

# Russian Sanctions/ Export Controls

June 2022

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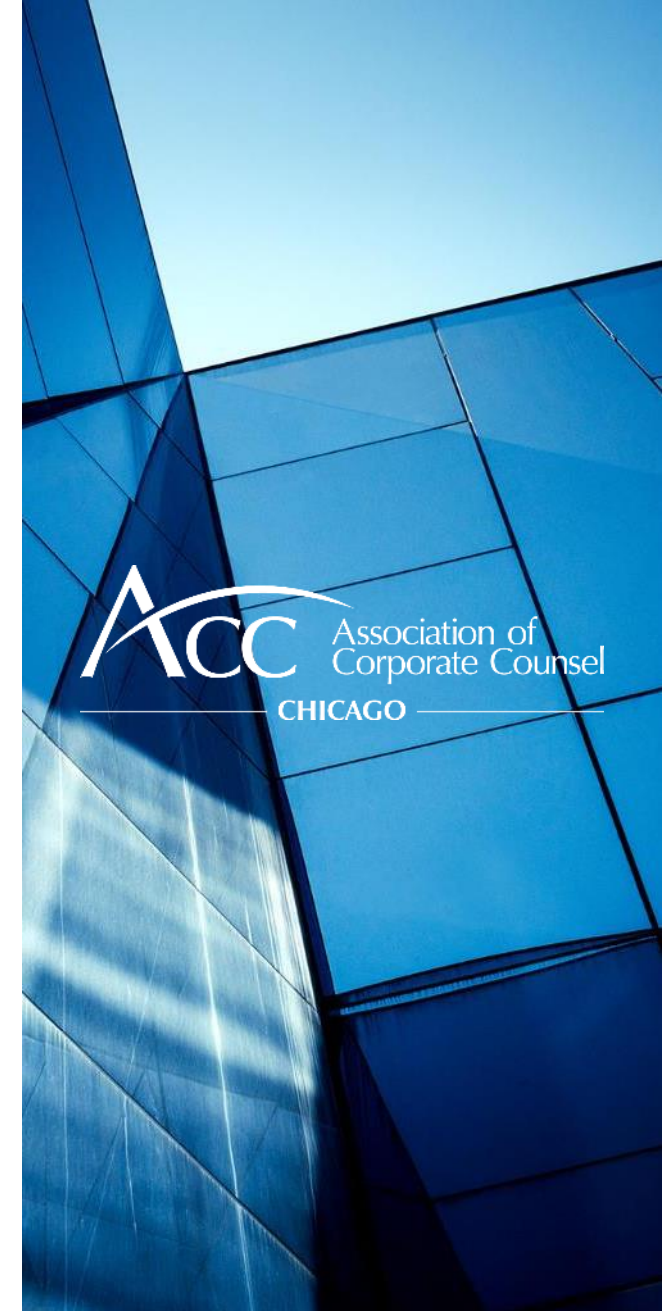


Watch for the survey/feedback link sent to your email after the program.



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# Today's Speakers



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# Roadmap

1. Intro to Sanctions
2. Intro to Exports
3. U.S. Nexus
4. U.S. Penalties
5. Sanctions on Russia
6. General Licenses
7. Sanctions Best Practices
8. Export Controls on Russia
9. Export Controls Best Practices



# Exports/Sanctions 101

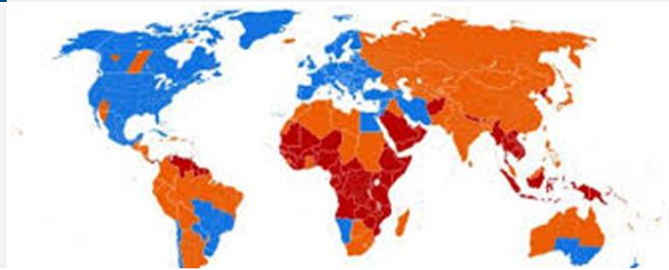


# What Sanctions Target and Prohibit



**Provision of  
goods, technology,  
services, support**

**directly or indirectly**



**to sanctioned territories  
and sanctions targets**

Prohibitions include provision of services or goods to non-sanctioned clients in support of their trade/transaction with sanctioned territories or sanctions targets



# Intro to U.S. Sanctions

**Sanctions are levied against regions/countries, individuals/entities, and even the aircraft and vessels that they own or control**

- Implemented and enforced by the Department of Treasury's Office of Foreign Assets Control
- Intended as an arm of foreign policy
  - Prevent "bad people" from access to U.S. dollars
- Certain regions/countries are under a "full embargo" where all transactions, including imports from those regions/countries, are restricted
  - Cuba, Iran, Syria, North Korea, Crimea, Donetsk, Luhansk
- Other sanctions apply to listed individuals/entities
  - Prohibitions depend on which list they are on, but generally **any transaction with a U.S. nexus is prohibited**
  - May extend to companies owned more than 50% by those listed individuals/entities





# Intro to U.S. Export Controls

**Export controls regulate the export, release, sale, re-export or in-country transfer of goods, software or technology (and, sometimes, services)**

- “Dual-use” export controls (i.e., non-military and non-nuclear) are implemented and enforced by the Department of Commerce’s Bureau of Industry and Security
- Address national security concerns and, increasingly, are used as an arm of foreign policy
- Whether or not something requires an export license depends on:
  - Whether or not the item is “subject” to the Export Administration Regulations (EAR)
  - What the item’s classification is
  - Where the item is going
  - To whom the item is going
  - What is the item’s end use



# U.S. Nexus

Generally, for sanctions purposes, any transaction with a U.S. nexus is prohibited with embargoed countries/regions and with listed individuals/entities and companies of which they own more than 50%

## A U.S. nexus arises due to the involvement of:

- Items subject to the EAR, such as:
  - Goods manufactured or shipped from the U.S.
  - Software or technology developed in the U.S. or released from the U.S.
  - Goods, software or technology manufactured or developed outside the U.S. which:
    - Contains more than a certain level of U.S. content
    - Is based on certain U.S. technology
    - Is manufactured in a plant containing equipment based on certain U.S. technology
  - U.S. persons (includes U.S. companies and, in the case of Iran and Cuba sanctions, foreign subsidiaries of U.S. companies)
  - U.S. services
  - U.S. dollars
  - U.S. banks



# Basic Principles

## Indirect counts!

We cannot support clients' trade with or related to sanctioned territories or sanctions targets

- This is the case even if our client is neither a sanctions target nor located in sanctioned territory

## Facilitation is prohibited!

If we are prohibited from servicing, you cannot refer clients to another broker or help them with the business in any other way

- If you can't help a client with their business, you also can't help the client do it themselves or find someone else who will
- Don't circumvent sanctions prohibitions or restrictions

## Laws reach far & wide!

US laws can apply – and have implications – outside the US

- Jurisdiction over US nationals anywhere
- Watch out for transactions transiting the US financial system; consider US banks, including correspondents, US or US based (re)insurers, co- and sub-brokers in the money flow/transaction
- Potential for penalties on foreign parties for causing US persons to violate US sanctions laws (e.g. by clearing USD/other transactions through US banks)
- If a good/plane/vessel is "US origin," US export control laws will always apply to it regardless of where it goes/flies or who owns or leases it



# Increasing Complexity; Enhanced Obligations; Aggressive Enforcement



**US:** \$327K OR 2x value of transaction  
OR designation as sanctions target!

**UK:** £1M OR 50% value of transaction

**US:** Dept. of Treasury Office of Foreign Assets Control (OFAC), State Dept., Dept. of Commerce Bureau of Industry & Security (BIS), NY Dept. of Financial Services

**UK:** HMT Office of Finance Sanctions Implementation (OFSI)





# U.S. Penalties

## Civil

- EAR and OFAC sanctions: Civil penalties of ~\$327,000 or twice the amount of the value of the underlying transaction (whichever is higher)
- Other Administrative Penalties
- Denial of export privileges
- Listing on the Entity List/SDN or Menu-Based Sanctions List
- Debarment from government contracting

## Criminal

EAR and OFAC sanctions: More than \$1 million per violation for corporations; more than \$1 million and up to 20 years in jail for individuals



# Russian Sanctions 101



# U.S. Russian Sanctions | A Long and Winding Road Since 2014

2014

## Sectoral Sanctions and Crimea Embargo

EO 13662 targeted the following industries:

- Finance
- Oil/gas
- Full embargo on Crimea imports/exports/services

2017

## CAATSA

- Expanded scope of sectoral sanctions
- Codified 2014 EOs into law
- Required Department of State to provide certain reports to facilitate increase in sanctions in the future — Russian oligarchs and parastatal entities
- Allowed for secondary sanctions for significant transactions with respect to certain sanctions

2021

## EOs 14024 and 14039

- **EO 14024:** allowed sanctions on individuals/entities participating in harmful foreign activities of the Government of the Russian Federation
- Directive 1 issued, prohibiting U.S. persons from participating in bonds or funds relating to the Central Bank of Russia
- **EO 14039:** authorized blocking of certain sanctions relating to Russian Energy Export Pipelines



# Russian Sanctions - 2022

2022

## Embargo on Donbas and new SDNs, Directives

- **EO 14065:** Full embargo on transactions involving the so-called Donetsk People's Republic and the Luhansk People's Republic
- Added 3 new directives pursuant to EO 14024:
- **Directive 1A:** prohibiting certain transactions related to sovereign debt of Russia
- **Directive 2:** authorized addition of entities to OFAC'S CAPTA list (Sberbank and its subsidiaries)
- **Directive 3:** prohibiting transactions in certain debt/equity of Russian financial institutions (overlapped with EO 13662 sectoral sanctions, on occasion)
- **Directive 4:** prohibiting certain transactions with the Central Bank of Russia, the Ministry of Finance and the National Wealth Fund of the Russian Federation
- Added SDNs to list, including their subsidiaries
- Prohibited imports of Russian products, including oil/gas, diamonds, fish, etc.
- Prohibited new investment and certain services (accounting, management consulting, trust and corporate formation) to Russia







# General Licenses

- General License 6A: authorizes certain transactions “ordinarily incident and necessary” to the 1) “exportation and reexportation of agricultural commodities, medicine, and medical devices to, from or transiting the Russian Federation;” 2) “the prevention, diagnosis, or treatment of COVID-19...;” and 3) “ongoing clinical trials and other medical research activities that were in effect prior to March 24, 2022”
- General License 13A: authorizes U.S. persons to “pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications” which are “ordinarily incidental and necessary to the person’s day-to-day operations in the Russian Federation” with the Central Bank of Russian Federation, the National Wealth Fund of the Russian Federation or the Ministry of Finance of the Russian Federation through September 30, 2022
- General License 31: authorizes certain transactions relating to a patent, trademark, copyright or other form of intellectual property in the Russian Federation





# Russian Sanctions

Unprecedented speed and  
impact of sanctions and  
restrictive measures



# Global Landscape

Landscape	Most Recent Sanctions
<ul style="list-style-type: none"> <li>▪ <b>Coordinated policy</b> with some significant variances: UK, EU, US, Canada, Switzerland, Australia, New Zealand, Japan, Singapore.               <ul style="list-style-type: none"> <li>▪ Level playing field vis à vis brokers, and commonality of approach with clients and markets based in these jurisdictions</li> </ul> </li> <li>▪ <b>Inaction/no sanctions:</b> China, India, Turkey, UAE, Lat Am               <ul style="list-style-type: none"> <li>▪ Unlevel playing field with brokers, and potential for conflict in approaches of clients and markets based in these jurisdictions</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ <b>EU prohibitions on Russian oil and petroleum product imports, purchases and transfers</b> into Member States, directly or indirectly, of crude oil and certain petroleum products which originate in Russia, or are exported from Russia, including on (re)insurance for the same</li> <li>▪ Exceptions apply to:               <ul style="list-style-type: none"> <li>▪ Seaborne crude oil and petroleum products that originate in a third country but are loaded in/depart from/transit through Russia</li> <li>▪ Crude oil;</li> </ul> </li> <li>▪ <b>EU prohibitions on onward transfer, transport or re-sale of crude oil from Russia delivered into a Member State by pipeline to other Member States or to third countries</b>, and the onward transfer, transport or re-sale of products obtained from such crude oil</li> <li>▪ Transitional periods of 6 and 8 months apply for pre-existing contracts.</li> <li>▪ <b>Prohibitions on (re)insurance</b> of maritime transport of Russian crude oil/petroleum products to third countries.               <ul style="list-style-type: none"> <li>▪ The UK and EU are reported to have agreed to a coordinated ban on (re)insuring vessels carrying Russian oil</li> </ul> </li> </ul>



# Best Practices

- Due diligence on entities with whom you are transacting business
    - Beneficial ownership is key
    - Google searches
    - Use of third party software
  - Asking the customer/vendor
  - End user forms for due diligence/compliance with laws
  - Other contractual terms and conditions so that purchasers understand potential of extraterritorial reach
  - Consider what information is available to screening in data bases versus what information work force may have (e.g. in emails, discussions, etc.)
- Screen all known parties to the transaction
    - This includes all parties you know or have reason to know are involved in a transaction and their owners and banks
  - Consider against which watch lists you are screening!
  - Consider timing of screening: screen at inception of relationship/prior to transaction and consider frequency of screening refresh
  - Best practice – screening software integrated with your ERP system that includes a beneficial ownership component
    - Screening software should re-screen at all updates to lists
    - Must have a way to stop shipments/payments if screening results identify a match





# U.S. Export Controls

## Increasing License Requirements

### Feb 24, 2022

- All items in Categories 3-9 require a license when destined for Russia
  - Certain license exceptions still available
- All items subject to EAR require a license when military end user/end use involved (i.e., even EAR99 items, except for EAR99 food/medicine)
- Expanded FDPR for items destined for Russia but manufactured outside U.S.
- For civil end-users: All items with an ECCN manufactured outside the U.S. based on Category 3-9 technology or in plant containing equipment based on Category 3-9 technology
- For military end users/uses: All items manufactured outside U.S. based on any CCL technology or in plant containing equipment based on any CCL technology
  - Moved entities from MEU list to Entity List

### February/March

- Expanded Russian restrictions to Belarus
- Expanded oil/gas industry export controls to additional items identified by HTS
- Prohibited export of luxury items to Russia/Belarus or to Russian/Belarusian SDNs, identified by Schedule B
- Additions to Entity List

### April/May/June

- Expanded license requirement to all items described on the CCL
- FDPR expanded to all items with an ECCN manufactured outside the U.S. based on any CCL technology or in a plant containing equipment based on any CCL technology
- Items manufactured in Canada, EU, UK, Japan, Australia, South Korea, New Zealand, Iceland, Liechtenstein, Norway, Switzerland exempt
- Additions to Entity List
- Expanded list of EAR99 items that cannot be sold to Russia/Belarus or to military end users
- Issued denial orders regarding several Russian airplanes and airlines, prohibiting any services to those airlines, regardless of U.S. persons or U.S. items



# Best Practices

1. Does a transaction involve a Russian airplane/airline subject to a denial order? If yes, apply for a license.
2. Understand whether the transaction is subject to the EAR and, if so,
3. Screen all parties to the transaction, if the transaction is not prohibited, then
4. Review for any red flags that military end users or end uses are involved, then
5. Properly classify all items involved in the transaction
  - a) Need to classify according to the Commerce Control List (CCL); and
  - b) The Harmonized Tariff Schedule or Schedule B
6. If the item has an ECCN, then a license is required.
7. Review the Supplements to 15 CFR Part 746 to determine whether a license is required.





# Questions?

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