

U.S. SANCTIONS OPTIONS AGAINST RUSSIA

The United States currently imposes sanctions against Russia for occupying and annexing the Crimean region of Ukraine in 2014 and for other activities. The sanctions involve primary sanctions that (i) require U.S. persons¹ to block property of designated Russian persons and prohibit U.S. persons from transferring, paying, exporting, withdrawing, or otherwise dealing in the property of such designated persons, and (ii) prohibit U.S. persons from engaging in certain transactions involving targeted sectors of the Russian economy. The United States also imposes secondary sanctions aimed at foreign persons (“non-U.S. persons”) for engaging in certain trade with Russian targets. The Office of Foreign Assets Control of the U.S. Treasury Department (“OFAC”) administers these sanctions in a Russia/Ukraine-related sanctions program.

The President has issued other Executive Orders, pursuant to national emergency authorities and other legislation. These Orders authorize OFAC to impose blocking sanctions against persons (individuals and entities) for engaging in malicious cyber activities, interfering in U.S. elections, engaging in chemical weapons and non-proliferation activities, and committing harmful activities.² OFAC has implemented these sanctions in separate sanctions programs.

U.S. sanctions are complex in that they involve different tools for addressing Russia’s activities over last seven years. This overview summarizes the current Russia/Ukraine Sanctions Program and certain other sanctions that impact Russia. It also discusses how the United States can expand sanctions, if Russian invades Ukraine or takes other aggressive actions.

I. Current Russia/Ukraine Sanctions Program

In response to Russia’s 2014 occupation of Ukraine, the President issued a series of Executive Orders (EOs 13661, 13662, 13663, and 13685) to impose primary sanctions that prohibit U.S. persons from engaging in transactions and activities involving certain targets. The Orders authorize blocking sanctions against persons for undermining Ukraine’s security, stability, sovereignty, and/or territorial integrity. They also authorize sectoral sanctions against Russian government officials and other persons that operate in the arms sector and other key sectors of the Russian economy.

¹ The term “U.S. persons” refers to (i) U.S. citizens and permanent residents (wherever located); (ii) U.S. organized entities; and (iii) foreign persons within the United States.

² The U.S. Department of State and the U.S. Department of Commerce impose separate sanctions (including visa restrictions, import restrictions, and export/reexport controls) against Russia. This overview does not discuss these separate sanctions.

In addition, Congress has authorized secondary sanctions against non-U.S. persons that engage in certain transactions with Russian sanctions targets.

Blocking Sanctions

Together, the Ukraine-related Executive Orders authorize OFAC to designate and block the U.S. property of (i) persons responsible for or complicit in certain activities relating to Ukraine; (ii) officials of the Government of the Russian Federation; (iii) persons operating in the arms sector or other sectors of the Russian Federation; and (iv) persons operating in Crimea. OFAC also may designate persons for materially assisting or providing financial, material, or technological support for, or goods or services to, Russian government officials as well as designated or blocked persons.

Pursuant to these Orders, OFAC has designated more than 700 persons (individuals and entities) and identified such persons on the Specially Designated Nationals and Blocked Persons List ("SDN List"). Under the Ukraine-Related Sanctions Regulations, U.S. persons must block (freeze) and report to OFAC all property (including property interests) of designated and blocked persons, if such property is in the United States or comes within a U.S. person's possession or control. The blocking requirement also extends to entities in which one or more SDNs hold, in the aggregate, a 50 percent or greater ownership interest (the "50% Rule"), even if such entities are not identified on the SDN List. U.S. persons are prohibited from engaging in transactions involving SDNs, their majority-owned entities, and/or blocked property.

Sectoral Sanctions

OFAC also has imposed sanctions that target specific entities in Russia's financial, energy, and defense sectors. The sectoral sanctions, as amended in 2017, are set forth in four Directives:

Directive 1 targets Russia's financial services industry by prohibiting U.S. persons from engaging in transactions in, providing financing for, or otherwise dealing in new debt with more than 14 days maturity, or new equity, involving persons identified on a Sectoral Sanctions ("SSI") List under this directive.

Directive 2 targets Russia's energy sector by prohibiting transactions in, provision of financing for, and other dealings in new debt with more than 60 days maturity involving persons identified on the SSI List under this directive.

Directive 3 targets the Russian defense sector by prohibiting transactions in, the provision of financing for, and other dealings in new debt with more than 30 days maturity involving persons placed on the SSI List under this directive.

Directive 4 prohibits "the provision, exportation, or reexportation . . . of goods, services (except financial services), or technology" to support (a) "exploration or production for certain deepwater, Arctic offshore, or shale projects that have the potential to produce oil in the Russian Federation"

and (b) such projects worldwide in which SSI-listed persons have an ownership interest of at least 33% or a majority of voting interests.

For these sanctions to apply, a proposed transaction must have a nexus to the United State and involve an SSI-listed person or, under the 50 percent rule, any entity that is majority-owned by one or more SSI-listed persons. (The 50 percent Rule is separate from the ownership rule in Directive 4.)

Comprehensive Sanctions

Executive Order 13685 imposes comprehensive sanctions as well as blocking sanctions against the occupied Crimea. OFAC prohibits U.S. persons from engaging in all trade and investment in Crimea. Crimea joins Cuba, Iran, North Korea, and Syria as the only countries/regions currently subject to comprehensive U.S. sanctions.

Secondary Sanctions

In 2017, Congress codified and expanded sanctions against Russia.³ Among other actions, OFAC implemented secondary sanctions – a new sanctions tool – to target non-U.S. persons for engaging in specified activities with Russian targets, even if such activities are entirely outside of the United States.

In particular, OFAC has authority to impose secondary sanctions against any non-U.S. person that knowingly and “materially violates, attempts to violate, conspires to violate, or causes a violation of” any U.S. sanctions against Russia. OFAC also may impose secondary sanctions against non-U.S. persons that knowingly facilitate a significant transaction for or on behalf of any person subject to Russia sanctions. The term “facilitate” means “providing assistance for a transaction from which the person in question derives a particular benefit of any kind.” This includes providing financial services, brokering, transportation, and other services of any kind; providing personnel; or providing goods, software, or technology. Thus, a non-U.S. person faces a risk of secondary sanctions for supporting a broad range of sanctionable activities by targeted Russian persons .

II. Other Related Sanctions Programs That Impact Russia

The United States has imposed other sanctions in response to various activities by or on behalf of Russia. The authorities for these sanctions are not necessarily specific to Russia and may appear as separate OFAC sanctions programs.

³ The President issued EOs 13660, 13661, 13662, and 13685 pursuant to long-standing national emergency authorities (including the International Emergency Economic Powers Act). The Countering America’s Adversaries Through Sanctions Act of 2017 (“CAATSA”) codified and expanded sanctions against Russia.

Sanctions for Malicious Cyber-Enabled Activities and Elections Interference

The President issued Executive Order 13694 in April 2015 to authorize blocking sanctions against persons for engaging in malicious cyber-enabled attacks that (a) target U.S. infrastructure, (b) earn financial or commercial gain, and (c) significantly disrupt access to computers or networks. The President amended this authority in December 2017 (in EO 13957) to authorize sanctions against persons that tamper with, alter, or cause the misappropriation of information to interfere with or undermine the U.S. election process. The President immediately invoked this authority to designate Russian intelligence services, individuals, and companies that supported the Russian government's cyber activities to influence the 2016 US election.

A separate, more recent Executive Order (EO 13848) authorizes blocking sanctions against foreign persons for engaging in, sponsoring, or concealing foreign interference in U.S. elections. In April 2021, OFAC designated a number of Russian entities and individuals for interfering with the 2020 Presidential election.

OFAC requires U.S. persons to immediately block all U.S. property of such designated persons. U.S. persons also are prohibited from engaging in transactions or activities involving the SDNs, their majority-owned entities, or blocked property.

Sanctions for Chemical Weapons and Weapons Proliferation Activities

The U.S. Department of State determined that Russia violated international law when it used chemical weapons in March 2018 and in August 2020 against British citizens and a former Russian GRU officer. These findings triggered sanctions under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 ("CBW Act"). In a first round of sanctions, the President issued Executive Order 13883 in August 2019. The Order authorized (a) the United States to oppose financial assistance to the Russian Federation by international financial institutions (such as the World Bank and the International Monetary Fund) and (b) OFAC to impose additional sectoral sanctions.

OFAC implemented EO 13883 by issuing a CWB Act Directive against Russia. The Directive prohibited U.S. financial institutions (including their foreign branches) from (1) participating in the primary market for non-ruble denominated bonds issued by the Russian Federation after August 26, 2019, and (2) lending non-ruble denominated funds to the Russian Federation after August 26, 2019. The Directive did not prohibit U.S. financial institutions from participating in ruble-denominated bonds or from participating in non-ruble-denominated bonds in the secondary market.

In August 2021, the President issued Executive Order 14039, directing a second round of sanctions under the CBW Act. As directed in this Order, the State Department

prohibited certain Russian firearms imports, and the Commerce Department expanded controls on exports and reexports to Russia.

Sanctions Against Russian Harmful Activities

More recently, the President issued Executive Order 14024 (April 2021) to expand blocking sanctions targeting not only persons for engaging in malicious cyber-enabled and other harmful activities on behalf of the Russian government, but also targeting persons for operating in the technology sector, the defense sector, or any other sector of the Russian Federation economy. OFAC invoked this authority to designate persons for operating in Russia's technology sector. As with other blocking sanctions, OFAC (a) required that U.S. persons block U.S. property of designated and blocked persons and (b) prohibited U.S. persons from engaging in transactions involving designated and blocked persons or their blocked property.

In addition, OFAC issued Directive 1, pursuant to EO 14024, that expands existing prohibitions (imposed in August 2019) on certain dealings in Russian sovereign debt. Directive 1 is separate from and in addition to the CBW Act Directive (discussed above); it prohibits U.S. banks and their foreign branches from (a) participating in the primary market for ruble or non-ruble denominated bonds issued after June 14, 2021 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; and (b) lending ruble or non-ruble denominated funds to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation. This Directive does not target the secondary market; it only impacts the Russian Government's ability to borrow new funds in local currencies.

Sanctions Against Corruption and Human Rights Abuses

The United States has used two other sanctions tools and established other sanctions programs to impose blocking sanctions against human rights abusers and corrupt actors. Under a 2012 statute, the President has authority to impose blocking sanctions against Russian persons for certain actions related to the death of Sergei Magnitsky, a Russian journalist. In 2016, a separate law authorizes blocking sanctions against any foreign person for engaging in human rights abuse or corruption. While the 2012 law focuses on Russia, the 2016 law applies to sanctionable activities around the world.⁴ The President implemented the 2016 law in Executive Order 13818.

OFAC has invoked these authorities to designate Russian persons for human rights abuses and other corrupt activities. As a result of the designations, U.S. persons must block U.S. property of designated and blocked persons. U.S. persons also are

⁴ The Sergei Magnitsky Rule of Law Accountability Act of 2012 and the Global Magnitsky Human Rights Accountability Act of 2016 ("Global Magnitsky Act") also require the State Department to deny entry into the United States of persons designated under these laws.

prohibited from engaging in transactions involving SDNs and blocked persons, their majority-owned entities, or blocked property.

III. Possible Expansion of Sanctions

If Russia invades Ukraine, the United States can immediately impose economic sanctions against Russia using existing authorities. All of these authorities are still effective. OFAC can invoke the Ukraine-related Executive Orders (mentioned above) to designate Russian persons, including government officials, for undermining Ukraine's security, stability, sovereignty, and/or territorial integrity. It also may expand in the financial sector or impose these sanctions in other sectors of the Russian economy. In addition, the President can issue a new Executive Order to target the Government of Russia or to impose comprehensive sanctions against Russia.

The United States can use one or more of its sanctions tools to address Russian aggression in Ukraine. Sanctions options include:

Expanding Bond Market Prohibitions: As previously discussed, OFAC prohibited U.S. financial institutions from purchasing new issues of Russian government bonds. OFAC can use existing authorities to expand this prohibition to the secondary market.

Imposing Blocking Sanctions: OFAC generally sanctioned Russia's smaller banks and persons in response to the 2014 invasion/occupation of Ukraine. This time around, OFAC can target large Russian financial institutions that depend on global financial transfers and currency exchanges. For example, OFAC can designate as SDNs Sberbank, VTB Bank, and other large Russian banks. This will prevent these targeted banks from clearing transactions through the U.S. financial system. (While OFAC previously identified Sberbank and VTB Bank as subject to new debt prohibitions in Directive 1, it did not impose blocking sanctions against these banks.)

Expanding Sectoral Sanctions: Previously, OFAC targeted the financial, energy, and defense sectors of the Russian economy. OFAC can amend the existing new debt prohibitions with respect to (for example) the energy sector by lowering the maturity tenor. OFAC also can expand sectoral sanctions to other Russian sectors, such as the technology sector. With respect to the financial sector, the United States can seek to disconnect Russian banks from SWIFT, the global electronic payment system.

Targeting the Government: The President, moreover, can issue a new Executive Order to target and block the Russian government, including its agencies, instrumentalities, and controlled entities. The United States took this action against the Governments of Venezuela and Syria. If this occurs, U.S.

persons must block all property and property interests of the Russian Government that is within the United States or in the possession of U.S. persons. U.S. persons also could not engage in any transactions involving the government, its majority-owned entities, or blocked property, unless OFAC otherwise licenses such transactions.

Imposing Comprehensive Sanctions: Any new Executive Order also can prohibit new investment in Russia, imports from Russia, and exports/reexports to Russia. OFAC would implement the Order by imposing comprehensive sanctions against Russia, similar to those against Crimea.

Expanding Export Controls: The Bureau of Industry and Security of the U.S. Department of Commerce (“BIS”) previously imposed export controls (restrictions) on Russia’s energy and defense sectors in response to the 2014 invasion/occupation of Ukraine. BIS can expand these restrictions to other Russian sectors. Alternatively, and depending upon the sanctions authority, BIS can add Russia to the most restrictive group of countries for export control purposes (*e.g.*, the embargoed countries). This action restricts the exportation and reexportation of virtually all U.S. goods, software, and technology to Russia. These broad controls would impact Russian consumers and businesses that want/need to purchase a wide range of U.S. goods, including cell phones, laptops, televisions, automobile components, aircraft avionics, and other goods that are made in the United States or that contain U.S. electronics.

Although these sanctions principally impose obligations upon U.S. persons (*e.g.*, they represent primary sanctions), non-U.S. persons will face a risk of secondary sanctions, if they engage in significant sanctionable transactions and activities involving Russian targets. Any new sanctions, therefore, will have a broad reach over both U.S. and foreign business in Russia, including trade transactions that occur entirely outside of the United States.

For more information about U.S. sanctions, please contact Lonnie A. Pera at [KMA Zuckert LLC](#).

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