

# Memorandum

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## Updated U.S. Sanctions and Export Controls in Response to Ukraine Crisis

March 8, 2022

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Over the course of the last week, and since our [prior memorandum](#) issued February 28, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") have imposed a number of additional sanctions and export controls against Belarus, Russia, and entities and individuals deemed to be providing support to Russia and contributing to the ongoing crisis in Ukraine. The updates discussed herein are additional measures implemented in the past week and include:

1. Prohibitions on dealing with Russia's Central Bank and related entities as set forth in Directive 4 to Executive Order ("E.O.") 14024;
2. Additional sanctions on Russian elites, oligarchs, their families and disinformation outlets;
3. Guidance on sanctions evasion tactics being employed by Russia's Central Bank;
4. Issuance of the Russian Harmful Activities Regulations implementing the requirements of E.O. 14024;
5. Removal of certain Russian banks from the SWIFT Messaging System;
6. Extension of additional export controls to Belarus; and
7. Additional BIS Entity List designations and export control restrictions on oil refining equipment destined for Russia.

This memo reflects updates as of March 8, 2022 and Simpson Thacher is actively monitoring the situation.

### Prohibitions Under Directive 4 and Corresponding General Licenses

On February 28, 2022, OFAC issued [Directive 4](#) under E.O. 14024 prohibiting any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or 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. By freezing the assets of Russia's Central Bank in the U.S., and other jurisdictions including the EU and U.K., the Russian government will be locked out of engaging in currency

swaps with western banks and deprived of foreign currency buffers needed to prop-up the Russian economy. A likely result of these sanctions is that the Russian credit market will begin to dry up, thereby damaging Russia's credibility as a lender and its attractiveness to investors.

OFAC has issued a handful of general licenses for the prohibitions in Directive 4 as follows:

- *GL 9A* – [authorizing](#) through May 25, 2022, all transactions that are ordinarily incident and necessary to the receipt of interest, dividend or maturity payments in connection with debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation or the Ministry of Finance of the Russian Federation issued before March 1, 2022.
- *GL 10A* – [authorizing](#) through May 25, 2022, all transactions that are ordinarily incident and necessary to the wind down of derivative contracts, repurchase agreements or reverse repurchase agreements entered into prior to March 1, 2022, that include the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation or the Ministry of Finance of the Russian Federation as a counterparty.
- *GL 13* – [authorizing](#) U.S. persons, through June 24, 2022, to pay taxes, fees or import duties, and purchase or receive permits, licenses, registrations or certifications, provided such transactions are ordinarily incident and necessary to such persons' day-to-day operations in the Russian Federation.
- *GL 14* – [authorizing](#) all transactions involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation or the Ministry of Finance of the Russian Federation (collectively, "Directive 4 entities"), where the Directive 4 entity's sole function in the transaction is to act as an operator of a clearing and settlement system, provided that (i) there is no transfer of assets to or from any Directive 4 entity, unless separately authorized; and (ii) no Directive 4 entity is either a counterparty or a beneficiary to the transaction, unless separately authorized. *GL 14* does not authorize any debit to an account on the books of a U.S. financial institution of any Directive 4 entity.

## Sanctions on Russian Oligarchs and Disinformation Outlets

On March 3, 2022, OFAC and the U.S. Department of State sanctioned additional Russian elites, their family members and certain Russian intelligence-directed disinformation outlets. OFAC explained that these elites "continue to provide direct and indirect support to the Government of the Russian Federation (GoR) through their business empires, wealth, and other resources." The sanctioned elites include:

- *Alisher Burhanovich Usmanov*. Usmanov is most known for his significant interests in the metals and mining, telecommunications and information technology sectors. Usmanov is sanctioned as an SDN pursuant to E.O. 14024, and his yacht, known as the "Dilbar," and his business jet have been designated as blocked property. The EU has also designated Usmanov as a blocked person. OFAC has issued [GL 15](#) which authorizes all transactions with entities that are 50% or more owned by Usmanov that are not sanctioned in their own right.

- *Nikolay Petrovich Tokarev*. Tokarev is president of Transneft, a state-owned pipeline company that is responsible for transporting 90 percent of oil extracted in Russia. Tokarev is sanctioned as an SDN pursuant to E.O. 14024, as well as his wife and daughter, and businesses owned by Tokarev's wife. The EU and Canada have also sanctioned Tokarev, and Canada additionally designated Tokarev's wife and daughter.
- *Yevgeniy Prigozhin*. Prigozhin is financier of the Internet Research Agency (IRA), which is used to operate global influence operations. Prigozhin is sanctioned as an SDN pursuant to E.O. 14024, as well as his wife and two adult children, and three companies he controls, named Lakhta Park, OOO, Lakhta Park Premium, OOO and Lakhta Plaza, OOO. Australia, Canada, the EU and the United Kingdom have also designated Prigozhin as a blocked person, and the EU and Canada have also designated Prigozhin's wife as a blocked person. Canada has also designated Prigozhin's adult children as blocked persons.

In addition to sanctioning these three elites, OFAC designated 26 Russia- and Ukraine-based individuals and seven Russian entities in connection with the Russian government's efforts to promulgate disinformation and influence perceptions. A list of the entities sanctioned by OFAC can be found [here](#).

### OFAC Guidance on Sanctions Evasion

On March 2, 2022, OFAC issued public [guidance](#) regarding cutting off potential avenues of sanctions evasion used by the Central Bank of the Russian Federation following reports that Russia was taking steps to use exporters to act as their agents and help them raise resources to prop up their currency and fund their priorities.

- Specifically, OFAC issued FAQ No. 1,002 stating that U.S. persons cannot engage in indirect transactions with the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation or the Ministry of Finance of the Russian Federation, which are all entities that are subject to prohibitions under Directive 4 of E.O. 14024. The FAQ states that U.S. persons are prohibited from engaging in any transaction involving these entities, and likewise prohibited from engaging in “(1) any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any of the prohibitions of the Russia-related Sovereign Transactions Directive; and (2) any conspiracy formed to violate any of the prohibitions of the Russia-related Sovereign Transactions Directive.”

The FAQ further notes that “[i]n light of the current economic situation in Russia, U.S. persons should be on alert for non-routine foreign exchange transactions that may indirectly involve entities subject to the Russia-related Sovereign Transactions Directive, including transactions that are inconsistent with activity over the 12 months prior to February 28, 2022.” An example provided in the FAQ says the “Central Bank of the Russian Federation may seek to use import or export companies to engage in foreign exchange transactions on its behalf and obfuscate its involvement.” The FAQ also warns U.S. persons to exercise caution “in engaging in foreign exchange transactions on the Moscow Exchange given the current heightened risk that the Central Bank of the Russia Federation could be a counterparty to such transactions.”

On March 7, 2022, the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Treasury issued an alert advising increased vigilance for potential Russian attempts to evade sanctions. The alert, which can be found [here](#), highlights a number of attempts by Russia to evade sanctions prohibiting its use of the U.S. financial system and provides a number of red flags for financial institutions to be aware of as part of their diligence.

### **OFAC Issues Russian Harmful Activities Regulations**

On March 1, 2022, OFAC issued the Russian Harmful Foreign Activities Sanctions Regulations, located at 31 C.F.R. part 587, to implement E.O. 14024. The regulations note they are being published in abbreviated form for the purpose of providing immediate guidance to the public. Nevertheless, OFAC has stated its intent to supplement part 587 “with a more comprehensive set of regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions.”

### **Certain Russian Banks To Be Removed From the SWIFT Messaging System**

Following the U.S. and allied nations’ joint statement on February 26, 2022 committing to remove certain Russian banks from the Society for Worldwide Interbank Financial Telecommunication (“SWIFT”), the EU announced on March 2, 2022 it will remove seven Russian banks by March 12 from the SWIFT messaging system which facilitates global financial transactions.

The banks being removed from the SWIFT system include: VTB, Bank Otkritie, Novikombank, Promsvyazbank, Bank Rossiya, Sovcombank, and VEB. It is reported that Sberbank and Gazprombank were not included because both are the main channels facilitating payments for Russian oil and gas with Europe. Each of the seven banks to be removed from the SWIFT system had already been sanctioned by OFAC and designated on the SDN List.

### **Extension of U.S. Export Controls to Belarus**

On March 2, 2022, BIS issued a final rule imposing new export controls on Belarus for facilitating Russia’s invasion of Ukraine. These new export controls mirror the restrictions imposed on Russia on February 24, which we summarized [here](#). Exports, re-exports, and transfers of products, software, and technology destined for Belarus, and controlled under Categories 3-9 of the U.S. Commerce Control List, will face licensing restrictions and a policy of denial, meaning that these items are unlikely to be approved for export to Belarus, with limited exceptions set forth in the rule.

Belarus is also now subject to the two Foreign Direct Product (“FDP”) rules imposed on Russia last week. This means even foreign-produced items subject to the U.S. Export Administration Regulations (“EAR”) will be subject to BIS licensing requirements for export to Belarus from abroad where the foreign item is the direct product of U.S. technology. In addition, Belarus military end users (“MEUs”) were added to the Russia MEU/FDP rule meaning there is a near total ban on exports of items to Belarusian MEUs. To this end, BIS added the Ministry of Defense of the Republic of Belarus, including its armed services, national guards and police, and governmental intelligence organizations to the BIS Entity List.

Finally, Belarus was removed from Country Group A:4 and added to Country Groups D:2 and D:4 in the BIS Country Groups chart. Addition of Belarus in Country Groups D:2 and D:4 flags Belarus as a concern for proliferation of nuclear and missile technology. This distinction will further restrict and limit the ability to secure an export license, or to use an export exception, in exporting U.S. items to Belarus.

### **Additional BIS Entity List Designations and Export Control Restrictions**

On March 4, 2022, BIS announced two additional rules placing restrictions on the export of equipment used in Russia's oil refining sector and adding numerous entities providing support to Russian military activities to the BIS Entity List.

The first [rule](#) restricts exports of critical oil refining equipment to Russia, regardless of the intended end user of the equipment. The rule is intended to limit the Russian oil sector by restricting additional items needed for oil refining, since sale of gasoline from Russian oil is a major source of revenue for Russia. The rationale for these changes is that limiting export, re-export, and transfer (in-country) of critical oil refining equipment will reduce Russia's ability to generate revenue to support military capabilities. The rule builds on existing restrictions from 2014 that BIS put in place on the Russian deepwater oil and gas exploration and extraction industries following Russia's annexation of Crimea. Specifically, the new rule amends part 746 of the EAR (*i.e.*, Embargoes and Other Special Controls) to expand the scope of the Russian industry sector sanctions by adding a new general prohibition that will apply to additional Harmonized Tariff Schedule (HTS)-6 codes and Schedule B numbers for all exports, re-exports, and transfers (in-country) to or within Russia.

The second [rule](#) adds 91 entities located around the world in countries including Belize, Estonia, Kazakhstan, Latvia, Malta, Russia, Singapore, Slovakia, Spain and the U.K., to the Entity List for their support of Russian military activities. As explained in the rule, each of the entities is being listed on the basis of its involvement or significant risk of being or becoming involved in activities contrary to U.S. national security or foreign policy. For the 91 entities added to the Entity List, BIS imposes a license requirement that applies to all items subject to the EAR. For 86 of the 91 entities, BIS will review license applications under a policy of denial. As a result of the rapidly increasing Entity List designations, businesses are reminded that they should be continually reviewing the most updated information available prior to engaging in business activities or exports with entities that could be prohibited under the new restrictions.

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