

Fried Frank International Trade and Investment *Alert*TM

U.S. Imposes Additional Sanctions and Export Controls on Russia in Response to Russia's Invasion of Ukraine

The United States [has imposed](#) significant additional sanctions, as well as export controls, in response to Russia's invasion of Ukraine. These new measures, which go significantly beyond the [previously announced](#) first tranche of sanctions, focus on Russia's financial sector and elites and their families. The export controls introduce new license requirements aimed at restricting Russia's ability to acquire a range of foreign-produced items and technologies. While these sanctions still fall short of a complete embargo of Russia, they will significantly hamper future commercial and financial transactions involving Russia.

Financial Sector Sanctions

Sberbank sanctions: On February 24, OFAC issued [Directive 2](#) which imposed correspondent and payable-through account sanctions on Sberbank, one of Russia's two largest banks. Directive 2 prohibits U.S. financial institutions from (1) opening or maintaining correspondent or payable-through accounts for or on behalf of Sberbank or Sberbank subsidiaries, or (2) processing any transactions involving Sberbank and its subsidiaries. These prohibitions take effect on March 26, 2022.

The directive is broadly worded, and its reach extends to banks and other depository institutions, money service businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, options brokers and dealers, foreign exchange merchants, securities and commodities exchanges, clearing corporations, and investment companies. The directive clarifies that U.S. financial institutions also include the branches, offices, and agencies of foreign financial institutions that are located within the United States.

Debt and equity restrictions: OFAC also issued [Directive 3](#), which prohibits U.S. persons from dealing in new equity and new debt with a maturity of longer than 14 days issued by designated companies in Russia's financial and oil and natural gas sectors. Directive 3 applies to new debt or equity issued after March 26, 2022, and further prohibits the provision of financing for such debt or equity. Some of the entities subject to this directive were already designated on the Sectoral Sanctions Identifications List under Executive Order 13662, which contains similar debt and equity restrictions. In [an FAQ](#), OFAC clarified that "each directive operates independently of the others" and "if a transaction involves a person subject to two separate directives, a U.S. person engaging in that transaction must comply with both directives." The entities designated under Directive 3 are primarily banks and energy companies, including:

- Sberbank
- Gazprombank
- Russian Agricultural Bank
- Alfa-Bank
- Credit Bank of Moscow
- Gazprom
- Gazprom Neft
- Transneft

Other entities subject to Directive 3 include: Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways. While Directive 3's debt and equity restrictions take effect on March 26, various general licenses are available, including [General License 9](#), which permits U.S. persons until May 25, 2022 to divest or transfer covered debt or equity to a non-U.S. person, and [General License 10](#), which allows (until May 25) transactions necessary to wind down derivative contracts entered into before the directive was issued. Other wind-down transactions are permitted until March 26 pursuant to [General License 11](#).

Importantly, OFAC also issued [General License 8A](#), which permits otherwise prohibited transactions with sanctioned banks (including the Central Bank of the Russian Federation) if the transactions are related to energy. Such energy transactions are permitted through June 24, 2022.

Central bank sanctions: On February 28, 2022 OFAC [issued](#) Directive 4, which prohibits any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities. This measure, one of the most extreme sanctions placed on Russia to date, follows similar steps taken by European allies in what one senior administration official [described](#) as an “unprecedented” act of global sanctions coordination. In a [press release](#), the Treasury Department announced that this action “will significantly limit Russia’s ability to use assets to finance its destabilizing activities.” By prohibiting all transactions involving these three entities, the sanctions have an effect similar to that of full blocking sanctions.

Blocking sanctions: OFAC [designated](#) VTB, the other of Russia’s two largest banks, on the Specially Designated Nationals and Blocked Persons List (“SDN List”). Accordingly, U.S. persons are prohibited from engaging in transactions with VTB, unless authorized by a general license, including General License 11, which allows for wind-down transactions until March 26, 2022. Three other financial institutions (Otkritie, Sovcombank, and Novikombank) were also designated on the SDN List. As is the case with all SDN List designations, the blocking sanctions apply to an entity that is at least 50% owned or controlled by VTB or another designated entity.

In a more symbolic move OFAC designated Russian President Vladimir Putin and Russian Minister of Foreign Affairs Sergey Lavrov on the SDN List. On February 28, 2022, OFAC added the Russian Direct Investment Fund (“RDIF”), an important Russian sovereign wealth fund, to the SDN List. Kirill Dmitriev, the CEO of the RDIF, was also designated. The RDIF and all three individuals were designated pursuant to Executive Order 14024

In a move coordinated with European allies, senior administration officials [announced](#) their intent to disconnect sanctioned Russian banks from the Society for Worldwide Interbank Financial

Telecommunication (“SWIFT”), although specific measures by the U.S. and EU have not yet been implemented.

New Export Controls Imposed on Russia

On February 24, 2022, the Department of Commerce’s Bureau of Industry and Security (“BIS”) issued a [rule](#) (“the BIS Rule”) amending the Export Administration Regulations (“EAR”) by implementing new Russia license requirements, establishing a policy of denial for export license applications to Russia, establishing two new foreign direct product (“FDP”) rules, and moving certain Russian entities from the Military End-User list to the Entity List. The Department of Commerce [published](#) a fact sheet clarifying the actions taken by the BIS Rule.

Commerce Control List (“CCL”)-based license requirements: Under the new rule, a license is now required for all ECCNs in Categories 3-9 for export to Russia. Previously, 58 of these ECCNs with unilateral controls (including microelectronics, sensors, telecommunications items, navigation equipment, avionics, and aircraft components) were not subject to export license requirements to Russia.

In conjunction with the new license requirements, the BIS Rule includes a policy of denial that applies, in almost all cases, to applications for the export, reexport, or transfer of items requiring a license for Russia. Applications related to flight and maritime safety, humanitarian needs, government space cooperation, government-to-government activities, and some applications for civil telecommunications infrastructure, are excluded from this policy of denial, and will be reviewed on a case-by-case basis. The BIS Rule also limits the available license exceptions, and only the following license exceptions may overcome these CCL-based license requirements:

- License Exception TMP for items used by the news media
- License Exception GOV
- License Exception TSU for software updates for civil end-users that are wholly-owned U.S. subsidiaries, foreign subsidiaries of U.S. companies that are JVs with U.S. companies, or JVs of U.S. companies with headquarters in Country Group A:5 or A:6 countries, and JVs or wholly-owned subsidiaries of companies headquarters in Country Group A:5 or A:6 countries
- License Exception BAG, excluding firearms and ammunitions
- License Exception AVS
- License Exception ENC, excluding Russian government end-users and Russian SOEs
- License Exception CCD

Expanded military end-user/end-user control scope: The BIS Rule expands the existing Russia military end-use/end-user restrictions to cover all items subject to the EAR except for food and medicine designated as EAR99, and items classified as 5A992.c or 5D992.c, as long as they are not destined for Russian government or Russian state-owned enterprise (“SOE”) end-users. This change imposes additional export license requirements for all items subject to the EAR (excluding the exceptions described above) if an exporter has reason to know that an item is intended for a Russian military end-user or end-use.

New foreign direct product rules: The BIS Rule also implemented two new foreign direct product (“FDP”) rules, which are intended to bring items produced outside of the United States within the scope of the EAR. These rules are similar to the FDP rule deployed against Huawei in 2020. Based on their scopes, BIS has termed these new rules the Russia FDP rule and the Russia Military End-User FDP rule.

In both cases, an item must meet the rule's product scope and end-user scope to fall within the purview of the FDP rule.

The Russia FDP rule's product scope includes any foreign-produced item that is not designated as EAR99 and:

- (i) is a direct product of U.S.-origin technology or software subject to the EAR that is specified in any ECCN in product groups D or E in Categories 3-9 of the CCL, or
- (ii) is produced by any plant or major component of a plant that is located outside the United States, where the plant or major component of the plant itself meets the criteria described in (i).

A foreign-produced item will fall within the Russia FDP rule's end-user scope rule if the exporter has knowledge that the foreign-produced item is destined to Russia or will be incorporated into or used in the production or development of any part, component, or equipment that is not designated EAR99 and is produced in or destined for Russia.

The Russia MEU FDP rule's product scope includes any foreign-produced item that:

- (i) is a direct product of U.S.-origin technology or software subject to the EAR and specified in any CCL categories, or
- (ii) is produced by any plant or major component of a plant that is located outside the United States, where the plant or major component of the plant itself meets the criteria described in (i).

The foreign-produced item meets the Russia MEU FDP's end-user scope if the exporter has knowledge that the item will be incorporated into or used in the production or development of any item that is produced, purchased, or ordered by any entity with a Footnote 3 designation on the Entity List, or if such an entity is involved in the transaction as a purchaser, consignee, or end-user. BIS has added Footnote 3 designations to 49 entities, 47 of which were moved from the MEU List to the Entity List

The Russia MEU FDP Rule contains an exception for food and medicine designated as EAR99 and items designed as 5A992.c or 5D992.c, unless they are destined for Russian government end-users or Russian state-owned enterprises. The BIS also contains a list of 32 partner countries that will not be subject to the Russia and Russia MEU FDP rules because they are adopting or have expressed a willingness to adopt similar rules. The license exceptions described above that apply to the new CCL-based license requirements may be used to overcome the Russia FDP rule, but are not available to overcome the Russia MEU FDP rule, unless the license exception is expressly included as part of an entity's Footnote 3 designation.

Key Takeaways

These measures go significantly beyond the sanctions announced on February 21 and 22, 2022, and are likely to have a far-reaching impact. Many previously authorized transactions are now prohibited, and items which could previously be exported to Russia without a license, or which were not subject to the EAR's jurisdiction, now require a license. While these measures may significantly impair the ability of U.S. persons to conduct transactions in or with Russia, they do not amount to a comprehensive embargo. The situation, however, continues to develop, and additional changes are likely in the coming days and weeks. U.S. companies that have any business interactions, directly or indirectly, with Russian or Russian persons or assets should assess their exposure to these new measures, and update their compliance policies and procedures. If you have any questions regarding these sanctions and export controls or how they may affect your business, please reach out to the contacts listed below.

