



# RUSSIA: US SANCTIONS

by The Swedish Club and Reed Smith LLP  
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## BACKGROUND

US sanctions in relation to Russia and Ukraine comprise the following:

1. A comprehensive embargo against the Crimea region of Ukraine in response to Russia's annexation of the territory.
2. A comprehensive embargo against the Donetsk and Luhansk regions of Ukraine in response to Russia's declaration of the regions as independent from Ukraine and the following military offensive.
3. Designations in relation to a number of persons and entities in and connected to Ukraine and Russia as Specially Designated Nationals ("SDNs") as a result of their role in contributing to the crisis in Ukraine.
4. Prohibitions on US banks from certain dealings in non-ruble denominated financial instruments with, or issued by, Russian sovereigns.
5. Sectoral sanctions in relation to the financial services, energy and defense and related material sectors, in respect of which a sanctions list called the Sectoral Sanctions Identification Lists ("SSI List") has been created and updated over time.
6. Prohibition on import into the US of Russian crude oil, petroleum, petroleum fuels, oils, and products of their distillation, as well as liquefied natural gas, coal and coal products; US; prohibition on US persons, wherever located, investing in the Russian energy sector; prohibition on US persons providing approval, financing, facilitation or guarantee of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a US person or within the US
7. Prohibition on import of Russian fish, seafood, and preparations thereof; alcoholic beverages; and non-industrial diamonds. The same executive order prohibits the export of US luxury goods to Russia, new investment by U.S. persons in the Russian economy, and the export of US dollar-denominated banknotes to Russia.
8. On March 17 2022, the House approved legislation that would strip Russia of preferential trade status and authorize higher tariffs on Russian imports. The legislation is expected to be approved by the Senate and signed into law by the President.

On August 2, 2017, the US significantly expanded sanctions targeting Russia when former President Trump signed into law the Countering America's Adversaries through Sanctions Act ("CAATSA"), PL 115-44 ("the Act"). The Act is significant because it codified many of the Russia-related sanctions previously imposed through executive order, thereby requiring the President to obtain Congressional approval before easing the targeted US sanctions relating to Russia. The Act also expanded several key restrictions in the oil and gas industry, and designated as SDNs a number of Russian Oligarchs and their businesses.

In December 2019, the US imposed secondary sanctions targeting persons selling, leasing, or providing vessels engaged in certain construction activities for Nord Stream 2 or TurkStream natural gas pipeline project.

In February 2022, the US imposed new sanctions on Russia in response to “the beginning of Russian invasion into Ukraine.”

In March, 2022, the US banned Russian oil and gas imports to the U.S., as well as US investment in the Russian energy sector. US persons may not approve, finance, facilitate or guarantee a transaction by a foreign person if the transaction would be prohibited for US persons. The Executive Order of March 8, 2022 also prohibits 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 set forth therein.

On March 11, 2022 the US prohibited the import of Russian fish, seafood, and preparations thereof; alcoholic beverages; and non-industrial diamonds to the U.S. The Executive Order of March 11, 2022 also prohibited 1) the export of luxury goods into the US, 2) new investment by U.S. persons in any sector of the Russian economy as may be determined by the Secretary of the Treasury, and 3) the export, sale or supply (directly or indirectly) of U.S. dollar-denominated bank notes to the Government of Russia or any person located in Russia.

On March 17, 2022 the US House of Representatives approved legislation that would increase tariffs on Russian goods. It is expected that the Senate will approve the bill and the President will sign it into law.

On April 6, 2022, the US imposed financial sanctions on Sberbank, Alfa-Bank and family members of Vladimir Putin, Sergey Lavrov and members of the Russian Security Council.

On April 7, 2022, the US sanctioned Alrosa (Russia’s largest diamond mining company) and United Shipping Corporation (a Russian entity responsible for building Russian navy warships).

## **LEGISLATIVE FRAMEWORK**

The legal framework for the US Ukraine/Russia-related sanctions includes executive orders issued by the President, and public laws (statutes) passed by Congress, such as the Act. These authorities are then codified by the US Treasury Department, Office of Foreign Assets Control (“OFAC”) in its regulations, which are published the Code of Federal Regulations (“CFR”).

### **I. Executive Orders**

- 13660—Blocking Property of Certain Persons Contributing to the Situation in Ukraine (March 6, 2014).
- 13661—Blocking Property of Additional Persons Contributing to the Situation in Ukraine (March 17, 2014).
- 13662—Blocking Property of Additional Persons Contributing to the Situation in Ukraine (March 20, 2014).
- 13685—Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine (December 19, 2014).
- 13883—Administration of Proliferation Sanctions and Amendment of Executive Order 12851 (August 1, 2019).
- 14024—Blocking Property With Respect to Specified Harmful Foreign Activities Of The Government Of The Russian Federation (Effective Date – April 15, 2021).
- 14039—Blocking Property With Respect to Certain Russian Energy Export Pipelines (August 20, 2021).

- 14065—Blocking Property of Certain Persons and Prohibiting Certain Transactions With Respect to Continued Russian Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine (February 21, 2022).
- 14066 - Executive Order of March 8, 2022 - Prohibiting Certain Imports and New Investments With Respect to Continued Russian Federation Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine. This EO expands the scope of national emergency declared in EO 14024 and relied on in EO 14039 above.
- 14068 - Executive Order of March 11, 2022 – Executive Order on Prohibiting Certain Imports, Exports and New Investment with Respect to Continued Russian Federation Aggression.
- 14071 – Executive Order of April 6, 2022 – Executive Order banning new outbound US foreign investment into Russia and a ban on services exports.

## **II. Statutes**

- The Act (see above), see CAATSA.
- International Emergency Economic Powers Act (“IEEPA”), 50 USC §§1701-1706, see IEEPA.
- National Emergencies Act (NEA), 50 USC §§1601-1651, see NEA.
- Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, as amended (the “CBW Act”) (22 USC § 5605(b).
- Section 7503, National Defense Authorization Act for Fiscal Year 2020 - Protecting Europe’s Energy Security Act of 2019 (“PEESA”).
- Section 1242, National Defense Authorization Act for Fiscal year 2021, Protecting Europe’s Energy Security Clarification Act (“PEESCA”).
- “Ending Importation of Russian Oil Act” (H.R. 6968).
- “Suspending Normal Trade Relations with Russia and Belarus Act” (H.R. 7108).

## **III. Code of Federal Regulations**

- The Ukraine-Related Sanctions Regulations appear at 31 CFR Part 589.
- The Weapons of Mass Destruction Proliferators Sanctions Regulations (such sanctions thereunder, the “Proliferation Sanctions”) appear at 31 CFR Part 544.
- Russian Harmful Foreign Activities Sanctions Regulations appear at 31 CFR 587.

## **IV. Federal Register Notices**

79 FR 26365-14 Issuance of regulations to implement Executive Order 13660, Executive Order 13661 and Executive Order 13662, see 79 FR 26365-14. 84 FR 44671 Issuance of regulations to implement Executive Order 13883.

86 FR 35867-21 Publication of Russian Harmful Foreign Activities Directive 1.

87 FR 11297 (March 1, 2022) Issuance of Russian Harmful Foreign Activities Sanctions Regulations.

## **APPLICATION: WHO DO THE US SANCTIONS APPLY TO?**

### **I. US Persons**

Under the Ukraine-Related Sanctions Regulations, so-called “primary sanctions” apply to “US Persons”—defined as: “any United States citizen, permanent resident alien, 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.” 31 CFR § 589.312. Primary sanctions under the Ukraine-Related Sanctions Regulations and recent executive orders include the following:

- Crimea Embargo, prohibiting US persons from engaging in most commercial transactions with Crimea (discussed on page 4)
- Donetsk and Luhansk Embargo, prohibiting US persons from engaging in most commercial transactions with these two regions (discussed on page 4)
- Blocking Provisions, prohibiting US persons from engaging in transactions with designated parties (discussed on page 4).
- Sectoral Sanctions, prohibiting US persons from specific types of transactions with designated parties (discussed on page 5).
- Prohibition on oil and gas imports to the U.S. and U.S. investment in Russian energy sector.
- Prohibition on import of Russia fish, seafood and preparations thereof; alcoholic beverages; and non-industrial diamonds
- Prohibition on export of luxury goods to Russia
- Prohibition on export of US dollar-denominated banknotes to Russia
- Prohibition on new U.S. investment in any sector of the Russian economy (as determined by the U.S Secretary of the Treasury) by any U.S. person

The Russia-Related Directive Under Executive Order of August 1, 2019 (“CBW Act Directive”) applies to US banks. The definition of “US bank” includes branches, offices and agencies of foreign financial institutions that are located in the United States and otherwise meet the definition of US bank used in this Directive.

### **II. Non-US Persons**

Ukraine-Related Sanctions also apply to non-US persons in two respects:

- First, under the International Emergency Economic Powers Act (50 USC § 1705), non-US Persons can be penalized if they “cause a violation” of US sanctions. For example, a shipowner or Club that conducts business in the US could be penalized if it makes or receives payment in US dollars for a transaction involving a Russian SDN while concealing the involvement of the SDN in the payment instructions. Such concealment unlawfully “causes” a US bank to violate US sanctions when it processes the payment. Accordingly, it is important that non-US entities ensure their US employees, contractors, vendors, banks, and other third parties with whom they deal, do not participate in transactions from which US persons are prohibited.

- Second, so-called “secondary sanctions” are restrictions that apply to non-US persons even when there is no US nexus. In the context of Ukraine-Related Sanctions, these include:
  - Special Russian Crude Oil Projects, requiring sanctions on non-US persons who make significant investments in a certain Russian crude oil projects (discussed on page 8).
  - Energy Pipelines, authorizing sanctions against non-US persons who invest in Russian energy export pipelines. Secondary sanctions can also be imposed on non-US persons who have leased, sold or provided vessels for the construction of Nord Stream 2 or TurkStream gas pipeline projects (discussed on page 8).
  - Blocking Provisions, authorizing OFAC to block non-US persons if they engage in certain activities and/or meet certain criteria (discussed on page 4).

## **OVERVIEW OF US SANCTIONS AGAINST RUSSIA/CRIMEA**

### **I. Crimea Embargo**

A major element of the Russia sanctions program is an embargo on Crimea that was established in 2014. Pursuant to Executive Order 13685, the US imposed comprehensive sanctions on the Crimea region of Ukraine, which includes the land territory in that region, as well as any maritime area over which sovereignty, sovereign rights, or jurisdiction is claimed based on purported sovereignty over that land territory.

US persons are prohibited from engaging in nearly all commercial transactions with Crimea including: new investment; importation into the US of goods, services or technology from Crimea; exporting or reexporting, directly or indirectly, any goods, services or technology to Crimea; facilitating any transaction with Crimea; and donating humanitarian goods to Crimea. In addition, EO 13685 added several entities to the SDN list.

### **II. Donetsk and Luhansk Embargo**

Upon the February 2022 Russian offensive on Ukraine, the U.S. has imposed the same type of comprehensive sanctions we saw in the Crimea context. Pursuant to Executive Order 14065, US persons are prohibited from engaging in nearly all commercial transactions in these two regions including: new investment; importation into the US of goods, services or technology from Donetsk/Luhansk; exporting or reexporting, directly or indirectly, any goods, services or technology to Donetsk/Luhansk; facilitating any transaction with Donetsk/Luhansk; and donating humanitarian goods to Donetsk/Luhansk.

While the Donetsk and Luhansk are the currently defined “Covered Regions” subject to these restrictions, Executive Order 14065 contains language pointing to that this scope could readily be extended – to “such other regions of Ukraine as may be determined by the Secretary of the Treasury.”

### **III. Blocking Provisions/Asset Freeze**

#### **1. What is prohibited?**

Pursuant to Executive Orders 13660, 13661, 13662, 13685, 14024, 14039, and 14065 OFAC designated a number of non-US persons in and connected to Ukraine and Russia. US persons cannot engage in any transactions with SDNs, and property and interests in property of SDNs that are in the possession or control of US persons or in the US must be blocked or frozen (that is to say may not be transferred, paid, exported, withdrawn or otherwise dealt in) and reported to OFAC.

The President has the power, acting through OFAC, to block and freeze the assets of non-US Persons meeting the following criteria:

- Cybersecurity: Individuals who knowingly undermine cybersecurity against a person, democratic institution, or government (such as hacking) on behalf of the Russian Government.
- Human Rights Abuses: Individuals who are responsible for commissioning serious human rights abuses in any territory “forcibly occupied” or controlled by the Russian Government.
- Abuses in Ukraine: Parties responsible or complicit in undermining democratic processes, threatening the peace, misappropriating state assets, and other abuses of power in Ukraine.
- Arms: Parties operating in the arms or related material sector in the Russian Federation.
- Crimea: Parties who “operate in the Crimea region of Ukraine” or are “a leader of an entity operating in the Crimea region of Ukraine.”
- Donetsk and Luhansk: Parties who “operate in” Donetsk or Luhansk, or are leaders of an entity operating in Donetsk or Luhansk.
- Russian Industries: Parties who operate in sectors of the Russian Federation economy as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State, such as financial services, energy, metals and mining, engineering, and defense and related materiel.
- Russian Harmful Foreign Activities: Parties who operate in the technology or defense sector of the Russian economy, and any other sector of the Russian Economy, as determined by the Secretary of Treasury. Executive Order 14024 also authorizes sanctions on persons determined to have engaged in or attempted to engage in, but not limited to, the following activities: inflicting bodily harm or causing the death of a US citizen, person, or national of a US ally; organizing transactions for the purpose of evading US sanctions (including through the use of digital assets or currencies); and transnational corruption. On March 31, 2022, Executive Order 14024 was extended to include the aerospace, marine and electronic sectors.
- Energy or Gas Supplies: Parties determined to be responsible for, complicit in, or engaged in or having attempted to interfere with or cut gas supplies or energy to the Caucasus, Asia, or Europe.
- Governments of other Countries: Parties who have “materially assisted” a government subject to blocking sanctions. This includes the governments of Iran, Cuba, North Korea, Syria, and Venezuela.

In addition to the blocking criteria listed above, OFAC is authorized to block and designate a non-US person when it has been determined that the person:

- Has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services for any person blocked pursuant to an executive order.
- Has knowingly “facilitate[d] a significant transaction . . . , including deceptive or structured transactions, for on behalf of . . . any person subject to the sanctions imposed by the United States with respect to the Russian Federation.” This includes entities owned 50 percent or more, individually or collectively, by an SDN. See Section 226 of CAATSA.
  - OFAC has explained that “facilitating” a transaction refers to the provision of “assistance for a transaction from which the person in question derives a particular benefit of any kind . . . .” See FAQ 545.

- OFAC will consider a totality of circumstances when determining whether a specific transaction is “significant”, while also providing seven factors to be considered when making that analysis. Those factors include (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis. See FAQ 545. A transaction is not “significant,” however, if a US person would not require a specific license from OFAC to engage in the activity.

OFAC is required to impose secondary sanctions on non-US financial institutions that have knowingly facilitated “significant financial transactions” for any Russian person who has been designated pursuant to Ukraine-related authorities. See CAATSA 226.

## **2. What penalties can be imposed on non-US persons?**

Non-US persons who engage in transactions with SDNs that OFAC finds to be “significant” and thus sanctionable under Section 231 of CAATSA, may face five or more of the sanctions described in Section 235 of CAATSA. These secondary sanctions include: prohibitions on Export-Import Bank assistance, export licenses for exports to sanctioned persons, prohibitions on loans to sanctioned persons of more than \$10 million over a 12-month period from any US financial institution, prohibition of any transactions in foreign exchange by the sanctioned person within the jurisdiction of the United States, and asset blocking, as well as various additional sanctions directed at financial institutions and transactions and measures against corporate executives. These measures are designed to use economic leverage to dissuade non-US persons from engaging in transactions with anyone subject to secondary sanctions.

## **3. How is the shipping industry affected by the blocking provisions/asset freeze?**

If a shipping industry participant is blocked, US persons would be prohibited from engaging in any transactions or dealings with that SDN. The US persons would also be required to block or freeze all property and interests in property of the SDN in their possession. Non-US persons should also avoid dealings with SDNs, because the provision of goods, services and other forms of material assistance to an SDN may expose non-US persons to blocking sanctions.

## **4. How can I find out which parties are designated?**

The full SDN List may be found at the OFAC website at SDN Human Readable Lists. It is also possible to search the list, using the OFAC search engine at Sanctions List Search Tool.

On February 22, 2022, the U.S. designated State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB) and Promsvyazbank Public Joint Stock Company (PSB). These institutions are now blocked, along with any entities they own by at least 50%. The OFAC designation notice lists 25 blocked subsidiaries for VEB, and 17 subsidiaries for PSB – one of which is PSB Lizing OOO. As part of the designation of PSB, OFAC also sanctioned five vessels that are owned by PSB Lizing OOO:

1. **Baltic Leader** (IMO: 9220639), a Russian-flagged roll-on roll-off cargo vessel with a gross registered tonnage of 8831;
2. **Linda** (IMO: 9256858), a Russian-flagged crude oil tanker with a gross registered tonnage of 61991;
3. **Pegas** (IMO: 9256860), a Russian-flagged crude oil tanker with a gross registered tonnage of 61991;
4. **Fesco Magadan** (IMO: 9287699), a Russian-flagged container ship with a gross registered tonnage of 7519; and

5. **Fesco Moneron** (IMO: 9277412), a Russian-flagged container ship with a gross registered tonnage of 7519

On February 23, 2022, the U.S. added Nord Stream 2 AG and its CEO Matthias Warning on the SDN List. These designations have been accompanied by a General Licence with permits transactions that are ordinarily incident and necessary to the wind down of transactions involving Nord Stream 2 AG, or any entity in which Nord Stream 2 AG owns, directly or indirectly, a 50 percent or greater interest, up to 12:01 a.m. EST 2 March 2022.

After this date, all U.S. persons will be prohibited from transacting with Nord Stream 2 AG and any U.S. dollar transactions will also be prohibited. Furthermore, non-US persons face risk of secondary sanctions if deemed to have provided Nord Stream 2 AG 'material support'.

Additions to the SDN list continue apace with Russia's assault on Ukraine, targeting government officials, heads of state-owned entities, allies of Putin (the "oligarchs") and their family members. On February 25 OFAC designated Russian President Vladimir Putin and Minister of Foreign Affairs Sergey Lavrov.

The most recent additions to the SDN list on March 11, 2022 expanded existing sanctions by targeting the following: family members of Dmitriy Sergeevich Peskov; property belonging to Viktor Feliksovich Vekselberg, (including an aircraft and a yacht); ten members of the management board of Russia's second largest bank, VTB Bank; and twelve members of the Duma, one of Russia's two chambers of legislature.

#### **IV. Sectoral Sanctions: The Directives<sup>1</sup>**

Since 2014, the OFAC has maintained four "Directives" that impose targeted sanctions upon key elements of the Russian economy, all of which were promulgated under Executive Order 13662. The primary purpose of Executive Order 13662 was to focus on entities in certain sectors of the Russian economy, such as "financial services, energy, metals and mining, engineering, and defense and related materiel."

Each Directive governs activities between US persons and those listed on the Sectoral Sanctions Identifications SSI List. The SSI List is organized according to the four Directives. The SSI List may be searched on the OFAC website at Sectoral Sanctions Identifications (SSI) List.

Unlike the SDN List, which includes blocked persons and prohibits virtually all activity with so-called SDNs, the SSI List designations result in narrow prohibitions that are limited to those activities in the identified sectors targeted by the Directives. Note that, with all the Directives, sanctions that apply to entities on the SSI List also apply to any entities that are owned 50 percent or more by one or more persons on the SSI List, see 50% Rule. Therefore, providing funds to a non-listed entity that is owned (50% or more) by a listed entity is considered a prohibited provision of funds to the listed entity.

##### **1. Directive 1 (as amended on September 29, 2017) Under Executive Order 13662 (13-Day New Debt/No Equity) targeting Russia's financial services sector**

Directive 1 was established in 2014 to target the financial services sector of the Russian economy. This directive originally prohibited US persons (or those within the United States) from engaging in transactions in, providing financing for, or otherwise dealing in new debt with a maturity of longer than 90 days (July 16, 2014 version) and then 30 days (September 12, 2014 version), or equity for persons identified on the SSI List under Directive 1.

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<sup>1</sup> Given the significant number of directives and general licenses that OFAC has recently promulgated, we have only summarized those primarily of interest to the maritime community here. Please consult the OFAC website or legal counsel for additional guidance.



However, under the Act, OFAC was required to modify Directive 1 to reduce the “new” debt prohibition to 14 days. This was done on September 29, 2017, and the reduction came into effect in respect of new debt or new equity issued on or after November 28, 2017.

**2. Directive 2 (as amended on September 29, 2017) Under Executive Order 13662 (60-Day New Debt) targeting Russia’s energy sector**

Directive 2 targets Russia’s energy sector of the Russian economy by prohibiting transactions in, the provision of financing for, and other dealings in new debt with a maturity of longer than 60 days for persons identified on the SSI List under Directive 2. Originally, Directive 2 covered new debt with a maturity of longer than 90 days but the Act required OFAC to reduce the period to 60 days. This was done on 29 September 2017, and the reduction came into effect in respect of new debt issued on or after November 28, 2017.

**3. Directive 3 (30-Day Debt) Under Executive Order 13362 targeting Russia’s defense and related material sector**

Directive 3 targets the Russian defense and related material sector by prohibiting all transactions in, the provision of financing for, and other dealings in new debt of longer than 30 days for persons identified on the SSI List under Directive 3.

**4. Directive 4 (as amended on October 31, 2017) under Executive Order 13662 (Energy Industry Prohibitions) further targeting Russia’s energy sector**

Directive 4 expands on the sanctions targeting the Russian energy sector. The original version of Directive 4 prohibited US persons from: (1) “the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology”; (2) “in support of exploration or production for deepwater [underwater activities at depths of more than 500 feet], Arctic offshore, or shale projects” (hereafter “Covered Projects”); (3) “that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory”; (4) that involve any person identified on the SSI List under Directive 4, including that person’s property, or its interests in property.

OFAC modified Directive 4 to prohibit US persons not only from providing goods, services and technology for Covered Projects in Russia, but also to such projects anywhere in the world, if they involved persons designated under Directive 4. Notably, the expansion of Directive 4 to reach Covered Projects beyond Russia applied only to “new” Covered Projects where the Directive 4 target “has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest.” The amendment was made on October 31, 2017 and covers projects that were initiated on or after January 29, 2018.

**5. Directive 3 under Executive Order 14024 (Russia-related Entities Directive)**

On February 24, 2022, OFAC issued Directive 3 under E.O. 14024 (the “Russia-related Entities Directive”) to prohibit transactions and dealings by U.S. persons or within the United States in new debt of longer than 14 days maturity and new equity of Russian state-owned enterprises, entities that operate in the financial services sector of the Russian Federation economy, and other entities determined to be subject to the prohibitions in this directive. Notably, subject to these new restrictions are:

- Sberbank
- Gazprombank
- Russian Agricultural Bank
- Gazprom
- Gazprom Neft
- Transneft.

- Rostelecom
- RusHydro
- Alrosa
- Sovcomflot
- Russian Railways
- Alfa-Bank
- Credit Bank of Moscow

### **Pertinent “Wind-Down” General Licenses**

General License 8A authorizes certain wind down transactions “related to energy” with VEB, Otkritie, Sovcombank, Sberbank, VTB and Russian Central Bank through June 24, 2022. Specifically, it permits what are commonly known as “U-turn transactions,” where payments related to energy are processed through non-sanctioned, third-country financial institutions, enabling the continuation of transactions that support the flow of energy to the market. For example, a company purchasing oil from a Russian company would be able to route the payment through a non-sanctioned third-country financial institution as an intermediary for credit to a sanctioned financial institution’s customer in settlement of the transaction.

For the purposes of General Licence 8A, the term “related to energy” means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

Note that General License A does not permit any activities prohibited by the Executive Order of March 8, 2022 banning Russian oil and gas imports to the U.S. (see further below).

OFAC released a number of FAQs to further clarify the use of this general license.

General License 9A: authorizes, through 25 May 2022, transactions that are ordinarily incident and necessary to dealings in debt or equity of VEB, Otkritie, Sovcombank, Sberbank, VTB Bank (and any entity owned 50% or more, directly or indirectly, by these financial institutions) provided that any divestment or transfer of, or facilitation of divestment or transfer of, covered debt or equity is to a non-US person. This GL also authorizes transactions that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity through 25 May 2022 provided that the trades were placed prior to 4:00 pm US eastern time on 24 February 2022.

General License 10A: authorizes, through 25 May 2022, transactions that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 pm US eastern time on 24 February 2022 that (i) include one of the following entities as a counterparty or (ii) are linked to debt or equity of a covered entity, provided any payments to a blocked person are made to a blocked account: VEB, Otkritie, Sovcombank, Sberbank, VTB and any entity owned 50% or more, directly or indirectly, by these financial institutions.

It also authorizes, through May 25, 2022, 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.

General License 11: authorizes U.S. persons, through 26 March 2022, to engage in transactions ordinarily incident and necessary to exit operations, contracts, or other agreements that were in effect prior to the date of blocking involving the specified blocked Russian financial institutions (Otkritie,

Sovcombank, VTB and any entity owned 50% or more, directly or indirectly, by these financial institutions) provided that such transactions do not involve a debit to a blocked account on the books of a U.S. financial institution.

General License 12: authorizes U.S. persons, through 26 March 2022, to reject (instead of block) transactions involving: Otkritie, Sovcombank, VTB and any entity owned 50% or more, directly or indirectly, by these financial institutions.

On March 3, 2022 OFAC issued amended General License 9A, General License 10A to include the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation (collectively “Directive 4 entities”) in the wind down periods of General Licenses 9 and 10 mentioned above. In addition, OFAC issued new General Licenses 13 and 14:

General License 13 authorizes, though June 24, 2022, U.S. persons to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications if ordinarily incident and necessary to such persons’ day-to-day operations in the Russian Federation.

General License 14 authorizes certain clearing and settlement transactions 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 (“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.

General License 15 authorises all transactions which are prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (“RuHSR”), and involve entities that are 50 percent or more directly or indirectly owned by Alisher Burhanovich Usmanov that is not listed on OFAC’s Special Designated Nationals and Blocked Persons (“SDN”) List.

General License (GL) 16 authorizes all transactions prohibited by E.O. 14066 that are ordinarily incident and necessary to the importation of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products of Russian Federation origin pursuant to written contracts or written agreements entered prior to March 8, 2022. GL 16 does not authorize entry into new contracts.

General License (GL) 17 authorizes through March 25, 2022 transactions that are ordinarily incident and necessary to the importation into the United States of fish, seafood, and preparations thereof; alcoholic beverages; or non-industrial diamonds of Russian Federation origin pursuant to written contracts or written agreements entered into prior to March 11, 2022. GL 17 does not authorize entry into new contracts.

General License (GL) 18 authorizes certain transactions that are ordinarily incident and necessary to the transfer of U.S. dollar-denominated banknotes for noncommercial, personal remittances from: (i) the United States or a U.S. person, wherever located, to an individual located in the Russian Federation; or (ii) a U.S. person who is an individual located in the Russian Federation. GL 18 authorizes methods of payment including withdrawals of U.S. dollar-denominated banknotes via automated teller machines and the hand carrying of U.S. dollar-denominated banknotes.

General License (GL) 19 authorizes U.S persons located in Russia to engage in transactions that are ordinary incident and necessary to their personal maintenance within the Russian Federation, including payment of housing expenses, acquisition of goods or services for public use, payment of taxes or fees, and purchase of receipts of permits, licenses, or public utility services.

General License 24 authorizes all transactions prohibited by E.O. 14065 in relation to the provision or receipt of civil maritime services performed by ordinary residents of the Covered Regions (Donetsk and Luhansk Oblasts) provided that:

- (1) The services are performed outside of the Covered Regions;
- (2) The services are not performed on behalf of any entity which is located in, or organized under the Covered Regions laws.

GL 24 does not authorize new investments as prohibited by E.O. 14065 or transactions involving any blocked person pursuant to E.O. 14065.

General Licence 26 authorises through 12 July 2022, all transactions ordinarily incident and necessary to the wind down of transactions involving Joint Stock Company SB Sberbank Kazakhstan and Sberbank Europe AG.

### **Shipping**

On 21 April 2022, President Joe Biden announced that the United States will ban Russian-affiliated ships from entering into American ports with effect from 28 April 2022, following similar restrictions imposed by Canada, the EU and the UK.

### **SWIFT**

On 26 February 2022, it was announced the EU, US and allies have agreed to cut off a number of Russian banks from the international payment SWIFT. While the EU announced the specific banks it would be cutting off from SWIFT, the U.S. has not yet announced any names.

### **Oil and Gas**

On 8 March 2022, President Biden announced a total ban on the imports of oil and gas, where oil and gas coming in from Russia will no longer be accepted in U.S. ports.

OFAC published General License 16 to authorize the performance of contracts that were entered prior to the date of publication of the order, March 8, 2022, until April 22, 2022. This includes transactions that are "ordinarily incident and necessary to the importation into the United States of crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products of Russian Federation origin pursuant to written contracts or written agreements entered prior to March 8, 2022 are authorized through 12:01 a.m. eastern daylight time, April 22, 2022."

Only Russian energy products listed in the executive order are prohibited. The order does not apply to non-Russian energy products that have transited Russian territory. In response to FAQ 1,104, OFAC explained the following: "Imports of other forms of energy of Russian Federation origin are not prohibited by E.O. of March 8, 2022. In addition, E.O. of March 8, 2022 does not prohibit imports of non-Russian Federation origin, even if such items transit through or depart from the Russian Federation. However, targeted prohibitions or restrictions may apply to certain energy-related dealings with specified Russian persons under other sanctions authorities, such as [E.O. 13662](#) or [E.O. 14024](#)."

In the order, the phrase "**Russian Federation origin**" means goods produced, manufactured, extracted, or processed in the Russian Federation; this excludes any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product (see OFAC FAQ 1,019). See further below for additional FAQs.

The same executive order also bans U.S. investment in the Russian energy sector. The phrase "**new investment in the energy sector in the Russian Federation**" means "a transaction that constitutes a

commitment or contribution of funds or other assets for, or a loan or other extension of credit to, new energy sector activities (not including maintenance or repair) located or occurring in the Russian Federation beginning on or after March 8, 2022.” OFAC has explained that a loan or extension of credit includes the following:

For purposes of this interpretation, a loan or extension of credit is any transfer or extension of funds or credit on the basis of an obligation to repay, or any assumption or guarantee of the obligation of another to repay an extension of funds or credit, including: overdrafts, currency swaps, purchases of debt securities, purchases of a loan made by another person, sales of financial assets subject to an agreement to repurchase, renewals or refinancings whereby funds or credits are transferred or extended to a borrower or recipient described in the provision, the issuance of standby letters of credit, and drawdowns on existing lines of credit.

OFAC went on to further describe the phrase “energy sector” as including:

the procurement, exploration, extraction, drilling, mining, harvesting, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, or transport of petroleum, natural gas, liquified natural gas, natural gas liquids, or petroleum products or other products capable of producing energy, such as coal or wood or agricultural products used to manufacture biofuels, the development, production, generation, transmission or exchange of power, through any means, including nuclear, electrical, thermal, and renewable (OFAC FAQ 1,019).

On April 8 2022, President Biden signed the “Ending Importation of Russian Oil Act” (H.R. 6968) which codifies into US law a prohibition on the importation of oil, gas and coal from Russia.

There are several other FAQs about the ban on oil and gas imports available on OFAC’s website.

## **V. Proliferation Sanctions**

Following a March 2018 chemical attack by individuals allegedly associated with Russian government forces in Salisbury, England, the US implemented several punitive measures against Russia. The sanctions prohibit US banks from: (1) participating in the primary market for non-ruble denominated bonds issued by a Russian sovereign and (2) lending non- ruble denominated funds to the Russian sovereign. OFAC imposed these sanctions through the CBW Act Directive of August 1, 2019, which was issued pursuant to Executive Order 13883 (Administration of Proliferation Sanctions and Amendment of Executive Order 12851), 31 CFR § 544.802, and section 307(b) of the CBW Act.

A “Russian sovereign” for purposes of the CBW Act Directive means “any ministry, agency, or sovereign fund of the Russian Federation, including the Central Bank of Russia, the National Wealth Fund, and the Ministry of Finance of the Russian Federation,” but does not include state-owned enterprises. The CBW Act Directive does not prohibit US banks from participating in the secondary market for Russian sovereign debt.

## **VI. Special Russian Crude Oil Projects**

The President is required, unless he/she determines it is not in US national security interests, to impose sanctions on any person who “knowingly makes a significant investment” in a “special Russian crude oil project,” defined as “a project intended to extract crude oil from (i) the exclusive economic zone of the Russian Federation in waters more than 500 feet deep; (ii) Russian Arctic offshore locations; or (iii) shale formations located in the Russian Federation.”

## **VII. Energy Pipeline Secondary Sanctions**

The US has also imposed secondary sanctions targeting non-US persons engaged in certain transactions related to Russian energy pipelines.

### *Investments*

The Act gives the President the power to impose (but does not require) secondary sanctions on non-US persons who knowingly: (1) make an investment of USD 1 million or more (or USD 5 million or more over a 12-month period) that directly and significantly contributes to enhancing Russia's ability to construct energy export pipelines or (ii) sell, lease, or provide to the Russian Federation, goods, services, technology, information, or support (valued at USD 1 million or more, or during a 12-month period with an aggregate value of USD 5 million or more) that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipeline.

### *Pipe-laying Vessels*

PEESA, which was signed into law in December 2019, requires the President to impose secondary sanctions on non-US persons who knowingly: (1) sell, lease or provide vessels engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project or the TurkStream pipeline project (a pipeline that runs from Russia to Turkey across the Black Sea) and any successor to either project; or (2) facilitate deceptive or structured transactions to provide those vessels for the construction of such a project.

The secondary sanctions consist of: (1) blocking sanctions and prohibitions on all transactions in US property and interests in property of any person sanctioned under PEESA if such property and interests in property are in the US or in the possession or control of a US person; and (2) prohibiting the entry into the US and the issuance of a US visa to any non-US person that is a corporate officer or principal shareholder of a person sanctioned under PEESA.

In January 2021, the United States congress enacted PEESCA, which threatens sanctions on companies providing, among other things, insurance, underwriting, inspection, pipe-laying, services related to retrofitting, upgrading, or tethering pipe-laying vessels, or pipe-laying vessels, goods, services, information, technology, or other support for either project.

## **EXPORT CONTROLS**

### **I. Commercial and Dual-Use Export Controls**

In coordination with the sanctions programs administered by OFAC, the US Department of Commerce, Bureau of Industry and Security ("BIS") administers export controls that impact trade with Russia. On August 6, 2014, BIS amended the Export Administration Regulations ("EAR") to include the "Russian Industry Sector Sanctions" at section 746.5. These restrictions impose a license requirement for the export to Russia of certain items if the exporter, reexporter, or transferor knows that the item "will be used directly or indirectly in exploration for, or production of, oil or gas in Russian deepwater (greater than 500 feet) or Arctic offshore locations or shale formations in Russia, or are unable to determine whether the item will be used in such projects." The items subject to this license requirement include items classified under the following Commerce Control List Export Control Classification Numbers (ECCNs): 0A998, 1C992, 3A229, 3A231, 3A232, 6A991, 8A992, 8D999, as well as EAR99 items identified in Supplement No. 2 to Part 746. BIS also established a policy of denial for such license applications. BIS further imposed a license requirement (subject to a policy of denial) for all exports, reexports, or transfers to Russia of items subject to the EAR if intended, in whole or in part, for a military end- use or military end- user in Russia.

## **II. Military/Defense Export Controls (ITAR)**

On March 27, 2014, DDTC placed a hold on the issuance of International Traffic in Arms Regulations (“ITAR”) licenses for the export of defense articles and defense services to Russia. On April 28, 2014, DDTC changed its hold on licenses to a policy of denial for defense articles or defense services to Russia or occupied Crimea. DDTC also began revoking existing licenses for defense articles and services. DDTC currently reviews defense article export licenses on a case-by-case basis to determine the export’s contribution to Russia’s military.

## **III. Luxury Goods**

On March 11, 2022, President Biden issued an executive order banning the import of Russian fish, seafood and preparations thereof; alcoholic beverages; and non-industrial diamonds. The same executive order also banned 1) the export of luxury goods to Russia, 2) provision of U.S. dollar denominated bank-notes to the Russian Government or any person in Russia, and 3) new investment in any sector of the Russian economy as may be designated for sanctions by the Treasury Department.

## **IV. Recent Export Controls**

On 24 February 2022, the US introduced new export control restrictions on Russia. These are as follows:

### *a. New Commerce Control List (CCL)-based license requirements for Russia*

This final rule adds new license requirements for all Export Control Classification Numbers (“ECCNs”) in Categories 3-9 of the CCL.

Certain of these items, in 58 ECCNs with unilateral controls, were not previously controlled to Russia and include microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, and aircraft components.

There are a number of carve-outs for these licensing requirements for certain products and recipients.

### *b. Applies a review policy of denial to license applications for exports, reexports to, or transfers within Russia*

Under the stringent licensing review policy being implemented, applications for the export, reexport, or transfer (in-country) of items that require a license for Russia will be reviewed, with certain limited exceptions, under a policy of denial. The categories reviewed on a case-by-case basis are applications related to safety of flight, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, government-to-government activities, and to support limited operations of partner country companies in Russia.

### *c. Expands the existing Russia ‘military end use’ and ‘military end user’ control scope to all items subject to the Export Administration Regulations (“EAR”)*

With this final rule, restrictions on Russian ‘military end users’ and ‘military end uses’ cover all items subject to the EAR with exceptions for: (i) food and medicine designated as EAR99; and (ii) items classified as ECCN 5A992.c or 5D992.c, so long as they are not for Russian “government end users” or Russian state-owned enterprises.

### *d. Adds two new Foreign Direct Product (“FDP”) Rules specific to Russia and Russian ‘military end users.’*

Creates a new FDP rule for all of Russia (“Russia FDP rule”). To restrict Russia’s ability to acquire certain foreign-produced items, the Russia FDP rule establishes a control over foreign-produced items that are: (i) the direct product of certain U.S.-origin software or technology subject to the EAR; or (ii) produced by certain plants or major components thereof which are themselves the direct product of certain U.S.-origin software or technology subject to the EAR. This control applies when it is known 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 produced in or destined to Russia. The Russia FDP rule does not apply to foreign-produced items that would be designated as EAR99.

*e. Creates a new foreign direct product rule for Russian military end users (“Russia-MEU FDP rule”)*

The Russia-MEU FDP rule is more extensive than the Russia FDP rule and applies to foreign-produced items that are: (i) the direct product of any software or technology subject to the EAR that is on the CCL; or (ii) produced by certain plants or major components thereof which are themselves the direct product of any U.S.-origin software or technology on the CCL. Such items will be subject to the EAR and require a license if an entity with a footnote 3 designation on the Entity List is a party to the transaction, or if there is knowledge 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 with a footnote 3 designation (which is established in this rule and described below) on the Entity List. These restrictions apply to all items, including those designated EAR99, with certain exceptions, and impose a license requirement for footnote 3-designated Russian military end users.

Partner Country Exclusion from Russia and Russia-MEU FDP rules. Certain partner countries that are adopting or have expressed intent to adopt substantially similar measures are not or will not be subject to the Russia and Russia-MEU FDP rules. Exports, reexports, and transfers (in-country) from the following countries are not subject to these rules: 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.

*f. Significantly restricts the use of EAR license exceptions for Russia exports, reexports, and transfers (in-country)*

Only certain sections of the following license exceptions are available for exports to Russia:

- (1) TMP (Temporary Imports, Exports, Reexports, and Transfers in Country), for items for use by the news media;
- (2) GOV, for certain government activities;
- (3) TSU (Technology and Software Unrestricted), for software updates to civil end users that are subsidiaries of, or joint ventures with, companies headquartered in the United States or partner countries;
- (4) BAG (Baggage), for baggage, excluding firearms and ammunition;
- (5) AVS (Aircraft, Vessels, and Spacecraft), for aircraft flying into and out of Russia;
- (6) ENC (Encryption Commodities, Software, and Technology), for encryption items, but not if they are destined for Russian ‘government end users’ and Russian state-owned enterprises; and
- (7) CCD (Consumer Communication Devices), for consumer communication devices, but not if they are destined for government end users or certain individuals associated with the government.

*g. Applies the Entity List footnote 3 designation and adds 49 entities.*

As described above, Entity List footnote 3 indicates that the Russia-MEU FDP rule applies to that entity. Thus, a license is required to export, reexport, or transfer (in-country) all items subject to the EAR (including foreign-produced items under the Russia-MEU FDP rule) to these entities, with limited



exceptions. Footnote 3 also applies to the Russian Ministry of Defence, including the Armed Forces of Russia. License applications for footnote 3-designated entities will be reviewed under a policy of denial in all cases. A total of forty-seven entities are being transferred from the MEU List to the Entity List, and are being designated with footnote 3. In addition, the BIS is adding two new Russian MEUs to the Entity List with a footnote 3 designation.

On 24 March 2022, the US Department of Commerce expanded its export controls by adding 120 Russian and Belarussian firms to the Entity List which are alleged to have provided support to the two countries' militaries.

On 8 April 2022, the US Department of Commerce adds Iceland, Liechtenstein, Norway and Switzerland to the list of countries excluded from the licence requirements under the Russia and Belarus sanctions rules imposed on 24 February and 2 March 2022.

On 8 April 2022, the President Biden signed "The Suspending Normal Trade Relations with Russia and Belarus Act (H.R. 7108), which denies "most-favored nation" tariff treatment to products of Russia and Belarus.

On 9 April 2022, the US Department of Commerce expanded the licence requirements on export controls applied to Russia and Belarus to all items on the CCL.

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