

Sanctions Are the New FCPA: US Pledges Enforcement, Issues New Russia Sanctions and Export Controls

As Russia's invasion of Ukraine persists, with no end currently in sight, the United States continues to issue increasingly punishing economic sanctions and export controls targeting Russia, most recently aiming at the exportation to Russia of certain categories of professional services. At the same time, Biden administration officials have begun publicly signaling their intention to aggressively enforce these new sanctions, affirming the recent trend of relying on sanctions and export controls to advance U.S. foreign policy interests.

Notably, at a recent bar association event, Deputy Attorney General Lisa Monaco emphasized the importance of sanctions and export controls as a U.S. Department of Justice (DOJ) priority, explaining that "[o]ne way to think about this is as sanctions being the new FCPA." [1] The Foreign Corrupt Practices Act (FCPA) is a well-known U.S. law prohibiting bribery of foreign government officials that has long been a major focus of DOJ enforcement, with DOJ regularly bringing high-profile FCPA enforcement actions against major global companies. Corporate compliance professionals should heed this stunning comparison and take steps to develop and resource sanctions and export control compliance programs comparable to the robust anti-corruption controls that have become common to global companies.

Summarized below are the sanctions and export controls that have been issued since our previous updates on [March 2, 2022](#), [March 21, 2022](#), and [April 20, 2022](#), and further discussion of their implications for U.S. and global business.

OFAC Sanctions Designations

Since late April 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) added several new Russian entities and individuals associated with sanctions evasion to the Specially Designated Nationals (SDN) list, including additional Russian banks (as well as prominent board members of those banks), a military manufacturing company, a virtual currency mining operation, and state-controlled media companies.

On April 20, OFAC designated several companies and individuals linked to sanctions evasion, including:

- Transkapitalbank, a Russian commercial bank, along with 40 individuals and entities associated with previously designated Russian oligarch Konstantin Malofeyev, "including organizations whose primary mission is to facilitate sanctions evasion for Russian entities"; and
- Bitriver AG, the Swiss holding company associated with Russian virtual currency mining company, Bitriver and 10 of its subsidiaries.

On May 8, OFAC further designated:

- Eight former and current executives of Russia's Sberbank (Sberbank, Russia's largest financial institution, was already designated along with its CEO and first deputy chairman);
- Twenty-seven members of the board of Gazprombank (Russia's third largest financial institution, which is subject to debt and equity prohibitions under Directive 3);
- Moscow Industrial Bank and 10 of its subsidiaries;

- Promtekhlogiya (a private defense company linked to Russian military and intelligence services); and
- Three of Russia's most widely watched state-owned television networks: Joint Stock Company Channel One Russia; Television Station Russia-1; and Joint Stock Company NTV Broadcasting Company.

Partial Ban of Professional Services

Executive Order 14071, issued on April 6, 2022, initially authorized the designation of services that may be prohibited for export to Russia, but at the time, did not designate any specific services for prohibition. On May 8, 2022, OFAC issued new sanctions under this provision, prohibiting exportation from the United States of (1) accounting; (2) trust and corporate formation; and (3) management consulting services to any person or entity in Russia. The guidance OFAC has provided defining the services covered by this prohibition is incredibly broad. *See* OFAC [FAQ 1034](#).

However, there is an exception allowing for such services under the following limited circumstances: (1) services that are provided to a Russian entity that is U.S.-owned/controlled; and (2) services facilitating the wind down or divestiture of a Russian entity if it is not owned by a Russian person. General License 35 also provides a carve out for the provision of credit rating and auditing services in Russia until August 20, 2022.

The services prohibitions take effect on June 7, 2022, with an authorization to wind down ongoing activities through July 7, 2022, under General License 34.

It bears noting that OFAC generally construes provisions of this nature broadly to prohibit both direct and indirect provisions of covered services by U.S. persons or entities or from the United States, as well as any activity that could be viewed as "facilitating" the provision of such services where the benefit would be received in Russia.

These sanctions are the first in what may be a series of designations limiting the export, re-export, sale, and supply of services to Russia.

General Licenses

OFAC has also issued and expanded a number of general authorizations, known as general licenses, allowing for certain types of transactions that would otherwise be prohibited under current sanctions but are specifically authorized for foreign policy reasons. The authorizations include many activities relating to providing food, medicine, and other humanitarian assistance to the people of Russia. OFAC has further issued various authorizations intended to alleviate the burden of these sanctions on U.S. persons and companies, including licenses providing periods to wind down transactions with prohibited parties as well as authorizations to engage in certain types of official administrative activities involving the government of Russia, including overflight payments and protection of intellectual property.

Export Controls

Since our April 20 client update, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued another final rule on May 9, 2022, significantly expanding the existing sanctions and export controls against Russian industry sectors by imposing a license requirement for exports, re-exports, or in-country transfers to and within Russia for additional items subject to the Export Administration Regulations (EAR). This rule seeks to further restrict Russia's access to equipment and other items, and sources of revenue that could

support its military capabilities. Specifically, 205 Harmonized Tariff Schedule (HTS) codes at the six-digit level and 478 corresponding 10-digit Schedule B numbers were added to Supplement No. 4 to Part 746 of the EAR, which lists items subject to this license requirement, created under the March 3, 2022, rule.

BIS has indicated that it will continue to review all license requests of these restricted items under a policy of denial, except in instances necessary for health and safety or humanitarian needs.

Recommendations

- In light of the rapid evolution of these sanctions and the increasing U.S. enforcement attention to evasion efforts, persons or entities transacting in, or with exposure to Russia should ensure they have adopted an effective process for analyzing and responding to new sanctions restrictions as they emerge.
- For U.S. persons and entities, this should include consideration of indirect exposure to Russia (such as through foreign suppliers or distribution networks) and potential facilitation of foreign transactions implicating Russian sanctions as well as opportunities for remote access to U.S.-managed or U.S.-based technology services. With regard to the new services prohibitions, U.S. entities should consider the extent to which they provide any services that may either fall under the definitions provided by OFAC or otherwise be regarded as potentially facilitating prohibited services. Where ambiguity exists, guidance from sanctions counsel and/or OFAC should be sought.
- Foreign entities and individuals also can have exposure to U.S. sanctions to the extent that they deal in U.S. origin products or services; involve U.S. persons, directly or indirectly, in their operations; or transact in U.S. dollars. Several of the recent U.S. sanctions enforcement actions have been taken against foreign companies on the basis that they have "caused" violations by U.S. entities (for instance, through transacting in U.S. dollars).
- Foreign entities may be subject to "secondary sanctions" for engaging in transactions with U.S. sanctioned entities targets which could cut off these designated entities from U.S. markets. As such, global businesses should conduct a robust assessment of their U.S. and Russian touchpoints and ensure that they have procedures in place to address U.S. sanctions implications as necessary.

We continue to monitor the ongoing developments in sanctions and export controls concerning Russia and will provide additional updates as the U.S. response evolves.

Endnote

[1] *Wall Street Journal*, "[Sanctions Turn Into New Priority for Justice Department](#)" (April 27, 2022).

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