

# US, UK and EU Impose Significant Sanctions and Export Controls in Response to Russia's Invasion of Ukraine

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The United States, United Kingdom and European Union, among other allies, have moved swiftly in response to the Russian Federation's invasion of Ukraine. Merely hours after Russia's announcement on February 21, 2022, that it would recognize as "independent" states the separatist regions of Ukraine referred to as the Donetsk People's Republic (DNR) and the Luhansk People's Republic (LNR), the United States imposed comprehensive sanctions on the breakaway regions. The U.K. imposed additional sanctions targeting Russia shortly thereafter, and the EU followed with its own sanctions package. The U.S. issued additional sanctions on February 22 and 23, 2022, targeting individuals close to President Vladimir Putin as well as the Russian financial services and energy sectors. On February 24, 2022, the U.S., U.K., and EU announced further sanctions, as well as new export controls, in response to Russia's full-scale invasion of Ukraine and use of military force.

To the extent Russia continues on its current path, the U.S., U.K. and EU governments have stated that they will continue to work in close coordination to support Ukraine's sovereignty, defend the territorial integrity of NATO allies in the region and increase economic pressure on the Russian government, its functionaries and key sectors of the Russian economy through aggressive sanctions, export controls and other economic measures. Government officials in each of the U.S., U.K. and EU have indicated that the sanctions and export controls implemented or announced to date, as outlined in this client alert, represent the early stages of the coordinated response. To that end, we anticipate additional announcements in the coming days and weeks. Further significant sanctions and export controls may be imposed rapidly, and, consequently, the legal landscape remains very fluid.

## I. US Sanctions

### Overview of US Sanctions

On February 21, 2022, President Joe Biden issued an executive order (E.O.) imposing comprehensive sanctions on the DNR and LNR, prohibiting almost all commercial activity by involving the two regions (the February E.O.). In the following days, the president announced further sanctions in response to Russia's decision to recognize the DNR and LNR and the subsequent invasion by Russian armed forces into Ukraine's sovereign territory. Pursuant to E.O. 14024,<sup>1</sup> which the president issued on April 15, 2021, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) designated as Specially Designated Nationals (SDNs) several major Russian banks, including Vnesheconombank (VEB), Promsvyazbank PJSC (Promsvyazbank) and VTB Bank PJSC (VTB), certain of their subsidiaries and numerous individuals with close ties to President Putin and his inner circle. OFAC issued three new directives (Directives 1A, 2 and 3) pursuant to E.O. 14024, imposing increased restrictions on dealings in Russia's sovereign debt, restricting correspondent and payable-through accounts of PJSC Sberbank of Russia (Sberbank), and restricting access to U.S. capital markets by 13 entities linked to the Russian government and financial industry.

<sup>1</sup> Among other things, E.O. 14024 authorizes sanctions against persons determined to be engaged in "actions or policies that undermine democratic processes or institutions in the United States or abroad; ... [and] activities that undermine the peace, security, political stability, or territorial integrity of the United States, its allies, or its partners . . ." E.O. 14024 also authorizes sanctions against persons determined to be "owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, the Government of the Russian Federation" and, based on a determination made by the secretary of the treasury on April 15, 2021, pursuant to Section 1(a) of E.O. 14024, persons engaged in the "financial services sector of the Russian Federation economy."

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On February 25, 2022, OFAC imposed sanctions on President Putin, Russian Foreign Minister Sergey Lavrov and two members of Russia's Security Council. In addition, OFAC imposed sanctions on Nord Stream 2 AG and its managing director following German Chancellor Olaf Scholz's announcement that Germany would halt certification of the pipeline. Finally, OFAC designated as SDNs 24 Belarusian individuals and entities in light of Belarus' support of the Russian invasion.

Together with the directionally similar sanctions imposed by the EU and the U.K., discussed below, these actions represent a coordinated effort to increase pressure on the Russian government and tighten existing restrictions on the Russian economy. In announcing these actions, the Biden administration was clear that the United States stands prepared to impose further, and potentially more severe, sanctions in the coming days and weeks.

## Blocking Sanctions Targeting Russian Financial Institutions and Russian Individuals

On February 22, 2022, OFAC announced the designations of VEB and Promsvyazbank as SDNs. In addition to designating the institutions themselves, OFAC designated 42 of VEB's and Promsvyazbank's subsidiaries and five vessels owned by one of Promsvyazbank's designated subsidiaries, PSB Lizing OOO. On February 24, 2022, in response to Russia's further invasion of Ukraine, OFAC also designated VTB, Russia's second-largest financial institution according to the Treasury Department's press release, and 20 of VTB's subsidiaries. OFAC also designated PJSC Bank Financial Corporation Otkritie (Otkritie) and 12 of its subsidiaries; OJSC Sovcombank (Sovcombank) and 22 of its subsidiaries; and JSC Bank Novikombank (Novikombank), which is wholly owned by Rostec.

Additionally, OFAC designated 20 individuals with close ties to President Putin or the Russian financial sector, 10 of whom had been previously designated pursuant to other Russia/Ukraine-related authorities, and two Moscow-based real estate companies owned by one of the designated individuals. Any property, including entities, directly or indirectly owned 50% or more by one or more of these individuals or entities is also sanctioned by operation of law.

As a result of these designations, any property or interest in property belonging to these individuals and entities that is in the United States or comes within the possession or control of a U.S. Person<sup>2</sup> must be blocked (*i.e.*, frozen), and U.S. Persons

<sup>2</sup> "U.S. Person" means any U.S. citizen, lawful permanent resident or 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.

are generally prohibited from engaging in any transactions or dealings involving the SDNs.

## CAPTA Sanctions Against Sberbank

On February 24, 2022, OFAC imposed correspondent and payable-through account (CAPTA) sanctions on Sberbank. The CAPTA sanctions require that, by 12:01 a.m. Eastern Daylight Time on March 26, 2022, all U.S. financial institutions<sup>3</sup> close any correspondent or payable-through accounts they maintain for Sberbank and reject any future transaction involving Sberbank or its foreign financial institution subsidiaries. Sberbank also remains subject to the restrictions on transactions and dealings in certain of its debt and equity set forth in Directive 1 under E.O. 13662 and is now subject to additional restrictions pursuant to the issuance of Directive 3 under E.O. 14024, discussed below.

OFAC implemented the CAPTA sanctions on Sberbank through the issuance of Directive 2 under E.O. 14024, which identifies Sberbank and 24 of its foreign financial institution subsidiaries in a separate annex. These institutions have also been added to OFAC's CAPTA List, which includes all financial institutions for which OFAC has restricted the opening of correspondent or payable-through accounts in the United States. All foreign financial institutions owned 50% or more by Sberbank are subject to the CAPTA sanctions, even if not included in the CAPTA List.

## Imposition of New Russian Debt and Equity Sanctions

On February 24, 2022, President Biden announced new restrictions intended to limit the access to U.S. credit by certain key sectors of Russia's economy. OFAC implemented these restrictions through the issuance of Directive 3 under E.O. 14024. Directive 3 prohibits transactions by U.S. Persons or in the United States in, the provision of financing for or other dealings in new debt of longer than 14 days' maturity or new equity with certain Russian state-owned enterprises or entities that operate in the Russian financial sector. The prohibitions apply to new debt or equity that is issued by these entities on or after 12:01 a.m.

<sup>3</sup> E.O. 14024 Directive 2, which implements the CAPTA restrictions, 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.

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Eastern Daylight Time on March 26, 2022. Annex A of Directive 3 includes a list of 13 entities subject to the restrictions, including two of Russia's largest privately owned banks and 11 state-owned enterprises:

- **Credit Bank of Moscow PJSC:** Russia's largest nonstate public bank and Russia's sixth-largest financial institution.
- **Gazprombank JSC:**\* Russia's third-largest financial institution and closely affiliated with the energy sector.
- **JSC Alfa-Bank:** Russia's largest privately owned financial institution, and Russia's fourth-largest financial institution overall.
- **JSC Russian Agricultural Bank:**\* Russia's fifth-largest financial institution and closely affiliated with the agricultural sector.
- **JSC Sovcomflot:** Russia's largest maritime and freight shipping company.
- **OJSC Russian Railways:** One of the world's largest railroad companies.
- **PJSC Alrosa:** The world's largest diamond mining company.
- **PJSC Gazprom:**\* The world's largest natural gas company.
- **PJSC Gazprom Neft:**\* One of Russia's largest oil producers and refiners.
- **PJSC Rostelecom:** Russia's largest telecommunications company.
- **PJSC RusHydro:** A hydroelectricity company and one of Russia's largest power companies.
- **Sberbank:**<sup>4</sup> Russia's largest financial institution.
- **PJSC Transneft:**\* Manages Russia's network of petroleum-related pipelines.

\* Subject to other restrictions under E.O. 13662.

OFAC may add additional entities under Directive 3. If so, the prohibitions described above will apply to new debt or equity issued by such entities on or after 12:01 am Eastern Time on the date that is 30 days after OFAC makes its determination. Similar to other sectoral sanctions regimes, the restrictions under Directive 3 are intentionally narrow, and all other activities with the entities identified under Directive 3 are permitted unless otherwise prohibited by law, E.O. 14024 or another sanctions program.

## New General Licenses Under E.O. 14024

Simultaneously with the imposition of CAPTA sanctions on Sberbank and the imposition of new Russian debt and equity

sanctions, OFAC issued several general licenses (GLs) to E.O. 14024 to minimize any unintentional consequences to third parties. Each GL includes certain limitations.

- **GL 2:** Authorizing all transactions prohibited by VEB's designation 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 (together, the Russian Governmental Entities).<sup>5</sup>
- **GL 3:** Authorizing until 12:01 a.m. Eastern Daylight Time, March 24, 2022, all transactions ordinarily incident and necessary to the wind-down of transactions involving VEB. While GL 2 and GL 3 authorize transactions prohibited as a result of VEB's designation as an SDN under E.O. 14024, the preexisting Directive 1 sectoral sanctions restrictions issued under E.O. 13662 applicable to VEB remain in place and are not impacted by GL 2 or GL 3.
- **GL 5:** Authorizing all transactions involving the official business of the International Centre for Settlement of Investment Disputes, the Multilateral Investment Guarantee Agency, the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies.
- **GL 6:** Authorizing all transactions ordinarily incident and necessary to (i) the exportation or re-exportation by a U.S. Person of food, agricultural commodities, medicine, medical devices and other related items to, from or transiting the Russian Federation; or (ii) the prevention, diagnosis or treatment of COVID-19.
- **GL 7:** Authorizing all transactions ordinarily incident and necessary to (i) the receipt of, and payment charges for, services rendered in connection with overflights of, or emergency landings in, the Russian Federation by aircraft registered in the United States or owned, controlled by or chartered to a U.S. Person; and (ii) air ambulance and related medical services to individuals in the Russian Federation.
- **GL 8:** Authorizing all transactions related to energy that involve VEB, VTB, Sberbank, Otkritie, Sovcombank, any entity in which they own a 50% or greater interest (the Covered Entities). A transaction is "related to energy" for purposes of GL 8 where it involves the extraction, production, refinement, liquefaction, gasification or other processes with respect to petroleum products, natural gas or other products capable of producing energy.

<sup>4</sup> Sberbank is also subject to Directive 2 under E.O. 14024 and other restrictions under E.O. 13662.

<sup>5</sup> GL 2 states specifically that it does not authorize any transactions prohibited by Directive 1A, discussed *infra*.

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- **GL 9:** Authorizing until 12:01 a.m. Eastern Daylight Time on May 25, 2022, all transactions ordinarily incident and necessary to dealings in debt or equity issued prior to 4 p.m. Eastern Standard Time on February 24, 2022, by any of the Covered Entities (Covered Debt or Equity). Any divestment or transfer of Covered Debt or Equity, or the facilitation thereof, pursuant to GL 9 must be to a non-U.S. Person. Authorized transactions include the facilitation, clearing and settlement of transactions to divest Covered Debt or Equity, including on behalf of U.S. Persons.

GL 9 also authorizes until 12:01 a.m. Eastern Daylight Time on May 25, 2022, all transactions ordinarily incident and necessary to facilitating, clearing and settling trades of Covered Debt or Equity, provided such trades were placed prior to 4 p.m. Eastern Standard Time on February 24, 2022. Debits to the accounts of the Covered Entities on the books of U.S. financial institutions are authorized to the extent ordinarily incident and necessary to effect authorized transfers.

- **GL 10:** Authorizing until 12:01 a.m. Eastern Daylight Time on May 25, 2022, transactions ordinarily incident and necessary to wind down derivative contracts entered into prior to 4 p.m. Eastern Standard Time on February 24, 2022, that (i) include one of the Covered Entities as a counterparty, or (ii) are linked to the debt or equity of a Covered Entity. Any payments to a blocked person in connection with a transaction authorized under GL 10 must be made into a blocked account. Moreover, as with GL 9, debits to the accounts of the Covered Entities on the books of U.S. financial institutions are authorized to the extent ordinarily incident and necessary to effect authorized transfers.

- **GL 11:** Authorizing until 12:01 a.m. Eastern Daylight Time on March 26, 2022, transactions ordinarily incident and necessary to wind down transactions involving VTB, Otkritie, Sovcombank or any entity in which they own a 50% or greater interest.

- **GL 12:** Authorizing U.S. Persons to reject, rather than block, transactions involving one or more of VTB, Otkritie, Sovcombank or any entity in which they own a 50% or greater interests that are not authorized under another GL, until 12:01 a.m. Eastern Daylight Time on March 26, 2022.

On the same day that these GLs were issued, OFAC issued guidance clarifying that GLs 6, 7 and 8 do not authorize a U.S. financial institution to open or maintain a correspondent or payable-through account for or on behalf of entities subject to the prohibitions of Directive 2. Therefore, in order for a U.S. financial institution to engage in transactions authorized under

these GLs, such fund transfers must be processed indirectly through a nonsanctioned, non-U.S. financial institution.<sup>6</sup>

## Increased Restrictions on Dealings in Russian Sovereign Debt

On February 22, 2022, OFAC issued Directive 1A to tighten restrictions on U.S. financial institutions' dealings in Russian sovereign debt. Directive 1A replaces and supersedes Directive 1, which was issued on April 15, 2021, under E.O. 14024. Directive 1 prohibited U.S. financial institutions and their foreign branches from participating in the primary market for ruble or non-ruble denominated bonds issued by the Russian Governmental Entities after June 14, 2021, and the lending of ruble or non-ruble denominated funds to the Russian Governmental Entities after the same date.<sup>8</sup> Directive 1A preserves these prohibitions and includes an additional prohibition on U.S. financial institutions dealing in the secondary market for ruble or non-ruble denominated bonds issued by the Russian Governmental Entities after March 1, 2022.

In guidance issued and updated simultaneously with the issuance of Directive 1A, OFAC made clear that the "Russia-Related Directive Under Executive Order of August 1, 2019," issued under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (the CBW Act Directive), remains in effect. The CBW Act Directive prohibits U.S. banks<sup>9</sup> from dealing in the primary market for non-ruble denominated bonds issued by the Russian sovereign and from lending non-ruble denominated funds to the Russian sovereign. These prohibitions are narrower than those set forth in Directive 1A, as they relate only to non-ruble denominated debt, but the CBW Act Directive targets a broader group of entities through its definition of the "Russian sovereign," which

<sup>6</sup> See OFAC FAQ 978.

<sup>7</sup> The definition of "U.S. financial institution" under Directive 1A is the same as Directive 2. See FN 2, *supra*.

<sup>8</sup> For more details, see our April 22, 2021, client alert "[US Imposes Additional Round of Sanctions on Russia Amid Increasing Tensions](#)."

<sup>9</sup> For the purposes of the CBW Act Directive, "U.S. bank" means any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches), or any entity in the United States, 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, commodity futures, or options, or procuring purchasers and sellers thereof, as principal or agent. "U.S. bank" includes, but is not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, 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 and otherwise meet the definition of "U.S. bank," but not such institutions' foreign branches, offices, or agencies.



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covers “any ministry, agency, or sovereign fund of the Russian Federation,” including the Russian Governmental Entities.

OFAC's guidance also make clear that the so-called 50% rule does not apply to Directive 1A; its prohibitions do not extend to bonds issued by, or loans made to, entities owned 50% or more by the Russian Governmental Entities.

## Designation of Nord Stream 2 AG and Its Managing Director

On February 23, 2022, OFAC designated Nord Stream 2 AG, the project company overseeing construction of the Nord Stream 2 pipeline, and its managing director as SDNs. Concurrently with its designations, OFAC issued GL 4 to authorize until 12:01 a.m. Eastern Standard Time on March 2, 2022, all transactions that are ordinarily incident and necessary to wind down transactions involving Nord Stream 2 AG.

As with the individuals and entities that OFAC designated on February 22, 2022, Nord Stream 2 AG and its managing director are now blocked persons, and U.S. Persons are generally prohibited from engaging in any transactions or dealings involving them.

## Comprehensive Sanctions Targeting the Donetsk and Luhansk Regions of Ukraine

The scope of comprehensive sanctions against the DNR and LNR in the February 21, 2022, E.O. is nearly identical to the sanctions imposed on the Crimea region of Ukraine under E.O. 13685 in December 2014. Specifically, the February 21, 2022, E.O. prohibits:

- new investment in the DNR or LNR, or other regions of Ukraine as determined by the secretary of the treasury, in consultation with the secretary of state (collectively, the Covered Regions), by a U.S. Person, wherever located;
- the importation into the United States, directly or indirectly, of any goods, services or technology from the regions;
- the exportation, re-exportation, sale or supply, directly or indirectly, from the United States, or by a U.S. Person, wherever located, of any goods, services or technology to the regions; and
- the approval, financing, facilitation or guarantee by a U.S. Person of a transaction by a foreign person where such transaction would be prohibited as to a U.S. Person or within the United States.

The February 21, 2022, E.O. also provides the secretary of the treasury, in consultation with the secretary of state, the authority to impose blocking sanctions on persons determined to:

- operate or have operated since the date of the order in the Covered Regions;
- be or have been since the date of the order a leader, official, senior executive officer or member of the board of directors of an entity operating in the Covered Regions;
- be owned or controlled by, or who has acted or has been purported to act for or on behalf of, any person blocked pursuant to the order; or
- have materially assisted, sponsored or provided financial, material or technological support for, or goods or services to or in support of any person blocked pursuant to the order.

The blocking sanctions and the authority to expand the scope of the February 21, 2022, E.O. to cover additional regions of Ukraine are not self-executing. The secretary of the treasury must make a separate determination to designate an individual or entity under the February 21, 2022, E.O. or add additional regions to the Covered Regions.

Similar to the E.O. relating to the Crimea region, the February 21, 2022, E.O. was accompanied by several standard GLs intended to reduce the potential impact of the sanctions on the Ukrainian people and provide a brief window during which activities in the DNR and LNR can be wound down. Each GL includes certain limitations.

- **GL 17:** Authorizing until 12:01 a.m. Eastern Daylight Time on March 23, 2022, all transactions ordinarily incident and necessary to the wind-down, divestiture or transfer by U.S. Persons of pre-February 21, 2022, transactions, investments, operations, contracts or other agreements in the Covered Regions.
- **GL 18:** Authorizing the exportation or re-exportation by a U.S. Person of food, agricultural commodities, medicine, and medical devices to the Covered Regions.
- **GL 19:** Authorizing all transactions involving the receipt or transmission of telecommunications, including mail and package services.
- **GL 20:** Authorizing all transactions involving the official business of certain international organizations, including the United Nations and the Organization for Security and Cooperation in Europe, both of which have been active in seeking a diplomatic solution to the crisis in Ukraine.
- **GL 21:** Authorizing all transactions involving certain noncommercial personal remittances, which do not include charitable donations or funds transfers in support of a business, including a family-owned business.

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- **GL 22:** Authorizing the exportation or re-exportation by a U.S. Person of services and certain software related to communication over the internet, including instant messaging, chat, email, social networking, file sharing, web browsing and blogging.

## Designations of Belarusian Individuals and Entities

On February 24, 2022, OFAC designated 24 Belarusian individuals and entities pursuant to E.O. 14038 in response to Belarus' support for, and facilitation of, Russia's invasion of Ukraine's sovereign territory. The designations target key players in Belarus' defense and security sectors, two state-owned banks (Belinvestbank JSC and Bank Dabrabyt JSC), and two real estate firms that OFAC has determined are owned or controlled by, or acting for or on behalf of, one of the designated banks. OFAC simultaneously issued Belarus GL 6, which authorizes all transactions for the official business of the U.S. government, and Belarus GL 7, which authorizes all transactions involving the official business of certain international organizations, similar to Russia/Ukraine GL 5 and GL 20.

## II. US Export Controls

The U.S. Department of Commerce, Bureau of Industry and Security (BIS) issued a final rule effective February 24, 2022, implementing significant new Russia export controls license requirements and licensing policies. These sweeping measures are quickly becoming one of the most critical actions impacting international companies and reportedly correspond with similar measures to be implemented by Canada and partners in Europe and Asia. They are intended to have a substantial impact on Russia's ability to access crucial U.S.- and foreign-made technology, as well as other economic activity in Russia.

There are five main updates: (i) substantial new license requirements based on the Commerce Control List (CCL) for all shipments to Russia; (ii) creation of two new Foreign Direct Product (FDP) Rules specific to Russia and Russian "military end users"; (iii) expansion of the Russia "military end use" and "military end user" restrictions to cover all items subject to the U.S. Export Administration Regulations (EAR); (iv) addition of 47 Russian entities to the Entity List; and (v) controls specific to the DNR and LNR (the Covered Areas).

Additional restrictions remain available to BIS if Russia continues to escalate matters in Ukraine.

### Previous US Export Controls on Russia

Prior to the February 24, 2022, action by BIS, U.S. export controls already imposed substantial restrictions on the export or re-export of items to Russia or the transfer of items within the country:

- With limited exceptions, exports of defense articles or defense services to Russia under the U.S. International Traffic in Arms Regulations are subject to a "policy of denial," which means that almost no license applications will be granted.
- The EAR, which govern U.S. commercial or "dual-use" exports, require licenses for shipments to Russia of items controlled under the multilateral export control regimes (the Australia Group, Missile Technology Control Regime, Nuclear Suppliers Group and Wassenaar Arrangement), as well as items controlled unilaterally by the U.S. government for regional stability and crime control reasons.
- In response to Russia's incursion into the Crimea region of Ukraine, a license is required to export almost any item subject to the EAR, including EAR99 items, to Crimea, with a policy of denial in place for most license applications. The EAR also impose licensing requirements on a variety of less sensitive exports for use in Russian deepwater, offshore or shale projects that have the potential to produce oil.

Restrictions on shipments to Russia were further supplemented by BIS' creation of the so-called Military End User List (MEU List) and expanded controls on military end uses in 2020. These changes placed license requirements on certain items if the exporter has knowledge that such items are intended for a party on the MEU List or other military end users or end uses in Russia.

### New US Export Controls on Russia

In response to the evolving situation in Ukraine, BIS announced the following additional restrictions targeting Russia:

#### 1. New CCL-Based License Requirements for Russia

BIS announced new license requirements for Russia (under new Section 746.8(a)(1) of the EAR) for all items covered by Export Control Classification Numbers (ECCNs) in Categories 3-9 of the CCL. CCL Categories 3-9 cover a variety of industries, including electronics, computers, aviation, telecommunications and information security, sensors, marine and navigation. As a result, many items not previously controlled for Russia will now require a license to be exported, re-exported or transferred (in-country) to Russia. The new licensing requirements will not be imposed on deemed exports and deemed re-exports of controlled technology in CCL Categories 3-9 to Russian nationals.

With limited exception, applications for the export, re-export or transfer of items that require a license for Russia under Section 746.8(a)(1) will be reviewed under a "policy of denial." Only certain limited categories of licenses will be reviewed on a case-by-case basis, such as licenses relating to humanitarian needs, air and maritime safety, government-to-government cooperation or for items destined for U.S. subsidiaries and certain other

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non-Russian entities. When conducting the case-by-case review for these items, BIS has indicated that the transaction will be reviewed to determine whether it would benefit the Russian government or defense sector. As a result, most items in CCL Categories 3-9 will now be presumptively unable to be shipped to Russia or Russian end-users. In addition, only certain license exceptions will be available to overcome this new licensing requirement in Section 746.8(a)(1) of the EAR.

## 2. Creation of Two New FDP Rules Specific to Russia and Russian 'Military End Users'

Possibly the most significant export control measure announced by BIS was the creation of two new FDP rules targeting Russia. The new measures are similar to, but even more expansive than, the FDP restrictions placed on China's telecom giant Huawei Technologies Co., Ltd (Huawei) and its subsidiaries under the so-called Entity List FDP Rule,<sup>10</sup> which has proven to be effective in blocking Huawei's access to semiconductors and semiconductor components.

First, under a new FDP rule applicable to all of Russia, (the Russia FDP Rule), foreign-produced items will now be subject to control under the EAR if the foreign items are not designated EAR99 and are: (i) the direct product of U.S.-origin software or technology subject to the EAR that is specified in any ECCN in product groups D or E in CCL Categories 3-9; or (ii) produced by plants or major components thereof that are the direct product of U.S.-origin software or technology subject to the EAR that is specified in any ECCN in product groups D or E in CCL Categories 3-9. To be controlled, the parties involved in the shipment must know (which includes having reason to know) that the foreign-produced item is destined to Russia or will be used in the production or development of an item destined to Russia.

Second, BIS announced an additional, even more expansive FDP rule targeting Russian military end users on the Entity List (the Russia-MEU FDP Rule) that applies to foreign-produced items that are (i) the direct product of any software or technology subject to the EAR (other than EAR99); or (ii) produced by plants or major components thereof that are themselves the direct product of any U.S.-origin software or technology on the CCL. In doing so, BIS created a new "footnote 3" designation for Russian parties on the BIS Entity List who are subject to the Russia-MEU FDP Rule. Items subject to the Russia-MEU FDP Rule will require a license if an Entity List party with a footnote 3 designation is a party to the transaction, or if there is knowledge (including

<sup>10</sup> See 15 CFR Section 734.9(c).

reason to know) that the item will be incorporated into or used in the production or development of any part, component or equipment produced, purchased or ordered by any Entity List party with a footnote 3 designation. Unlike the Russia FDP Rule, the Russia-MEU FDP Rule also applies to foreign-produced items that would be designated as EAR99, with only limited exceptions.

BIS has excluded certain "partner countries" from the two new FDP rules because such countries have adopted or have committed to adopt substantially similar export controls measures on Russia. These countries, which are identified in a new "Russia Exclusions List" at Supplement 3 to Part 746 of the EAR, include Australia, Austria, Belgium, Bulgaria, Canada, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, New Zealand, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. BIS also adjusted the de minimis rules to exclude certain U.S.-origin content covered by new Section 746.8(a)(1) from de minimis calculations for foreign-made items shipped to Russia from countries on the Russia Exclusions List.

## 3. Expansion of Russia 'Military End Use' and 'Military End User' Controls to All Items Subject to the EAR

Previously, the Russia military end use and military end user rules imposed a licensing requirement on an enumerated list of items subject to the EAR if the exporter had knowledge that such items were intended for a party on the MEU List or other military end users or end uses in Russia. The new rule announced by BIS expands the Russia military end use and military end user rules to cover all items subject to the EAR, with the exception of (1) EAR99 food and medicine and (2) "mass market" items not destined for Russian "government end users" or Russian state-owned enterprises.

## 4. Addition of Russian Entities to the Entity List

BIS moved 45 entities from the MEU List to the Entity List, added two new Russian parties to the Entity List and added a footnote 3 designation to each of these entities (along with two other Russian parties already on the Entity List). The Entity List identifies parties determined by the interagency End-User Review Committee to be involved in activities "contrary to the national security or foreign policy interests of the United States."<sup>11</sup> Unlike the MEU List, no findings of specific military connections are required for BIS to add parties to the Entity List. In effect,

<sup>11</sup> See 15 CFR Section 744.16.

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the Entity List can act as an export “blacklist” and can result in a complete block on a foreign firm’s ability to obtain even low-risk items that are subject to the EAR. For the newly added entities to the Entity List, BIS has instituted a licensing requirement for all items subject to the EAR other than EAR99 food and medicine and (for non-government entities) mass market hardware and software. BIS has established a “policy of denial” for reviewing license applications for these entities.

## 5. Expansion of Export Controls Over Covered Areas of Ukraine

Finally, BIS amended Section 746.6 of the EAR to impose a license requirement on shipments of all items subject to the EAR (with the exception of EAR99 food and medicine and certain software for Internet-based personal communications) to the Covered Areas, similar to controls put in place with respect to Crimea in 2015. BIS license applications for the Covered Areas will be subject to a policy of denial, with the exception that license applications for items authorized by a General License issued by OFAC will be subject to case-by-case review.

## Additional Export Control Measures Against Russia

If Russia’s invasion of Ukraine continues, we may expect additional export restrictions with increasingly significant consequences. These measures could seek to target additional individuals and entities, including members of the Russian government and military, or may broadly apply to any exports to Russia. BIS and the Biden administration have indicated that they do not want to impose measures that will harm the Russian civilian population. However, the measures announced on February 24, 2022, can be anticipated to have far-reaching effects throughout the Russian economy and financial system, and necessarily will impact both Russian and non-Russian civilians.

## III. UK Sanctions and Export Controls

On February 10, 2022, the U.K. took an important first step in anticipation of imposing additional sanctions against Russia. Specifically, the U.K. amended its existing sanctions framework targeting Russia<sup>12</sup> to allow for the imposition of sanctions against persons “involved in obtaining a benefit from or supporting the Government of Russia.”<sup>13</sup> The amended regulations define this phrase as carrying on business (i) as a government of Russia-affiliated entity; (ii) of economic significance to the government of Russia; (iii) in a sector of “strategic significance” to the government of Russia; or (iv) owning or controlling directly or

indirectly, or working as a director, trustee or equivalent of a government of Russia-affiliated entity or an entity falling under (ii) or (iii). The amended regulations list the sectors of strategic significance as the chemicals, construction, defence, electronics, energy, extractives, financial services, information, communications, digital technologies and transport sectors. While the February 10, 2022, changes significantly broadened the U.K. sanctions framework — by authorizing the imposition of sanctions on a much wider range of individuals, companies and sectors — no new sanctions in response to the escalation at the Russia-Ukraine border were imposed at that time.

On February 22, 2022, upon Russia’s incursion into Ukraine, the U.K. made its first designations under the new criteria. It imposed blocking sanctions with immediate effect on five Russian banks (Bank Rossiya, Black Sea Bank for Development and Reconstruction, Joint Stock Company Genbank, IS Bank and Promsvyazbank) and three high-net-worth individuals who had already been sanctioned by the United States (Gennadiy Nikolayevich Timchenko, Boris Romanovich Rotenberg and Igor Arkadyevich Rotenberg). All assets of these entities and individuals held in the U.K. must be frozen. Similarly, any person to whom U.K. sanctions apply<sup>14</sup> is required to block the relevant assets and is prohibited from dealing with or making funds or economic resources directly or indirectly available to or for the benefit of the sanctioned entities and individuals. The sanctioned individuals are also subject to a travel ban that prevents them from entering the U.K.

On February 24, 2022, the U.K. announced its next package of sanctions and export controls described by government officials as including the following measures:

1. All major Russian banks will have their assets frozen and excluded from the U.K. financial system, preventing them from accessing sterling and clearing payments, with an immediate asset freeze in place for VTB.<sup>15</sup>
2. Legislation to allow the U.K. to ban Russian state and private companies from raising funds, dealing with securities and making loans on U.K. markets.
3. Blocking sanctions on 120 new individuals and entities (with 11 new designations effective as of February 24, 2022, and two new designations (President Putin and Mr. Lavrov as of February 25, 2022)).

<sup>14</sup> U.K. sanctions apply to conduct within the U.K. (*i.e.*, all persons within the territory or territorial sea of the U.K.), and to all U.K. persons (a U.K. national or a body incorporated or constituted under the law of any part of the U.K.) wherever they are in the world.

<sup>15</sup> As of the writing of this client alert, it is unclear which Russian banks would be covered by this prohibition.

<sup>12</sup> Regulation 6 of The Russia (Sanctions) (EU Exit) Regulations 2019.

<sup>13</sup> The Russia (Sanctions) (EU Exit) (Amendment) Regulations 2022.



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4. Limits on the amount of money Russian nationals can deposit into U.K. bank accounts (£50,000).
5. Aeroflot to be banned immediately from U.K. airspace.
6. Legislation to be introduced including a ban of all dual-use items to Russia through an immediate suspension of export licences for dual-use items.
7. Legislation to be introduced next week to stop exports of high-technology items and oil refinery equipment and components in sectors including electronics, telecommunications and aerospace.
8. The Economic Crime Bill will be brought forward before Easter recess and will include measures around unexplained wealth orders, reforms to Companies House, registration of property ownership and a new dedicated kleptocrat unit within the National Crime Agency.
9. Similar financial sanctions to be extended to Belarus.
10. Russia may potentially be cut from the SWIFT system.

While the situation remains extremely fluid, as of the writing of this client alert, the scope of the U.K.'s sanctions lags slightly behind those imposed by the United States, as well as those enacted by the EU. Out of the measures previewed above, only a limited set of blocking sanctions have come into force (and the banning of Aeroflot from U.K. airspace). However, these blocking sanctions are significant — targets include VTB, Rostec, Uralvagonzavod, United Aircraft Corporation, United Shipbuilding Corporation and Tactical Missiles Corporation. The other measures described above still require implementing legislation.

The U.K. government has also previously confirmed that it will take steps to (i) sanction members of the Russian Duma and Federation Council who voted to recognize the independence of the DNR and LNR; (ii) extend the territorial sanctions imposed on Crimea to the DNR and LNR; and (iii) impose restrictions around sovereign debt. Implementing legislation for these measures has not yet been adopted.

## IV. EU Sanctions and Export Controls

On February 23, 2022, the EU announced measures in response to the crisis in Ukraine that build upon and expand the existing sanctions targeting Russia. On February 24, 2022, the EU published the legal acts imposing a first set of sanctions (*i.e.*,

the decisions<sup>16</sup> and corresponding regulations<sup>17</sup>) that appear to align, at least in some respects, with those enacted by the United States and the U.K.

### Sanctions on Economic Relations With the DNR and LNR

The first EU sanctions package includes restrictions on economic relations with the DNR and LNR, similar to those that were already in place with respect to Crimea and Sevastopol. Specifically, the EU sanctions prohibit:

- Importing into the EU goods originating from the DNR and LNR;
- Providing, directly or indirectly, financing or financial assistance, as well as insurance and reinsurance, related to the import of such goods;
- Exporting to the DNR and LNR, or for use therein, listed goods and technologies. The listed goods and technologies relate to the following sectors: (i) transport; (ii) telecommunications; (iii) energy; and (iv) the prospecting, exploration and production of oil, gas and mineral resources in the DNR and LNR;
- Providing, directly or indirectly, technical assistance, brokering services, or maintenance services or financing or financial assistance related to the listed goods and technologies;
- Providing technical assistance or brokering, construction or engineering services directly relating to infrastructure in the DNR and LNR in the sectors referred to above;
- Investments in real estate or entities, including the creation of joint ventures, as well as any financing arrangements in the DNR and LNR, and the provision of investment services; and
- Tourism activities in the DNR and LNR.

EU sanctions targeting the DNR and LNR contain grandfathering provisions allowing the execution of obligations arising from contracts concluded before February 23, 2022, but only until May 24, 2022, which effectively implements a wind-down period

<sup>16</sup>Four Council Decisions: (i) Council Decision (CFSP) 2022/264 amending Decision 2014/512/CFSP; (ii) Council Decision (CFSP) 2022/265 amending Decision 2014/145/CFSP; (iii) Council Decision (CFSP) 2022/266; and (iv) Council Decision (CFSP) 2022/267 amending Decision 2014/145/CFSP.

<sup>17</sup>Five Council Regulations: (i) Council Regulation (EU) 2022/259 of February 23, 2022, amending Regulation (EU) No 269/2014; (ii) Council Implementing Regulation (EU) 2022/260 of February 23, 2022, implementing Regulation (EU) No 269/2014; (iii) Council Implementing Regulation (EU) 2022/261 of February 23, 2022, implementing Regulation (EU) No 269/2014; (iv) Council Regulation (EU) 2022/262 of February 23, 2022, amending Regulation (EU) No 833/2014 c; and (v) Council Regulation (EU) 2022/263 of February 23, 2022.

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of three months for preexisting contracts. Competent authorities can grant authorizations for certain otherwise prohibited conduct, provided that these authorizations are required for official purposes of consular missions or humanitarian purposes (e.g., hospitals, public health institutions, equipment for medical use).

## Blocking Sanctions Targeting Russian Institutions, Companies and Individuals

The EU imposed blocking sanctions and travel bans against the 336 members of the Russian State Duma who voted in favor of a resolution to ask President Putin to recognize the independence of the DNR and LNR.

The EU also added 22 individuals and four entities to the EU list of persons subject to restrictive measures. These include members of the government who were involved in the decisions that have led to Russia's incursions into Ukraine,<sup>18</sup> three banks,<sup>19</sup> businesspersons/oligarchs supporting financially or materially Russian operations in the DNR and LNR, senior military officers<sup>20</sup> and those responsible for leading a disinformation war against Ukraine.<sup>21</sup>

All funds and economic resources belonging to, owned, held or controlled by these listed persons are required to be frozen. Making funds or economic resources available to — directly or indirectly — or for the benefit of listed parties is also prohibited. The travel bans applicable to the listed individuals prevent them from entering or transiting through EU territory.

## Restrictions on Dealings in Russian Sovereign Debt

As part of the February 23, 2022, package of sanctions, the EU has further expanded its sectoral sanctions by amending Council Regulation 833/2014<sup>22</sup> (Regulation 833) to introduce restrictions

<sup>18</sup> Such as Sergei Shoigu, the defense minister of the Russian Federation; Anton Vaino, the chief of staff of the Presidential Executive Office; Marat Khusnullin, the deputy prime minister of Russia for construction and regional development; Dmitriy Grigorenko, the deputy prime minister; and Maxim Reshetnikov, the minister of economic development.

<sup>19</sup> VEB, Bank Rossiya and Promsvyazbank.

<sup>20</sup> Nikolay Yevmenov, the commander-in-chief of the Russian navy; General Oleg Salyukov, the commander-in-chief of the Russian ground forces; and General Sergei Surovkin, the commander-in-chief of the Russian aerospace forces.

<sup>21</sup> Such as the Internet Research Agency.

<sup>22</sup> Council Regulation (EU) No 833/2014 of July 31, 2014, concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine (OJ L 229, 31.7.2014, p.1), as amended.

that prohibit any person to whom EU sanctions apply<sup>23</sup> from directly or indirectly purchasing, selling or providing investment services for, or assistance in the issuance of, transferable securities and money-market instruments issued after March 9, 2022, by:

- Russia and its government;
- The Central Bank of Russia; or
- a legal person, entity or body acting on behalf or at the direction of the Central Bank of Russia.

The new sanctions also prohibit — directly or indirectly — arranging or being part of any arrangement to make any new loans or credit after February 23, 2022, to the legal persons, entities or bodies listed above.

The amendments to Regulation 833 are designed to cut off Russia and its government from the European financial markets, as the European Commission President Ursula von der Leyen announced in a television interview on February 20, 2022. Since 2014, Regulation 833 has restricted the ability of certain large state-owned Russian companies in the energy, defense and financial sectors, which frequently need medium- to long-term financing, to issue such equity or debt on the EU market. Regulation 833 has now been expanded to directly target, in the same manner, the Russian government.

With the aim of protecting legitimate EU trade, the EU sanctions contain exceptions for loans or credit that have a specific and documented objective to provide financing for non-prohibited imports or exports of goods and non-financial services between EU member states and non-EU countries. Furthermore, the new restrictions do not apply to drawdowns or disbursements made under a contract concluded before February 23, 2022, if: (i) all the terms and conditions of such drawdown or disbursements were agreed before February 23, 2022, and have not been modified on or after that date; and (ii) prior to February 23, 2022, a contractual maturity date had been fixed for the repayment in full of all funds made available and for the cancellation of all the commitments, rights and obligations under the contract.

<sup>23</sup> EU sanctions apply: (i) within the territory of the EU; (ii) on board any aircraft or any vessel under the jurisdiction of an EU member state; (iii) to any person inside or outside the territory of the EU who is a national of an EU member state; (iv) to any legal person, entity or body, inside or outside the territory of the EU, which is incorporated or constituted under the law of an EU member state (including their non-EU branches); and (v) to any legal person, entity or body in respect of any business done, in whole or in part, within the EU.

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## Second Set of Measures To Come

The EU Commission stated on February 24, 2022, that an additional “package of massive and targeted sanctions” has been prepared and is being presented to the EU Council for approval. This new package includes measures targeting strategic sectors of the Russian economy by preventing their access to certain key technologies and markets. The new package would also include measures to stop Russian banks from accessing European financial markets. Later that day, the European Council announced that the new set of measures would include sanctions targeting the financial, energy and transport sectors; export

controls (including for dual-use items); visa policy changes; and additional listings of Russian persons. The European Council also announced it would utilize new listing/designation criteria for the imposition of sanctions. On February 25, 2022, President von der Leyen, specified that sanctions would cut off 70% of Russia's banking market from European capital markets; sectoral sanctions would specifically target the aviation sector and crucial and advanced technology required for the transformation of Russia's economy. It was also announced that an asset freeze (although no travel ban yet) would be imposed on President Putin and Mr. Lavrov.

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