Insights: Alerts

Reference Sheet: Russia/Ukraine-Related U.S. Sanctions

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What are primary sanctions? Sanctions programs administered by the Office of Foreign Assets Control ("OFAC") require the "blocking" or "freezing" of assets of an "SDN." U.S. persons are generally prohibited from engaging in most transactions, directly or indirectly, with such SDNs. Primary sanctions apply not only to U.S. persons but also to transactions where there is a U.S. nexus, such as involvement by a U.S. person, U.S.-originating goods, a transaction taking place within the U.S., or that involves the U.S. financial system. *For example*, if a foreign entity (non-U.S. person) engages in a transaction with an SDN that requires a payment in U.S. dollars, which clears through a U.S. bank (including a foreign branch), the transaction is subject to the jurisdiction of OFAC.

What is an SDN? An individual, company, foreign government, or group designated under one or more sanctions programs administered by OFAC and listed on the Specifically Designated Nationals and Blocked Persons list ("SDN List").

What is a U.S. person? Includes companies organized under U.S. laws and their non-U.S. branches, all persons physically within the U.S., and U.S. citizens and permanent resident aliens wherever located or employed. With respect to sanctions programs pertaining to Iran and Cuba, this includes any entity owned or controlled by a U.S. person, wherever located.

What are sectoral sanctions? OFAC's sanctions that apply against very focused targets or sectors of a country's economy (e.g., energy, financial services), as opposed to the blanket prohibitions under primary sanctions. Persons subject to sectoral sanctions are listed on OFAC's Sectoral Sanctions Identifications List ("SSI List") under one of four Directives originally created under Executive Order 13662. OFAC has recently issued four additional Directives under Executive Order 14024. Each Directive places specific prohibitions, requirements, and restrictions on transactions by U.S. persons with those listed persons/entities.

What is the 50 percent rule? This rule states that an entity that is owned 50 percent or more by an SDN or multiple SDNs is also considered blocked even if not individually named on the SDN List. U.S. persons are generally prohibited from engaging in any transactions, directly or indirectly, with such an entity. The rule also applies to entities on the SSI List. *For example*, a foreign entity that is majority-owned by an entity on the SSI List is considered subject to the same restrictions and Directives as the entity designated on the SSI List.

Recent Executive Orders and Relevant Directives

Executive Order 14065 (February 21, 2022). This Executive Order ("EO") imposes a broad trade embargo on the so-called Donetsk People's Republic ("DPR") or Luhansk People's Republic ("LPR") regions of Ukraine. This EO expands prohibitions already in place for the Crimea region of Ukraine to include new investments in the DNR or LNR regions, the importation into the U.S. of any goods, services, or technology from the DNR or LNR, and the exportation, reexportation, sale, or supply from the U.S. or by a U.S. person of any goods, services, or technology to the DNR or LNR. The EO also prohibits any "approval, financing, facilitation, or guarantee by" a U.S. person of a transaction by a foreign person, where the transaction by that foreign person would be prohibited if it were performed by a U.S. person (a "facilitation prohibition"). The EO also blocks the assets of any person within DNR or LNR, among others.

Executive Order 14066 (March 8, 2022). This EO prohibits the import of certain Russian-origin energy products into the U.S. and new investments in the Russian energy sector by U.S. persons. The EO includes a similar facilitation prohibition as the one included in EO 14065. OFAC issued General License 16 authorizing through 12:01 a.m. EST on April 22, 2022, all transactions otherwise prohibited by the new EO that are ordinarily incident and necessary to the importation into the US of the Russian-origin energy products, provided that such imports were pursuant to written contracts or agreements entered into prior to March 8, 2022.

Executive Order 14068 (March 11, 2022). This EO prohibits the import of certain Russian-origin products: fish, seafood, and preparation thereof; alcoholic beverages; non-industrial diamonds; and any other products of Russian-origin as may be determined by the Secretary of the Treasury. The EO includes a prohibition on the export of US-dollar denominated banknotes. Following on the imposition of a ban on new US investment in the Russian energy sector in EO 14066, this EO allows the Secretary of the Treasury to impose similar investment bans on any other sectors of the Russian economy in the future. These sectors have not yet been identified. Additionally, OFAC issued General License 17 generally authorizing certain transactions related to the banned products until 12:01 a.m. EST on March 25, 022, provided that such imports were pursuant to written contracts or agreements entered into prior to March 11, 2022. General License 18 authorizes certain transactions pertaining to the transfer of U.S.-dollar denominated banknotes for noncommercial, personal remittances.

Directive 1A (February 22, 2022). Directive 1A extends Directive 1 (April 15, 2021) to now prohibit activities by U.S. financial institutions involving primary and secondary markets for ruble or non-ruble denominated funds and bonds issued by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the ministry of Finance of the Russian Federation. The 50 percent rule does not apply to Directive 1A.

Directive 2 (February 24, 2022). Prohibits U.S. financial institutions from opening or maintaining a correspondent account or payable-through account for, or processing a transaction involving, foreign financial institutions subject to the Directive. This directive is effective March 26, 2022. For any entities later determined to be subject to this Directive, the prohibitions will be effective beginning at 12:01 a.m. EST on the date that is 30 days from such determination. The 50 percent rule applies to this Directive.

Directive 3 (February 24, 2022). Prohibits U.S. persons from engaging in all transactions in, financing for, and other dealings in new debt of longer than 14 days maturity or new equity for entities subject to the Directive. The 50 percent rule applies to this Directive.

Directive 4 (February 28, 2022). Prohibits U.S. persons from engaging in any transaction involving the 3 entities identified in Directive 1A. The 50 percent rule does not apply to this Directive.

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In addition to these sanctions, companies and individuals should be aware of expanding export controls as they pertain to the Russian Federation and Belarus. Requirements include new license requirements for all Export Control Classification Numbers in Categories 3-9 of the Commerce Control List.

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