

The Ukraine Crisis: What Businesses Need to Know

As a result of the Russian invasion of Ukraine last week, the US, EU, UK and other countries imposed severe sanctions on Russia and Belarus. The situation is still evolving. This alert summarizes the main sanctions imposed by the US since February 21.¹ In light of these extraordinary events, businesses that have operations involving Russia and Ukraine should:

- ensure compliance with the new sanctions and export controls, taking advantage of the authorized “wind down” periods to thoroughly analyze and answer any complicated questions;
- ensure that they have in place sufficiently robust due diligence processes to screen business partners in the region from both a legal and reputational perspective;
- depending on the scope of their potential vulnerability, prepare for possible Russian countermeasures, including sanctions, asset seizures, expulsions of local personnel, regulatory harassment and cyber attacks; and
- think through various scenarios about possible escalation in the region, analyze how the various scenarios might affect their business in Eastern Europe more generally and develop appropriate contingency plans.

New sanctions and export controls

The measures that were imposed by the US during the week of February 21 go far beyond those that have been imposed by the US in response to Russia’s annexation of Crimea in 2014 and other subsequent events. Among other things, they involve (a) significant sanctions on several large state-owned banks, (b) restrictions on international transactions by Russia’s Central Bank, (c) denial of access to the SWIFT system for some Russian banks and (d) personal sanctions on Russia’s President and Foreign Minister.

February 21 – DNR and LNR Blocking Sanctions

- The White House issued an Executive Order imposing comprehensive sanctions on the Donetsk People’s Republic (DNR) and the Luhansk People’s Republic (LNR) (self-proclaimed republics in eastern Ukraine recognized as independent by Russia). The Executive Order prohibits:
 - new investment in the DNR or LNR by a United States person, wherever located;
 - the importation into the United States, directly or indirectly, of any goods, services, or technology from the DNR or LNR;
 - the exportation, reexportation, sale or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of any goods, services, or technology to the DNR or LNR; and

¹ With the exception of the February 26 joint communique on SWIFT and the Russian Central Bank, this alert does not cover sanctions imposed by the EU, countries other than the US, or non-governmental organizations.

- any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be covered by the EO if performed by a United States person or within the United States.²
- At the same time, the Department of Treasury’s Office of Foreign Assets Control (OFAC) issued six General Licenses (“GL”s) authorizing certain kinds of transactions in the DNR and LNR:
 - GL 17 (authorizing the wind down of transactions involving the DNR and LNR by March 23, 2022);
 - GL 18 (authorizing the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates related to the COVID-19 pandemic);
 - GL 19 (authorizing the continuation of transactions related to telecommunications and mail);
 - GL 20 (authorizing the official business of certain international organizations and entities);
 - GL 21 (authorizing noncommercial, personal remittances and the operation of accounts); and
 - GL 22 (authorizing the exportation of certain services and software incident to internet-based communications).³

February 22 – Russian Sovereign Debt and Additional SDN Designations

- OFAC issued a revised Directive 1A (which was originally issued in April 2021 and which restricts primary market transactions in Russian sovereign debt) to now cover secondary market transactions in Russian sovereign debt. As a result, Directive 1A now prohibits US financial institutions⁴ from:
 - participating in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021 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 (collectively the “Directive 1A Entities”);
 - lending ruble or non-ruble denominated funds to the Directive 1A Entities; and

² <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/21/fact-sheet-executive-order-to-impose-costs-for-president-putins-action-to-recognize-so-called-donetsk-and-luhansk-peoples-republics/>

³ https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220221_33

⁴ Directive 1A defines “U.S. financial institution” to mean 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 also includes depository institutions, banks, savings banks, money service 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. It also 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.

- participating in the secondary market for non-ruble denominated bonds issued after March 1, 2022 by Directive 1A Entities.⁵
- OFAC also added two Russian state-owned banks, the Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (“VEB”) and Promsvyazbank Public Joint Stock Company (“PSB”), and certain individuals identified as “powerful Russians in Putin’s inner circle believed to be participating in the Russian regime’s kleptocracy and their family members”⁶ to OFAC’s list of Specially Designated Nationals (“SDNs”). As a result, US persons⁷ are now prohibited from dealing directly or indirectly with the designated individuals/entities, their property and property interests, and any entities that are owned 50% or more by them.
- At the same time, OFAC also issued two GLs related to these designations:
 - GL 2 (authorizing transactions involving VEB or any entity owned 50% or more by VEB that are ordinarily incident and necessary to the servicing of Russian bonds issued before March 1, 2022 by Directive 1A Entities)⁸; and
 - GL 3 (providing a wind-down period until March 24, 2022 for all otherwise prohibited transactions that are ordinarily incident and necessary to the wind down of other transactions involving VEB entities).⁹

February 23 – Nord Stream 2 and GL 4

- OFAC designated Nord Stream 2 AG (the company responsible for building the Nord Stream 2 gas pipeline from Russia to Germany) and its Chief Executive Officer, Matthais Warning, as SDNs.¹⁰ As a result, the assets of Nord Stream 2 AG and Warning are blocked and US persons are generally prohibited from dealing with them.
- At the same time, OFAC also issued GL 4, which authorizes the wind down of transactions involving Nord Stream 2 by March 2, 2022.¹¹

⁵ https://home.treasury.gov/system/files/126/russia_directive_1a.pdf

⁶ Those designated on February 22 were (i) Denis Bortnikov, Deputy President of VTB and son of Alexander Bortnikov, the Director of the Russian Federal Security Service, (ii) Peter Fradkov, Chairman and CEO of Promsvyazbank and son of Mikhail Fradkov, former Prime Minister of Russia and (iii) Vladimir Kiriienko, the CEO of VK Group, the parent company of Russia’s top social media platform and son of Sergei Kiriienko, the First Deputy Chief of Staff of the Presidential Administration.

⁷ For purposes of these regulations, the term “US person” is defined as US citizens and permanent resident aliens, even if located outside the US; entities incorporated under US law and their non-US subsidiaries; and other individuals and entities physically located in the US.

⁸ https://home.treasury.gov/system/files/126/russia_gl2.pdf

⁹ https://home.treasury.gov/system/files/126/russia_gl3.pdf

¹⁰ https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220223_33

¹¹ https://home.treasury.gov/system/files/126/peesa_gl4.pdf

Financial Institution Designations

- OFAC designated four Russian financial institutions -- VTB Bank Public Joint Stock Company (“VTB Bank”) (and 20 of its subsidiaries), Public Joint Stock Company Bank Financial Corporation Otkritie (“Otkritie”) (and 12 of its subsidiaries), Open Joint Stock Company Sovcombank (“Sovcombank”) (and 22 of its subsidiaries) and Joint Stock Commercial Bank Novikombank (“Novikombank”) as SDNs.¹²
- As a result, these financial institutions are now subject to full blocking sanctions, meaning that US persons are now prohibited from dealing directly or indirectly with the designated individuals/entities, their property and property interests, and any entities that are owned 50% or more by them.
- At the same time, OFAC also issued two GLs related to these designations:
 - GL 11 which authorizes transactions ordinarily incident and necessary to wind down transactions involving (i) Otkritie, (ii) Sovcombank, and (iii) VTB Bank, as well as any entities owned 50% or more by them, by March 26, 2022;¹³ and
 - GL 12 which authorizes US persons to reject all transactions prohibited by EO 14024 involving (i) Otkritie, (ii) Sovcombank, (iii) VTB Bank, as well as any entities owned 50% or more by them that are not authorized, by March 26, 2022.¹⁴

Directive 2: D2 CAPTA

- OFAC also issued Directive 2 (“D2 CAPTA”). D2 CAPTA takes effect on March 26, 2022 and prohibits access to correspondent and payable-through accounts (“CAPTA”s) for Public Joint Stock Company Sberbank of Russia (“Sberbank”) and certain associated entities and other entities.
 - As a result, US financial institutions are prohibited from (i) opening or maintaining a CAPTA for or on behalf of Sberbank or any entity determined to be subject to D2 CAPTA or their property or interests in property and (ii) processing of transactions involving Sberbank and D2 CAPTA entities, or their property or interests in property.¹⁵

Directive 3: D3-Debt/Equity

- OFAC also issued Directive 3 (“D3-Debt/Equity”) which, effective March 26, 2022, prohibits US persons from engaging in all transactions in, provisions of financing for, and

¹² <https://home.treasury.gov/news/press-releases/jy0608>

¹³ https://home.treasury.gov/system/files/126/russia_gl11.pdf

¹⁴ https://home.treasury.gov/system/files/126/russia_gl12.pdf

¹⁵ <https://home.treasury.gov/news/press-releases/jy0608>

other dealings in new debt of longer than 14 days maturity or new equity of 13 specified Russian financial institutions and entities owned 50% or more by them.¹⁶

- OFAC also designated as SDNs three individuals for being “influential Russians in Putin’s inner circle and in elite positions of power within the Russian state... [who] participate in, or benefit from, the Russian regime’s kleptocracy.”¹⁷
- At the same time. OFAC also issued several General Licenses related to these designations:
 - GL 5 (authorizing the official business of certain international organizations)¹⁸;
 - GL 6 (authorizing certain 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)¹⁹;
 - GL 7 (authorizing certain transactions related to overflight payments, emergency landings, and air ambulance services)²⁰;
 - GL 8 (authorizing certain transactions related to energy through June 24, 2022)²¹;
 - GL 9 (authorizing certain transactions ordinarily incident and necessary to dealings in debt or equity issued before February 24, 2022)²²; and
 - GL 10 (authorizing the wind down of certain derivative contracts by May 25, 2022).²³

New Belarus Designations

- Based on Belarus’ support for the Russian military action, OFAC also designated as SDNs:
 - two Belarusian state-owned banks – Bank Dabrabyt and Belinvestbank (as well as two affiliated companies); and

¹⁶ <https://home.treasury.gov/news/press-releases/jy0608> The 13 specified Russian financial institutions are: (i) Credit Bank of Moscow Public Joint Stock Company; (ii) Gazprombank Joint Stock Company; (iii) Joint Stock Company Alfa-Bank; (iv) Joint Stock Company Russian Agricultural Bank; (v) Joint Stock Company Sovcomflot; (vi) Open Joint Stock Company Russian Railways; (vii) Open Joint Stock Company Alrosa; (viii) Public Joint Stock Company Gazprom; (ix) Public Joint Stock Company Gazprom Neft; (x) Public Joint Stock Company Rostelecom; (xi) Public Joint Stock Company RusHydro; (xii) Public Joint Stock Company Sberbank of Russia and (xiii) Public Joint Stock Company Transneft.

¹⁷ <https://home.treasury.gov/news/press-releases/jy0608> Those designated were (i) Sergei Ivanov, CEO of state-owned diamond mining company Alrosa and the son of the former Defense Minister, (ii) Andrey Patrushev, son of the Secretary of the Russian Federation Security Council and (iii) Ivan Sechin, an employee of one of Russia’s largest oil companies, Rosneft, and the son of Igor Sechin, the CEO of Rosneft.

¹⁸ https://home.treasury.gov/system/files/126/russia_gl5.pdf

¹⁹ https://home.treasury.gov/system/files/126/russia_gl6.pdf

²⁰ https://home.treasury.gov/system/files/126/russia_gl7.pdf

²¹ https://home.treasury.gov/system/files/126/russia_gl8.pdf

²² https://home.treasury.gov/system/files/126/russia_gl9.pdf

²³ https://home.treasury.gov/system/files/126/russia_gl10.pdf

- 11 Belarusian entities and five Belarusian individuals affiliated with the Belarus defense and security apparatus and one Belarusian individual identified as a member of President Lukashenko’s inner circle.²⁴
- At the same time, OFAC also issued Belarus General Licenses 6 and 7 which respectively authorize certain transactions related to the official business of the US government and international organizations and entities.²⁵

New Export Controls

- The Department of Commerce’s Bureau of Industry and Security (“BIS”) announced new export control measures designed to deny Russia access to sensitive items that it relies on for its defense, aerospace and maritime industries. These items include:
 - Semiconductors;
 - Computers;
 - Telecommunications;
 - information security equipment;
 - lasers; and
 - sensors.²⁶
- BIS also added 49 Russian military end users to its Entity List, which means that they are subject to specific license requirements for the export, reexport and/or transfer (in-country) of specified items.²⁷

February 25 – Putin, Lavrov, Shoigu and Gerasimov

- OFAC designated Russian President Putin, Foreign Minister Lavrov, Defense Minister Shoigu and Chief of the General Staff Valery Gerasimov as SDNs for their role in the Ukraine invasion.²⁸
- As a result, all property and interests in property held by Putin, Lavrov, Shoigu and Gerasimov that are in the United States or in the possession or control of US persons are blocked and must be reported to OFAC.
- In addition, any entities that are owned, directly or indirectly, 50 percent or more by one or more blocked persons, are also blocked. All transactions by US persons or within (or transiting) the United States that involve any property or interests in any property of designated or otherwise blocked persons are prohibited unless authorized by a general or specific license issued by OFAC, or otherwise exempt.

²⁴ <https://home.treasury.gov/news/press-releases/jy0607>

²⁵ <https://home.treasury.gov/news/press-releases/jy0607>

²⁶ <https://www.commerce.gov/news/press-releases/2022/02/commerce-implements-sweeping-restrictions-exports-russia-response>

²⁷ <https://www.commerce.gov/news/press-releases/2022/02/commerce-implements-sweeping-restrictions-exports-russia-response>

²⁸ <https://home.treasury.gov/news/press-releases/jy0610>

- These prohibitions include the making of any contribution or provision of funds, goods, or services by, to, or for the benefit of any blocked person and the receipt of any contribution or provision of funds, goods, or services from any such person.

February 26 – SWIFT, Central Bank Restrictions and Russian Direct Investment Fund

On February 26, the US joined a statement of the European Commission, France, Germany, Italy, the United Kingdom and Canada condemning Russia's actions in Ukraine and committing to "ensuring that selected Russian banks are removed from the SWIFT messaging system."²⁹ (SWIFT, which stands for "Society for Worldwide Interbank Financial Telecommunication," is a messaging service that connects financial institutions around the world and allows them to inform one another of impending transactions.) According to the statement, "[t]his will ensure that these banks are disconnected from the international financial system and harm their ability to operate globally."³⁰ The statement did not specify which banks would be removed from SWIFT, but other statements suggested that the restrictions would apply to the same Russian banks that have already been sanctioned, including VTB Bank, VEB, Promsvyazbank and Sberbank. The statement also said that "we commit to imposing restrictive measures that will prevent the Russian Central Bank from deploying its international reserves in ways that undermine the impact of our sanctions" but did not specify what these restrictive measures would be.³¹ At the same time, the White House announced "full blocking sanctions" on the Russian Direct Investment Fund, a state-owned financial entity designed to attract capital into the Russian economy.³²

February 28

OFAC prohibited U.S. persons from engaging in transactions with the Central Bank of Russia, the National Wealth Fund of Russia and the Russian Ministry of Finance, thus immobilizing any assets of the Central Bank held in the United States or by U.S. persons, wherever located. In addition, OFAC formally sanctioned the Russian Direct Investment Fund and its Chief Executive Officer, Kirill Dmitriev.³³

What's Next?

As noted above, the situation is still very dynamic and could develop in a variety of ways, including a rapid Russian takeover of Ukraine, a "forever war" with ongoing guerilla resistance, a negotiated cease fire and "frozen conflict," a spillover of hostilities into neighboring NATO countries such as Poland and Lithuania, a run on Russian banks resulting in economic and political instability and possibly even regime change within Russia, or some combination of all

²⁹ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423

³⁰ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423

³¹ https://ec.europa.eu/commission/presscorner/detail/en/statement_22_1423

³² <https://www.whitehouse.gov/briefing-room/press-briefings/2022/02/27/background-press-call-by-a-senior-administration-official-on-imposing-additional-severe-costs-on-russia/>

³³ <https://home.treasury.gov/news/press-releases/jy0612>

of the above. Each scenario will have very different implications for businesses operating in Russia, Ukraine and Eastern Europe.

Your Stroock legal team will closely monitor all the developments and will be available to advise on what they mean for your operations. In addition to providing regular written updates, we will also be conducting a regular webcast to discuss events as they unfold. Please watch for the webcast invitation.