March 2024

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New Sanctions on Russia Mark Two-Year Anniversary of Ukraine Invasion

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I. Introduction

On February 23, 2024, the Biden Administration announced new sanctions targeting a number of different sectors of the Russian economy, Russian government officials and financial institutions, entities suspected of sanctions circumvention, and additional activities. These sanctions were unveiled just one day before the two-year anniversary of Russia's invasion of Ukraine, and follow the recent death of opposition leader Alexei Navalny in a Siberian prison.

In a statement announcing the new sanctions, the Biden Administration advised that the new sanctions would "target individuals connected to Navalny's imprisonment as well as Russia's financial sector, defense industrial base, procurement networks and sanctions evaders across multiple continents" and would ensure that the Russian regime "pays an even steeper price for [its] aggression abroad and repression at home." In total, the U.S. Department of the Treasury Office of Foreign Assets Control ("OFAC"), the U.S. Department of State ("State Department"), and the U.S. Department of Commerce Bureau of Industry and Security ("BIS") designated more than 600 individuals and entities, marking one of the largest sanctioning actions, measured by number of targets, by the United States at one time. The U.S. Department of the Treasury also released an analysis of the second phase of the Russian oil price cap, and promulgated sanctions intended to amplify the impact of the restrictions on Russian oil.

OFAC's press release referencing these new sanctions emphasizes that the United States continues to shift its focus towards the financial sector and those who seek to evade restrictions already in force. Thus, the new designations will have implications for companies, including financial institutions, that engage in business with Russian entities or individuals, or operate in certain sectors of the Russian economy. Even those that do not have direct engagement with Russian persons may be impacted by new designations against third-party sanctions evaders located outside of the Russian Federation.

II. New Sanctions Imposed by the U.S. Department of the Treasury, the U.S. Department of State, and the U.S. Department of Commerce

The new sanctions represent a coordinated effort among OFAC, the State Department and BIS: OFAC added almost 300 new individuals to its list of Specially Designated Nationals and Blocked Persons ("SDN") list; the State Department sanctioned more than 250 entities and individuals; and BIS added 93 entities to the Entity List.

OFAC specifically sought to target: (i) "Russia's core financial infrastructure," which includes Russian banks, investment firms, and financial technology companies; (ii) persons who evade or circumvent existing sanctions restrictions; (iii) Russia's unmanned aerial vehicles ("UAV") procurement network; and (iv) Russia's military-industrial base. As described in the press release announcing the sanctions, OFAC's designations related to Russia's military-industrial base focus in particular on:

> advanced manufacturing and technology such as machine tools, including computer numerically controlled (CNC) machines, which are used in Russia's heavy machine-building and arms manufacturing industries; additive manufacturing (also known as 3D printing), of which Russia has increased its use for defense purposes, including creating special-purpose 3D printers for the production of UAVs, aircraft parts, and other military-related items; bearings, which are an integral component of Russia's military hardware, including its main battle tanks; and other fields such as robotics, industrial automation and software, specialized lubricants, and lasers.

The sanctions also target entities operating in additional sectors of the Russian economy such as the engineering, electronics, metals and mining, and transportation sectors.

Outside of Russia, OFAC targeted facilitators who "orchestrate, engage in, and otherwise support the transfer of critical technology and equipment to Russia's military-industrial base" encompassing "26 third-country entities and individuals in 11 countries, including the People's Republic of China [("PRC")], Serbia, the United Arab Emirates, and Liechtenstein." Among these facilitators are PRC-based entities that provide microelectronics and technological equipment to Russia and Serbia-based exporters of electronics to Russia. These sanctions designations underscore the importance of strong sanctions due diligence measures aimed at detecting and preventing circumvention or diversion, even when not directly engaging with Russia or Russian persons.

Finally, separately from its designation of hundreds of new individuals and entities, OFAC also designated Russia's state-owned shipping company and fleet operator and blocked 14 crude oil tankers based on that company's interest in the vessels. OFAC noted that these sanctions are specifically in support of the Russian oil price cap and intended to target Russia's "shadow operations."

While the OFAC sanctions are effective immediately, OFAC has concurrently issued six Russia-related general licenses (available here and here) that temporarily allow for the wind-down of certain business with persons blocked pursuant to the February 23, 2024 designations, including financial transactions with the newly designated Russian financial institutions. Further, OFAC issued new guidance in the form of three Frequently Asked Questions ("FAQs"), which describe and further clarify specific prohibitions on the importation and entry of certain categories of diamonds into the United States. OFAC also has issued eight amended Russia-related FAQs that cover a myriad of topics, including emphasizing that non-U.S. companies do risk sanctions exposure for supporting the Russia military-industrial complex.

The State Department sanctions include three Government of Russia officials connected to Navalny's death at the Russian IK-3 Penal Colony, individuals and entities "engaged in sanctions evasion and circumvention, and those bolstering Russia's future energy and metals and mining production," and individuals "supporting Russia's war, including . . . those involved in the unlawful transfer and/or deportation of Ukrainian children."

The 93 additions to the BIS Entity List include entities in Russia, the PRC, Turkiye, the United Arab Emirates, the Kyrgyz Republic, India, and the Republic of Korea for "reasons related to their activities in support of Russia's defense-industrial sector and war effort." More than 50 of those additions also include "a 'footnote 3' designation as Russian-Belarusian military end users," which denote additional export restrictions. BIS also released a Russia Export Controls Communique underscoring the actions it has taken against Russia, including the development, and recent expansion, of the Common High Priority List ("CHPL") with the European Union, Japan, and the United Kingdom "to aid countries and companies in conducting necessary due diligence."

Unlike OFAC and State Department sanctions that broadly restrict dealings with designated persons, BIS Entity List designations instead implicate export controls restrictions. Any person who seeks to engage in a transaction to which a company on the Entity List is party to export, re-export, or transfer any item subject to the U.S. Export Administration Regulations ("EAR") must first secure a license from BIS; license exceptions are generally unavailable for such shipments. Moreover, applications for the required specific authorization are "usually subject to a policy of denial," according to BIS guidance. Items that are subject to the EAR include those that are: (i) located in the United States; (ii) of U.S. origin; (iii) foreign-made items that incorporate U.S.-origin goods, software, or technology (often above a specified threshold); and (iv) certain other items that are "direct products" of U.S.-origin technology or software.

III. Conclusion

While the new sanctions may only represent an incremental tightening of already wide-ranging restrictions on the Russian economy, they do serve as a reminder to companies operating internationally of the importance of know-your-customer and sanctions due diligence efforts. The coordinated action among U.S. Government agencies not only emphasizes that the U.S. Government aims to sanction and restrict the Russian economy through targeting Russian entities, but also that non-Russian companies should heed U.S. guidance on applicable sanctions compliance, such as OFAC's December 2023 guidance issued to foreign financial institutions.

Indeed, as underscored in a "Tri-Seal Compliance Note" released by OFAC, BIS and the U.S. Department of Justice on March 6, all non-U.S. companies, including financial institutions, must be aware of, and implement measures to comply with, the broad and sweeping sanctions and export controls restrictions that have been imposed by the U.S. Government on activities deemed to support or aid the war effort of the Russian Federation. Failure to do so could expose those entities to risks of significant sanctions-related consequences.

Companies that engage in business with Russian individuals or entities, or parties with a Russian nexus, should ensure that they have effective procedures in place to comply with these new restrictions and risks. In particular, companies would be well advised to:

- Identify their counterparties, including financing parties, in transactions;
- Implement effective sanctions compliance programs that incorporate screening of all counterparties against lists of blocked or denied parties; and
- Review their contracts to ensure that they are complying with any notification periods, including to lenders, if they have engaged in certain activities with regard to sanctioned persons, entities, or sectors.

It is likely that, so long as the Russian war in Ukraine continues, the U.S. Government will continue to increase pressure on the Russian economy. Therefore, companies should ensure that they stay informed of developments and are prepared to make any necessary updates to their compliance processes moving forward.

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