



Understanding and Complying with U.S. and Global Sanctions Against Russia

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Introduction to Economic and Financial Sanctions

- Economic sanctions are laws and regulations imposed by governments related to specified foreign policy, national security, or other policy grounds that restrict the ability to engage in activities involving designated countries or regions economic sectors or specified parties.
- Restricted activities typically include imports and exports of goods and services, financial transactions, certain business transactions and technology transfers.
- Restrictions vary depending upon the sanctions program:
 - Comprehensive (embargo)
 - Sectoral (energy, oil and gas)
 - Targeted (certain groups)
 - Individual or Entity focused (restricted parties lists)
 - Secondary sanctions (apply extra-territorially to countries or individuals not otherwise subject to primary sanctions)

U.S. Sanctions – Jurisdiction and Application

- U.S. citizen (including dual nationals) and permanent residents (“green card” holder).
- Any entity formed under U.S. law.
- Any person located in the U.S.
- Any person engaged in an activity within the U.S. (e.g. employee, officer, or director of any organization who is a U.S. citizen or permanent resident, regardless of their physical location).
- Non-U.S. subsidiaries or entities majority-owned or controlled by U.S. persons under certain programs (e.g. Cuba & Iran).
- Non-U.S. persons where there is a sufficient U.S. nexus:
 - where transactions involve U.S.-origin goods or services, or financial transactions that are denominated in U.S. dollars.

U.S. Sanctions – Jurisdiction and Application

- Under some sanctions programs, non-U.S. persons may also be subject to "secondary sanctions" for engaging in certain activities with sanctioned parties (applicable to Russian sanctions).
- Evasion or "facilitation" of sanctions evasion:
 - a U.S. person assisting or approving a transaction with a sanctioned party or redirecting a transaction from a U.S. person to a non-U.S. person to avoid sanctions) may also be prohibited.
- "Blocking" of a sanctioned party's assets (which can include almost anything of value, tangible or intangible) if assets come within the jurisdiction of the U.S.
 - U.S. banking system or within the customs territory.
 - Come into possession or control of a U.S. person, must be "blocked" or "frozen."

U.S. Government Agencies

- **U.S. Department of Treasury, Office of Foreign Assets Control (OFAC)** – Regulatory agency responsible for publication and interpretation of sanctions regulations, issuance of licenses authorizing activities with parties subject to sanctions, and civil and administrative enforcement of penalties for violations of sanctions regulations.
- **U.S. Department of Justice (DOJ)** – Authorized to prosecute criminal cases involving knowing or willful violations of sanctions laws.
- **U.S. Department of Commerce, Bureau of Industry and Security (BIS)** – May have parallel jurisdiction over U.S.-origin exports to countries subject to comprehensive sanctions (as described below).
- **U.S. Securities and Exchange Commission (SEC)** – Requires certain disclosures regarding business with sanctioned regions, countries, or targeted parties.
- **U.S. Department of State (DOS)** – Sets policy and may be involved in regulatory designations of parties under certain sanctions programs (e.g., Cuba sanctions, Countering American Adversaries Sanctions Act (CAATSA)).

U.S. Russia Sanctions Legislation

- **Countering America's Adversaries Through Sanctions Act (CAATSA) PL 115-44**
- **Ukraine Freedom Support Act of 2014 (UFSA)**
- **Support for Sovereignty, Integrity, Democracy & economic Stability of Ukraine Act 2014**
- **EOs implemented under the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 et seq.)**
 - EOs 13662, 13883, 13849, 13685, 13662, 13661 & 13660 (Crimea)
 - EOs 14024 (and Directives 1A-4), 14065, 14066, 14068 (recent)
- **Russian Harmful Foreign Activities Sanctions Regulations to implement EO 14024 (31 C.F.R. 587).**
 - OFAC intends to supplement the regulations with more comprehensive regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions.
 - The regulations are effective March 1, 2022.

Current U.S Sanctions Against Russia

- Comprehensive embargo (transactions and activities) against Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine (EO 14065) (2/21) & Crimea (12/14)
- Specially Designated Nationals ("SDNs") designations of banks and individuals meaning that all property and interests in property in the U.S. or in the possession or control of U.S. Persons are blocked unless authorized by OFAC (EO 14024)
- Prohibition of access to correspondent and payable-through accounts ("CAPTAs") for certain specified entities ("D2 – CAPTA"), as well as the inclusion of entities associated with PJSC Sberbank ("Sberbank") to the Non-SDN Menu-Based Sanctions List ("NS-List") as subject to D2 – CAPTA restrictions (EO 14024, Directive 2)

Current U.S Sanctions Against Russia

- **Prohibitions Related to New Debt and Equity of Certain Russia-related Entities"** to prohibit transactions and dealings by U.S. Persons (or within the U.S.) in new debt of longer than 14 days' maturity and new equity of 13 major firms. Provided for heavy restrictions on raising money through the U.S. market (E.O. 14024, Directive 3)
- **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 (Directive 4 under E.O. 14024).**
 - Despite the broad prohibitions regarding dealings with these entities, OFAC has not formally designated them as SDNs

Current U.S Sanctions Against Russia

- **Executive Order on Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine, (EO 14066) prohibiting:**
 - the importation into the U.S. of the following Russian-origin products: crude oil, petroleum, petroleum fuels, oils, and products of their distillation, liquefied natural gas, coal and coal products; and
 - new investment in the energy sector in the Russian Federation by a U.S. Person, wherever located.

Current U.S Sanctions Against Russia

- **Executive Order on Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression" (the "March 11 EO") prohibits:**
 - the importation into the U.S. of Russia-origin fish, seafood, and "preparations thereof," alcoholic beverages, and non-industrial diamonds;
 - the direct or indirect exportation, reexportation, sale, or supply of luxury goods to Russia from the U.S. or by a U.S. Person;
 - the direct or indirect exportation, reexportation, sale, or supply of USD banknotes to Russia from the U.S. or by a U.S. Person; and
 - new investment in any sector of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, by a U.S. Person.

Current U.S. Export Controls Against Russia

- **Export controls, which affect a range of items subject to the Export Administration Regulations (EAR), including:**
 - New export license requirement for exports, reexports, and in-country transfers to or within the country of many items subject to the EAR
 - Expansion of the scope of U.S. export controls via two new "foreign direct product rules," and expanded controls associated with "military end users" and "military end uses"
 - Expanded licensing requirements associated with exports, reexports and transfers to or within Russia of encryption items
 - Pay attention to deemed exports
 - Most license exceptions no longer apply

Current U.S. Belarus Sanctions

- OFAC designated 24 Belarusian individuals and entities pursuant to E.O. 14038 in response to Belarus' support for, and facilitation of, Russia's invasion.
- Same export control measures on exports, reexports and in-country transfers to or within Belarus that it imposed on Russia.



Other Actions Against Russia

- **Loss of MFN/NTR Status (action along with G7 countries)**
 - Increased import duties
- **Removal from SWIFT of specified banks**

Global Sanctions and Focus on U.K. and EU

- The recent measures taken by the U.S. are part of an ongoing international response against Russia, which includes actions taken by Australia, Bahamas, Canada, the EU, Iceland, Japan, New Zealand, Norway, Switzerland, Singapore, South Korea, Taiwan, and the U.K..
- There are similarities between the U.K., EU and U.S. sanctions laws but there is not uniformity and navigating Russian sanctions has become a maze of complexity.

U.K. and EU Government Agencies

- The U.K. Foreign and Commonwealth Development Office (FCDO) - government policy on international sanctions.
- Her Majesty's Treasury (HM Treasury), Office of Financial Sanctions Implementation (OFSI) - financial sanctions
- U.K. Department for International Trade, which (through the Export Control Joint Unit (ECJU)) – trade sanctions and embargos
- Council of the European Union (EU), European Commission, Council of the EU as implemented and enforced in the legislation of various Member States

EU & U.K. Sanctions Legislation

- **The Russia (Sanctions) (EU Exit) Regulations 2019 (2019 Regulations) is the key legal act setting out U.K. sanctions against Russia (as retained under UK law following Brexit).**
 - The Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022 (10 February 2022)
 - The Russia (Sanctions) (EU Exit) (Amendment) (No. 3) Regulations 2022
 - The Russia (Sanctions) (EU Exit) (Amendment) (No. 4) Regulations 2022
- **U.K. Sanctions and Anti-Money Laundering Act 2018 (SAMLA)**
- **U.K. Economic Crime (Transparency and Enforcement) Act 2022 (the Act)**
- **Export Control Order 2008**
- **Regulation (EU) 2022/328. Regulation (EU) 2022/328 amends Regulation (EU) 833/2014 (implemented in Member States' legislation).**

Current U.K. Sanctions Against Russia

- Expanding the list of sanctioned individuals by adding 386 members of the Russian Parliament and 378 more individuals, including Roman Abramovich, the owner of the Chelsea Football Club. The funds and economic resources of designated persons are required to be frozen immediately by any U.K. person in possession or control of them.
- Sanctioning of Russian Banks
- Prohibiting Russian ships to enter U.K. ports and putting in place legislative authority for previously announced measures to ban Russian aircraft from UK airspace.
- Restricting the provision of financial services for the purpose of foreign exchange and asset management to the Russian Central Bank, the Russian National Wealth Fund, the Russian Ministry of Finance, or persons owned or controlled by, or acting on behalf of, or at the direction of, these entities.
- Adding to the list of aviation and space-related goods which are prohibited from export to Russia from the U.K, as well as banning related insurance/reinsurance services.
- Announcing a ban on the exportation of high-end luxury goods to Russia while increasing import tariffs on hundreds of key products.
- Phasing Out of Russian Oil Imports by the end of 2022.

Current U.K. Sanctions Against Russia

- Measures to prevent Russian state-owned and key strategic private companies from raising finance on the U.K. financial markets.
- Restrictions on the amount of money Russian nationals can deposit into U.K. bank accounts.
- The Russia (Sanctions) (EU Exit) (Amendment) (No.3) Regulations significantly enhance the trade sanctions imposed on Russia by the U.K., similar to the restrictions adopted by the U.S. and the EU
 - to remove Russia as a permitted destination for certain "critical industry goods" (electronics, computers, telecommunications & information security etc.)
 - Removing Russia as a destination for 9 Open General Export Licenses

Current U.K. Sanctions Against Russia

- **The Economic Crime (Transparency and Enforcement) Act 2022 (the Act), which went through all stages of primary legislation in a matter of days to bring more transparency to property holdings in the U.K. The main effects of the Act are:**
 - Much greater transparency about the ultimate beneficial ownership of property in the U.K. Foreign owners of UK property will have to reveal their identities and may no longer remain anonymous.
 - Stronger Unexplained Wealth Order processes
 - Provision for urgent designation of sanctioned individuals and entities, including the power to include anyone sanctioned by U.S., EU, Canada, Australia or any other country as notified by the government
- **As soon as the legislation was enacted, on March 15, the government announced the designation of a further 370 individuals and entities.**

Current U.K. Sanctions Against Russia

- **Strict Liability under the Act**

- strict civil liability test represents a significant departure from the current test which requires for the Office for Financial Sanctions Implementation ("OFSI") to show that firms had knowledge or a "reasonable cause to suspect" sanctions are being breached to be liable for fines.

Current U.K. Belarus Sanctions

- Asset freezes against specific Belarusian individuals as a consequence of Belarus' assistance with the Russian invasion.
- Expansion of existing import restrictions against Belarus to cover further sectors, including the wood, cement, rubber, iron, and steel industries (prohibition to import products.
- Prohibition on the supply of dual-use, and listed military and technological goods and technology to Belarus.

Current EU Sanctions Against Russia

- Cutting access to capital markets, as well as prohibiting the listing and provision of services related to shares of Russian state-owned entities on EU trading platforms.
- Prohibiting the acceptance of deposits above certain values from Russian nationals or residents, the holding of accounts of Russian clients by the EU Central Securities Depositories, as well as the selling of euro-denominated securities to Russian clients.
- Import ban on goods from the non-government controlled areas of Donetsk and Luhansk, restrictions on trade and investments related to certain economic sectors, a prohibition to supply tourism services, and an export ban for certain goods and technologies.

Current EU Sanctions Against Russia

- Restrictions on new investment across the Russian energy sector, as well as a comprehensive export restriction on equipment, technology and services for the energy industry in Russia
- Further trade restrictions concerning iron and steel, as well as luxury goods, introducing the prohibition to sell, supply, transfer or export directly or indirectly, these goods.
- Restrictive measures with regard to the export of maritime navigation goods and radio communication technology to Russia.

Current EU Sanctions Against Russia

- The EU Council also expanded the list of legal persons, entities and bodies subject to the prohibitions related to investment services, transferable securities, money market instruments and loans. (includes crypto-assets)
- Sanctions on Russian individuals (14 oligarchs and business people, as well as 146 members of the Russian Federation Council).
- Suspension of broadcasting activities of Russia state-owned media outlets in the EU or directed at the EU. The outlets impacted by the sanctions are Sputnik and RT/Russia Today, including RT English, RT UK, RT Germany, RT France and RT Spanish.
- The measures prohibit any transactions with the Central Bank of Russia in Europe.

Current EU Sanctions Against Russia

- **Restrictions and prohibitions are applicable to the export of goods and related services to or for use in Russia, including the sale, supply, transfer or export of and the provision of technical assistance, brokering services, other services, financing or financial assistance related to:**
 - Dual-use items
 - Goods and technology other than dual-use items and technology listed in Annex VII to Regulation 833/2014 and which might contribute to Russia's military and technological enhancement or the development of the defense and security sector
 - Goods and technology suited for use in oil refining
 - Goods and technology suited for use in aviation or the space industry Specific authorization requirements for the export of and the provision of services related to certain dual-use items and goods and technology listed to Russian state-owned entities in the military and defense(Reg 2022/328)
- **Prohibition on deposits by Russian nationals, residents and entities exceeding €100,000 per credit institution and the prohibition for EU central securities depositories from providing certain services for transferable securities issued after April 12, 2022, to any Russian national, resident or entity.**

U.K. and EU Sanctions Against Russia - Jurisdiction

■ UK sanctions:

- apply to British citizens and British overseas citizens;
- UK incorporated/constituted entities; and
- any conduct by any persons that takes place wholly or partly in the UK or in UK territorial seas.

■ EU sanctions:

- to nationals of EU Member States;
- EU incorporated/constituted entities within the territory of the EU;
- onboard any aircraft of any vessel under the jurisdiction of an EU Member State; and
- to any person in respect of business conducted in whole or part within the EU.
- Under the Ireland/Northern Ireland Protocol, EU sanctions also apply to trade in goods between Northern Ireland and Russia.

****Note:** Differences jurisdictional basis from U.S. sanctions

Licenses

- If a transaction is prohibited under the sanctions regimes, you cannot engage in the transaction unless you have a license. There are 2 types:
 - Certain general licenses are available (focus on winddown and certain exempted activities)
 - Presumption of denial for specific licenses

Consequences of Violations – U.S.

- Violations of OFAC regulations may result in significant criminal (willful violations) or civil penalties.
- IEEP (\$330,947 or 2xs the amount of the transaction per violation among other penalties).
- Willful violations or aiding and abetting up to US\$1m or imprisoned for 20 years or both.
- E.O. 14024 authorizes sanctions against persons determined:
 - deceptive or structured transactions or circumvention using digital currencies or assets, or the use of physical assets;
 - to operate or to have operated in the financial services or technology sectors of the Russian Federation economy; and
 - persons that have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, blocked persons.
- OFAC is closely monitoring any efforts to circumvent or violate Russia-related sanctions (including using virtual currency) and is committed to using its broad enforcement authorities to act against violations and to promote compliance.

Consequences of Violations – U.K.

- Breaches of financial sanctions are criminal offences, punishable upon conviction by up to 7 years in prison.
- There are both civil and criminal enforcement options to remedy breaches of financial sanctions.
- Law enforcement agencies may consider prosecution for breaches of financial sanctions. The Policing and Crime Act 2017 ('the 2017 Act') creates powers for HM Treasury to impose monetary penalties an alternative to criminal prosecution for breaches of financial sanctions legislation.
 - The Office of Financial Sanctions Implementation that imposes these monetary penalties.

Key Issues:

SDN List and 50% Rule

- SDN's assets are blocked, and U.S. persons are generally prohibited from dealing with them.
- OFAC's 50% Rule applies to entities owned 50% or more in the aggregate by one or more blocked persons.
 - Ex: Blocked Person X owns 25% of Entity A, and Blocked Person Y owns another 25% of Entity A, Entity A, is also blocked because Entity A is owned 50% or more in the aggregate by one or more blocked persons.
- An entity that is controlled (but not owned 50% or more) by one or more blocked persons is not considered automatically blocked pursuant to OFAC's 50% rule (different in the U.K. & E.U.)
- Case of the divested Oligarch (does transferring your assets work?)
 - In the U.S., likely "no"

Key Issues: EU/U.K.

Listed Parties Ownership Approach

- Key difference between U.S. (50% rule) and UK and EU law is that an entity that is owned (50%) or "controlled" by a sanctioned person is effectively also sanctioned.
 - person or made available to the person ("indirect benefit presumption")
 - subsidiaries of, or entities owned or controlled by, a Listed Person will not always be affected by an EU asset freeze, particularly if they can be shown to operate independently in their own commercial interests.
 - No rebuttable presumption in the UK
 - aggregated ownership should be taken into account regarding the threshold of 50% for an entity to be considered as being owned by a listed person in the EU (3/20 new ruling).
 - EU & UK both tend to follow U.S. rule on aggregate ownership

Key Issues:

Terminating Contracts

- **Can I terminate my Russian contract without facing any damages?**
The answer to this question will depend on a number of factors:
 - whether there is a right of termination at will or for breach of contract.
 - frustration - whether the business that is party to the contract is subject to a sanctions law that prevents performance or renders performance radically different.
 - force majeure - any force majeure clause should be carefully scrutinized to assess whether it permits termination (or excuses non-compliance) in these circumstances.
 - what is the governing law?

Key Issues:

Terminating Contracts

■ Force Majeure

- Are sanctions included in the FM clause act of government or war, conflict, hostilities, disruption of supply chain?
- Is performance resulting from sanctions impossible or impractical or unforeseeable?
- Is the inability to perform a consequence of the act FM?
- Pay attention to notice and termination periods for FM
- Is it legal to continue in suspended mode?

Key Issues:

Terminating Contracts

- **Convention on the International Sale of Goods (CISG) & UCC:**
 - Art. 79 CISG – not liable to perform if failure is to an impediment beyond control & would not have taken the impediment into account at the time of the contract signing.
 - UCC Art. 2-615 – delay or non-delivery is not a breach of duty.
- **Illegality and frustration:**
 - Must show continued performance violates law (legal when it began but later became illegal).
 - An English law-governed contract is discharged if its performance becomes illegal under English law (illegality clearly prohibits performance).
 - EU – As with many EU sanctions regimes, the EU's Russian sanctions contain so-called 'no claims' provisions, which protect a party who refuses to perform a contract on the basis that they may breach EU sanctions from claims that they might otherwise face
- **MAE & MAC clauses in M&A context**
 - How are these terms defined?

Key Issues:

Employees in Russia

- **Any payment to or from Russia (even if made to nonrestricted individuals or entities) may violate the sanctions imposed by one country or another.**
 - Bank may be on the sanction list
 - Employees may have accounts at sanctioned banks
 - Consider any impact on non-employee workers, such as direct payment to third party agencies, service companies, payroll providers and independent contractors
- **Russian employment law invalidates compensation payments to employees by a third party who is not the employer of record.**
- **U.S. and other countries have clarified that even non-traditional means of payment, such as via cryptocurrency, would be considered an illegal circumvention of the sanctions.**
- **U.S. parties prohibited from facilitation & foreign subsidiaries (non-Russian may be restricted by EU, U.K. or other sanctions programs).**

Key Issues:

Employees in Russia

- **Termination of employees (notice and mandatory severance)**
 - Must be for a cause (no at-will employment)
 - Redundancy or company liquidation, but protected categories (2 months' notice)
 - Longer notice for CEO, management
 - 3 days' notice if fixed term contract
 - Severance obligations (funding, available funds, payments)
 - 2 months' liquidation
 - other periods depending on duration of employment (based on average salary (all payments) during previous 12 months)

Key Issues:

Moving Goods out of Russia

- The world's largest container lines are dropping Russia to manage sanctions risk but also perhaps manage reputational risk.
 - Sanctions can change while ship is on the water
 - Requirement to check every other party to the transaction thinks so: your banks, insurer, shipper, receiver, charterer, owner, etc.
- Restricting certain foreign ships from Russian ports
- Specific certifications required to shippers and use only lawful shippers on lawful vessels.
- Russia has a ban on over 200 products leaving Russia to 48 countries (“unfriendly countries”).

Key Issues – Winding Down & Divesting

- New Russian law to prevent companies from "unfriendly" jurisdictions (which includes the U.S., U.K. & EU) from exiting Russia.
- Law could apply to Russian companies with foreign shareholders (25% or greater ownership) based in "unfriendly" jurisdictions.
- If the "unfriendly" parent decides to cease operations in Russia, members of the Russian company's board, or certain government officials, may apply to a local commercial court for "external administration" of the Russian company.
 - "External administration," a process under Russia's bankruptcy law, is a reorganization (similar to Chapter 11 in the U.S.), with an external manager immediately displacing current management.
- The court supervises the restructuring, and may **prohibit layoffs, control company assets, or prohibit rejection of contracts.**
- Russia may choose to invalidate any terminations that result from an exit of Russia post imposition of sanctions.

Key Issues – Winding Down & Divesting

- If, within 5 days, the foreign owners withdraw their decision to leave Russia (or agree to continue operations pending a sale to a buyer that will continue running the business), the external administration proceedings may be withdrawn.
- Otherwise, the company's assets will be transferred to a new company, and the new company's shares will be sold at auction.
- The definition of "ceasing operations" is an open question and it is unclear whether temporarily suspending operations or continuing them in a scaled-down manner will trigger application.
 - Currently, the focus seems to be more on companies with "significant" numbers of employees.
- Not clear when the Russian government will make this proposed law effective or clarity on the law.
- It may also be impossible to wind down or dissolve a dormant company.

What's on the Horizon?

- U.S. Congress is considering several bills that would impose additional measures, such as banning U.S. financial institutions and businesses subject to the Bank Secrecy Act from providing any product or service to Russia- or Belarus-based businesses, requiring the delisting of Russian and Belarussian companies from U.S. exchanges and indexes, and prohibiting the underwriting and trading of securities of Russia-based companies.
- The U.K. Parliament is expected to enact legislation to both (i) "phase out" imports of Russian oil by the end of 2022, and (ii) create a register of the ownership of overseas companies which hold property in the United Kingdom.

**Thank you and
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