

Russian and Belarusian Sanctions Update

Following Russia's invasion of Ukraine, the United States, United Kingdom, and the European Union implemented a series of broad sanctions on Russia and Belarus, as well as certain entities controlled by and individuals closely associated with those governments. Most of the sanctions are similar in scope and nature, yet differences exist across nations and political bodies. In addition to government sanctions, a significant number of international banks, as well as regional and local banks throughout the United Kingdom and European Union, have adopted *de facto* sanctions through the refusal to transfer funds and conduct any business with governments, government-controlled entities, businesses and individuals within Russia, Belarus and parts of Ukraine.

The sanctions cover five broad categories, and have been updated weekly by all governments and political bodies.

Blocked Persons.

The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") has issued "Directives" and "Licenses" that list hundreds of banks, entities, and individuals in Russia, Belarus, and Ukraine on the Specially Designated Nationals And Blocked Persons List (the "SDN List"). The United

Kingdom's Office of Financial Sanctions Implementation ("OFSI") has issued its version of the SDN List, known as The UK Sanctions List (the UK List"). The European Commission issued and updates its version of the SDN List, called the European Union Consolidated Financial Sanctions List (the "EU List"). All three Lists are updated regularly (collectively the "Sanctions Lists"). In the case of the U.S. the SDN List is updated at least weekly.

All U.S. companies, citizens, residents and others in the U.S. are prohibited from conducting business directly or indirectly with any person or entity on the SDN List ("SDN"), or any entity owned at least 50% by SDNs. Prohibited acts include the provision or receipt of any contribution, property, funds, goods, or services.

Payments and Fund Transfers.

The wave of recent Western sanctions focuses heavily on entities in the Russian and Belarusian banking and financial sector. Not surprisingly, the following entities are subject to specific targeted sanctions and also appear on all of the Sanctions Lists: the Russian Central Bank, Russia's National Wealth Fund, Russia's Finance Ministry, and entities that act as surrogates of the Russian government, including Sberbank,

Alfa-Bank, VTB Bank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways.

In addition to the prohibitions generally applicable to SDNs, the U.S. Sanctions also prohibit U.S. persons from engaging with sanctioned banking entities in any transfer of funds, issuance of new debt or equity, or payment of existing debt or equity. Even if a customer, vendor, agent or employee does not appear on any of the Sanctions Lists, U.S. companies and individuals cannot transfer money to deposit accounts maintained at banks or financial intermediaries that appear on the Sanctions Lists.

New debt is broadly defined and includes unsecured extensions of credit with a maturity date greater than 14 days. This covers virtually all normal business transactions that are not cash on delivery, or C.O.D., including greater than 14-day payment terms and late payment grace periods.

Many proposed work-arounds, while creative, carry a significant risk of running afoul of applicable (and ever-changing) sanctions, laws and regulations. U.S. companies and individuals should not transfer funds to a third party, who in turn re-transfers funds that would violate the sanctions. For example, a U.S. employer should not pay the spouse of a Russian citizen who works in Russia, if a direct payment to the Russian employee is prohibited. Additionally, a U.S. company should not pay a Ukrainian entity, knowing that the payment will be re-transferred to a vendor in Russia or Belarus through a

deposit account maintained by a bank on the Sanctions List.

Export Controls.

The U.S. Commerce Department implemented a series of stringent export controls under the Export Administration Regulations ("EAR").

All items subject to the EAR cannot be transferred to any Russian and Belarusian security service, military and defense sector, and any entity involved in military and defense research and development efforts that work for or support Russia or Belarus.

Additionally, the restrictions apply to the export of U.S. items produced domestically and in foreign countries, to companies or nationals of Russia or Belarus more generally, if the items use U.S.-origin software, technology, or equipment in enumerated Export Control Classification Numbers in Categories 3-9 of the Commerce Control List. Covered items now include semiconductors, computers, telecommunications, information security equipment, lasers and sensors. Even if a covered item is sold or transferred to a non-sanctioned entity or person, if the item is subsequently transferred to or incorporated into a product or device that is transferred to a sanctioned party, the original U.S. supplier will violate U.S. export control laws.

The EAR focus on products used by Russian defense contractors, with primary focus on combat aircraft, infantry fighting vehicles, electronic warfare systems, missiles, and unmanned aerial vehicles. The EAR also focus on oil and gas extraction equipment,

that would support Russia's refining capacity over the long term.

Non-Military Import and Export Controls; Flight Bans.

The U.S. also instituted sweeping sanctions to disrupt Russia's economy and political stability. Certain commodities, goods and services from Russia can no longer be imported into the U.S., including crude oil, certain petroleum products, liquefied natural gas, coal, seafood, spirits (such as vodka), and non-industrial diamonds.

Luxury items cannot be exported to Russia, including high end-watches, luxury vehicles, high-end apparel, high-end alcohol, jewelry, and other goods frequently purchased by Russian elites. U.S. dollar-denominated bank notes cannot be sold or transferred to the Russian government, or any person located in Russia.

Russian aircraft are barred from entering U.S. domestic airspace, for both passenger and cargo flights. The ban extends to aircraft certified, operated, registered or controlled by any person connected with Russia.

Bank Imposed Sanctions; SWIFT Messaging Systems.

Since February 26, 2022, the U.S., United Kingdom, Canada, European Union, and Japan removed the Russian central bank and certain Russian banks from the

Society for Worldwide Interbank Financial Telecommunication ("SWIFT"). Payments and funds transfers via SWIFT are essential for Russia's commodity based economy.

The SWIFT ban had the ancillary effect of self-imposed prohibitions on funds transfers by a significant number of banks and financial institutions throughout the U.S., U.K. and Europe.

Ongoing Developments.

The war in Ukraine and the reactions by Western governments changes each week. The conflict and sanctions will not end for the foreseeable future. To protect your business, vendors, contractors and employees periodically check the links provided above to ensure that you are not violating any sanctions, import/export bans or extending credit to banned actors.

As matters continue to develop we will publish updates, on new restrictions, government interpretation of existing bans and restrictions. We will also share examples of what is permitted and prohibited by the constantly evolving laws, and how evolving sanctions may impact your business.

If you have any questions or want to discuss any sanctions related issues please contact Russ Schlossbach, Sean Gilligan or Dallas K. Mosier at the phone number or email addresses indicated below.

This advisory is for information purposes only, and does not constitute legal advice. If you have any questions or want to discuss any sanctions-related issues please contact Russ Schlossbach, Sean Gilligan or Dallas K. Mosier at (617) 350-6800 or email them at russ.schlossbach@gesmer.com, sean.gilligan@gesmer.com or dallas.mosier@gesmer.com.



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