarusian military end user. A license is required to export, reexport or transfer (in-country) all items subject to the EAR to these entities, with limited exceptions.

#### Designation of Vladimir Putin and Others

On February 26, OFAC designated President Vladimir Putin, Minister of Foreign Affairs Sergei Lavrov, and other members of Putin's national security team as SDNs. The assets of SDNs in the U.S. are blocked and U.S. persons are prohibited from any dealings with them without authorization from OFAC.

#### Additional Restrictions on the Central Bank of Russia

On February 28, pursuant to EO 14024, OFAC issued Directive 4 ("Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation"), which prohibits U.S. persons (not only U.S. financial institutions) from engaging in any transactions 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 (the "Directive 4 Entities"), including any transfer of assets to such entities or any foreign exchange transactions. This measure would restrict Russia's ability to sell its reserves of international currency to avoid the impact of sanctions.

#### *Issuance of General Licenses*

Concurrent with the publication of Directive 4, OFAC updated existing general licenses and released a number of new general licenses authorizing specific activities otherwise prohibited by Directive 4 or in connection with the Directive 4 Entities:

- GL 8A: transactions related to energy involving one or more specified entities, including the Central Bank of Russia, through 12:01 eastern daylight time, **June 24, 2022**. GL 8A does not authorize any transactions prohibited by Directive 1 (prohibitions on sovereign debt), the opening or maintaining of a correspondent account for or on behalf of any entity subject to Directive 2, any debit to an account on the books of a U.S. financial institution of the Central Bank of Russia, or any transactions involving any blocked persons other than those blocked persons identified in GL 8A.
- GL 9A: transactions ordinarily incident and necessary to the receipt of interest, dividends, or maturity payments in connection with debt or equity of the Directive 4 Entities issued before March 1, 2022, are authorized through 12:01am eastern daylight time, **May 25, 2022**

- GL 10A: transactions ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements, or reverse repurchase agreements entered into prior to 12:01am eastern standard time, March 1, 2022, that include the Directive 4 Entities are authorized through 12:01am eastern daylight time, **May 25, 2022**.
- GL 13: U.S. persons are authorized to pay taxes, fees, or import duties, or receive permits, licenses, registrations, or certifications to the extent the transactions are prohibited under Directive 4 provided such transactions are ordinarily incident and necessary to such persons' day to day operation in the Russian federation, through 12:01am eastern daylight time, **June 24, 2022**
- GL 14: transactions involving Directive 4 Entities where the entity's sole function in the transaction is to act as an operator of a clearing and settlement system, provided that: (i) there is no transfer of assets to or from any Directive 4 entity, unless separately authorized; and (ii) no Directive 4 Entity is either a counterparty or a beneficiary to the transaction, unless separately authorized.

#### Designation of Russian Sovereign Wealth Fund and Related Entities

On February 28, OFAC imposed full blocking sanctions on The Russian Direct Investment Fund (RDIF), a Russian sovereign wealth fund used by Putin to raise funds abroad. In addition to RDIF, OFAC added RDIF's management company, Joint Stock Company Management of the Russian Direct Investment Fund (JSC RDIF), an RDIF subsidiary, Limited Liability Company RVC Management Company (LLC RVC), as well as RDIF's Chief Executive Officer to the SDN List. The assets of SDNs held in the U.S. or by U.S. persons anywhere in the world are blocked and U.S. persons are prohibited from dealings with them, directly or indirectly, without a license from OFAC.

#### SWIFT Sanctions

On February 27, the Biden administration announced it was committed to ensuring removal of certain Russian banks from the SWIFT system. On March 2, the Council of the European Union announced a ban, effective March 12, of certain Russian banks from the SWIFT system, including any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned more than 50% by any of the specified banks.

#### Additional Restrictive Measures

On March 2, the White House announced that it would impose full blocking sanctions on 22 Russian defense-related entities and impose export controls on oil and gas extraction equipment and technology to Russia, and add entities to the BIS Entity List "that have been involved in, contributed to, or otherwise supported the Russian and Belarusian security services, military and defense sectors and/or military and defense research and development efforts." The White House also announced that the U.S. would close American air space to all Russian passenger and cargo flights, "including aircraft certified, operated, registered or controlled by any person connected with Russia."

## New Export Controls on Oil Refining Equipment

On March 3, BIS implemented export restrictions on items needed by Russia for oil refining. BIS imposed the restrictions to reduce Russia's ability to generate Russian oil revenue in support of its military capabilities. The new rule requires a license for the export, reexport or transfer within Russia of any item listed in supplement no. 4 to part 746.5 of the EAR by a 6-digit Harmonized Tariff Schedule of the United States (HTSUS) and Schedule B codes. The restricted products include, among others, oil and gas field wire line and downhole equipment and gas separation equipment.

## Additions to BIS Entity List

Also on March 3, BIS added 91 parties in 10 countries to the BIS Entity List. According to a BIS news release, BIS added the parties based upon a determination of their involvement in, contributions to, or other support of the Russian security services, military and defense sectors, and military and/or defense research and development efforts. The entities are located primarily in Russia, but are also located in the United Kingdom, Estonia, Spain, Malta, Kazakhstan, Latvia, Belize, Singapore and Slovakia. The EAR imposes additional license requirements on parties included on the BIS Entity List and limits the availability of most license exceptions.

## Prohibition of Certain Imports and New Investments

On March 8, 2022, the White House issued Executive Order 14066 (EO 14066) entitled "Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine." Under the EO, the following activities are prohibited:

- Importation into the U.S. of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products with Russian Federation origin
- New investment in the energy sector in the Russian Federation by a U.S. person, wherever located
- 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 the EO if performed by a U.S. person within the U.S.

OFAC clarified in published guidance that the EO does not prohibit U.S. persons from engaging in transactions to sell or re-direct shipments that were previously destined for the U.S. OFAC also issued an FAQ stating that it anticipated publishing regulations defining the following terms:

- "*Russian Federation origin*" is defined as "goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product."

- "*New investment in the energy sector in the Russian Federation*" is defined to mean "a transaction that constitutes a commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring in the Russian Federation beginning on or after March 8, 2022."
- "*Energy sector*" includes "the procurement, exploration, extraction, drilling, mining, harvesting, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, or transport of petroleum, natural gas, liquified natural gas, natural gas liquids, or petroleum products or other products capable of producing energy, such as coal or wood or agricultural products used to manufacture biofuels, the development, production, generation, transmission or exchange of power, through any means, including nuclear, electrical, thermal, and renewable."

### *Issuance of General Licenses*

Concurrent with issuance of EO 14066, OFAC released General License 16 (GL 16), which authorizes all transactions ordinarily incident and necessary to the importation into the U.S. of crude oil; petroleum; petroleum fuels, oils, and products of the distillation; liquefied natural gas; coal; and coal products of Russian Federation origin pursuant to written contracts and written agreements entered prior to March 8, 2022, through 12:01am eastern daylight time, **April 22, 2022**. U.S. Customs and Border Protection stated in published guidance that it will implement the requirements of GL16 by requiring filers of import entries to provide purchase orders and/or executed contracts and/or any other documents demonstrating when the order and/or contract went into effect.

### Additional Ban on Certain Imports and New Investment

On March 11, 2022, the White issued Executive Order 14068 (EO 14068) entitled "Prohibiting Certain Imports, Exports, and New Investment With Respect to Continued Russian Federation Aggression." EO 14068 prohibits the following activities:

- Importing to the U.S.: fish, seafood, and preparations thereof; alcoholic beverages; non-industrial diamonds of Russian Federation; and those other products of Russian Federation origin as deemed by Treasury, State, or Commerce
- Exportation, reexportation, sale, or supply, directly or indirectly, from the U.S., by a U.S. person, wherever located, of luxury goods
- New investment in any sector of the Russian Federation as determined by Treasury, State, and Commerce
- Exportation, reexportation, sale, or supply, directly or indirectly, from the U.S., or by a U.S. person, wherever located, of U.S. dollar-denominated banknotes to the Government of the Russian Federation or any person located in the Russian Federation

- 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 EO if performed by a U.S. person or within the U.S.

According to guidance published by OFAC, the terms "fish, seafood, and preparations thereof," "alcoholic beverages," and "non-industrial diamonds" will be defined in forthcoming regulations, but anticipates the terms will include certain specified HTSUS subheadings as listed in FAQ Number 1,027 posted to the OFAC website.

### *Issuance of General Licenses*

Concurrent with EO 14068, OFAC issued four new general licenses relating to certain importations and new investment. The general licenses authorize the following activities:

- GL 17 (Imports)<sup>13</sup>: transactions ordinarily incident and necessary to the importation into the U.S. of fish, seafood, and preparations thereof; alcoholic beverages; or non-industrial diamonds of Russian Federation origin pursuant to written contracts or written agreements entered into prior to March 11, 2022. GL 17 expired on March 25, 2022. A new general license 17A, effective March 24, 2022, extended the authorizations of GL 17 for importations into the U.S. of fish, seafood and preparations thereof until **June 23, 2022**
- GL 18 (Imports): transactions ordinarily incident and necessary to transfer of U.S. dollar-denominated banknote noncommercial, personal remittances from: (i) the U.S. or a U.S. person, wherever located, to an individual located in the Russian Federation; or (ii) a U.S. person who is an individual located in the Russian federation are authorized. These do not include charitable donations to or for the benefit of any entity or funds transfers for use in supporting or operating a business, including a family-owned business
- GL 19 (Imports): U.S. persons located in the Russian Federation are authorized to engage in all transactions ordinarily incident and necessary to their personal maintenance within the Russian Federation, including payment of housing expenses, acquisition of goods or services for personal use, payment of taxes or fees, and purchase or receipt of permits, licenses, or public utility services. A similar authorization under GL 20 authorizes transactions ordinarily incident and necessary to the official business of third-country diplomatic or consular missions located in Russia

### BIS Implementation of Export Controls on Luxury Goods

BIS implemented the trade prohibitions on luxury goods by amending the EAR to impose two new licensing requirements: (1) the export, reexport, or transfer (in-country) to or within Russia or Belarus of 'luxury goods' as defined under the EAR and (2) exports, reexports and transfers (in-country) **worldwide** of such luxury goods to certain Russian or Belarusian oligarchs and other malign actors supporting the Russian or Belarusian governments who have been designated as SDNs by OFAC. The term 'luxury goods' are identified by Schedule B numbers listed in new

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<sup>13</sup> GL 17, 18, and 19 referenced in this section were issued pursuant to EO 14068 and should not be confused with the general licenses of the same number issued pursuant to EO 14065 issued on February 21, 2022, which relates to the DNR and LNR regions.

Supplement No. 5 to Part 746 of the EAR. These items include a wide array of items, including alcoholic beverages, tobacco products, beauty and skin care products, handbags, furs, textiles, carpets, apparel, footwear, jewelry, antiques and vehicles. When a license is required, applications for such items will be subject to a policy of denial and very limited license exceptions are available.

#### Publication of Commercial and Private Aircraft Exported to Russia in Violation of U.S. Law

On March 18, 2022, BIS published a list of commercial and private aircraft flown into Russia in apparent violation of U.S. export controls. BIS published the list to notify U.S. and foreign persons that providing any form of service to these aircraft requires authorization from BIS. Without such authorization, any person located anywhere in the world, is potentially liable for violations of the EAR.

General Prohibition Ten of the EAR (Proceeding with transactions with knowledge that a violation has occurred or is about to occur) (Section 736.2(b)(10) of the EAR broadly provides that no person "...may *sell, transfer, export, reexport, finance, order, buy, remove, conceal, store, use, loan, dispose of, transport, forward, or otherwise service, in whole or in part*, any item subject to the EAR and exported or to be exported with knowledge that a violation of the EAR...has occurred, is about to occur, or is intended to occur in connection with the item." That is, any person wherever located in the world, who has knowledge that an item subject to the EAR has been exported or will be exported in violation of the EAR cannot have any dealings with that item. Proceeding with such a transaction could be a violation of the EAR and subject to the full range of penalties including jail time, loss of export privileges, and fines. Please note this prohibition applies to any activity in connection with *any* item subject to the EAR.

#### Additional OFAC Designations

On March 24, OFAC designated as SDNs 48 Russian defense companies that produce weapons that have been used against the Ukrainian people, 328 members of the Russian State Duma who supported Russia's recognition of the independence of the LNR and DNR, and the head of Russia's largest financial institution. SDN assets located in the U.S. (or held by U.S. persons wherever located) are blocked and U.S. persons are prohibited from dealing with SDNs without a license from OFAC. These blocking sanctions also apply to any entity that is owned 50% or more, directly or indirectly, by one or more SDNs, even if not identified on the SDN List.

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