

## What Companies Need to Know About the U.S. Sanctions Against Russia

Following Russia's invasion of Ukraine, the United States has responded with a flurry of sweeping economic sanctions that target some of Russia's largest and most important financial institutions and state-owned enterprises, as well as a number of prominent Russian elites, including President Vladimir Putin himself. Given the scope and complexity of these new sanctions, combined with the potentially severe consequences for failure to comply with them, it is critical that companies both in the U.S. and abroad take steps to understand how these rules apply to their business and to assess any possible exposure.

### I. Overview of the Sanctions

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") has imposed a broad array of sanctions against Russian parties, with varying degrees of restrictions. These sanctions roughly fall into three categories: (1) correspondent and payable-through account ("CAPTA") sanctions against Russia's largest bank; (2) limited restrictions prohibiting transactions involving new debt and equity (but otherwise permitting all other activities) for 13 Russian state-owned entities; and (3) full blocking sanctions for specified Russian banks and elites, which prohibit virtually all dealings with these individuals and entities, and require the freezing of their funds or property that come within U.S. jurisdiction. These sanctions are explained in more detail below:

#### CAPTA Sanctions Against Sberbank:

In an effort to cut off Russia's largest financial institution, Sberbank, from the U.S. financial system, OFAC issued Directive 2 under Executive Order 14024, which imposes CAPTA sanctions against the bank. Starting March 26, 2022, U.S. financial institutions will be prohibited from opening or maintaining correspondent or payable-through accounts for or on behalf of, or processing transactions involving, Sberbank or any of its majority-owned subsidiaries. As a practical matter, this means that Russia's largest bank will be excluded from the U.S. financial system and U.S. dollar-denominated trade.

#### New Debt and Equity Sanctions Against State-Owned Entities:

Newly issued Directive 3 under Executive Order 14024 imposes new debt and equity restrictions on 13 Russian state-owned enterprises and entities: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways. These more limited restrictions prohibit transactions by U.S. persons or within the United States involving new debt of longer than 14 days maturity and new equity issued by these entities. Beyond these narrow prohibitions, however, all other activities involving these companies remain permissible.

#### Blocking Sanctions Against VTB and Other Russian Banks:

Pursuant to Executive Order 14024, OFAC has added Russia's second biggest bank, VTB Bank ("VTB"), and a number of other banks, as well as numerous subsidiaries of each, to the Specially Designated Nationals and Blocked Persons ("SDN") List. As a result of this designation, U.S. persons are prohibited from engaging in essentially all transactions involving these banks, and all of the banks' property and interests in property that

come within U.S. jurisdiction must be frozen, except as authorized by OFAC. Further, pursuant to OFAC's 50 Percent Rule, any other entity owned 50 percent or more by these banks is automatically subject to the same restrictions, even if they do not appear on the SDN List themselves.

#### Blocking Sanctions Against Russian Elites:

OFAC has also named several Russian elites and their family members, to the SDN List. This group includes high level government officials—most notably Russian President Vladimir Putin and Foreign Minister Sergei Lavrov—as well senior officials of designated banks and prominent individuals with close ties to the Kremlin. As with the designated banks, this action prohibits U.S. persons from dealing with these individuals, blocks their assets and property that come within U.S. jurisdiction, and imposes similar restrictions on any entity owned 50 percent or more by these individuals.

#### General Licenses:

In an effort to minimize unintended consequences of these sanctions on third parties, OFAC concurrently issued 8 general licenses related to the Russian sanctions:

- General License 5 “Official Business of Certain International Organizations and Entities” authorizes transactions for the conduct of the official business of certain international organizations.
- General License 6 “Transactions Related to the Exportation or Reexportation of Agricultural Commodities, Medicine, Medical Devices, Replacement Parts and Components, or Software Updates, or the Coronavirus Disease 2019 (COVID-19) Pandemic” authorizes transactions ordinarily incident to the export or reexport of covered agricultural commodities, medicine, and medical devices (including software and replacement parts), as well as transactions relating to the prevention, diagnosis, or treatment of COVID-19.
- General License 7 “Authorizing Overflight Payments, Emergency Landings, and Air Ambulance Services” authorizes transactions incident to services rendered in connection with overflights of Russia or emergency landings in Russia.
- General License 8 “Authorizing Transactions Related to Energy” authorizes, until June 24, 2022, transactions related to energy involving certain named Russian entities and their subsidiaries. The license defines transactions “related to energy” as “the 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.”
- General License 9 “Authorizing Transactions Related to Dealings in Certain Debt or Equity” authorizes, until May 25, 2022, dealings in debt or equity issued prior to February 24, 2022, of certain named Russian entities and their subsidiaries, provided that any divestment or transfer of debt or equity under this license must be made to a non-U.S. person.

- General License 10 “Authorizing Certain Transactions Related to Derivative Contracts” authorizes, until May 25, 2022, the winding down of derivative contracts entered into with certain named Russian entities and their subsidiaries prior to February 24, 2022.
- General License 11 “Authorizing the Wind Down of Transactions Involving Certain Blocked Persons” authorizes, until March 26, 2022, transactions ordinarily incident and necessary to the wind down of transactions involving certain named Russian entities and their subsidiaries.
- General License 12 “Authorizing U.S. Persons to Reject Certain Transactions,” authorizes, until March 26, 2022, U.S. persons to reject all transactions prohibited by Executive Order 14024 involving certain blocked persons and their subsidiaries.

## II. Who Must Comply with the Sanctions?

In a word, everyone. On their face, the newly enacted sanctions apply most directly to U.S. persons, defined as any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States. The blocking sanctions prohibit U.S. persons from virtually all dealings with SDNs, and require U.S. persons to freeze any of the SDNs’ property or interests in property that come within U.S. jurisdiction. And the newly issued directives impose specified restrictions (e.g. CAPTA and debt/equity sanctions) on U.S. persons.

While the sanctions do not expressly apply to non-U.S. persons, OFAC has indicated in a new FAQ 980 that non-U.S. persons face secondary sanctions risk—meaning that the non-U.S. persons could themselves be designated for blocking sanctions—if they materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of persons designated as SDNs under Executive Order 14024.

## III. What are the Consequences for Failure to Comply?

Pursuant to the International Emergency Economic Powers Act, 50 U.S.C. § 1701 *et seq.* (“IEEPA”), violations of the OFAC sanctions against Russia are subject to both criminal and civil penalties. Where a person “willfully” violates the rules, the U.S. Department of Justice can pursue criminal penalties of up to \$1 million per violation and, in the case of individuals, up to 20 years imprisonment.

OFAC can also impose civil monetary penalties for sanctions violations, and such civil violations are “strict liability” offenses. This means that individuals and companies can potentially be liable and subject to significant penalties, even if they were unaware that their activities ran afoul of the sanctions. It therefore critical that companies and their executives take proactive steps, including by seeking legal advice as necessary, to understand and comply with the rules.

## IV. What Should Companies Do Next?

The crisis in Ukraine and the United States’ response are extremely fluid. Companies should continue to monitor developments, as additional sanctions and restrictions are likely to be imposed. Companies, both in the United States and abroad, would be well advised to conduct a thorough review of their business and

counterparties, to understand any aspects of their operations that might have Russian touchpoints and to ensure that they are taking necessary steps to comply with the new rules.

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If you have any questions about the issues addressed in this memorandum, please do not hesitate to reach out to:

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