

U.S. IMPOSES ADDITIONAL, "SEVERE" SANCTIONS ON RUSSIA IN RESPONSE TO RUSSIA'S MILITARY ADVANCE INTO UKRAINE

Date: 25 February 2022

U.S. Policy and Regulatory Alert

By: Jeffrey Orenstein, Steven F. Hill, Jerome J. Zaucha, Donald W. Smith, Erica L. Bakies, Stacy J. Ettinger

As an update to K&L Gates' previous [alert](#) on 24 February, U.S. President Joe Biden announced sanctions and export controls against Russia that are in addition to those imposed on the 21st and 22nd of February. This escalation of sanctions is in response to Russia's military advance into Ukraine on multiple fronts. The following is a general high-level summary of these measures, some of which involve lengthy and complex rules. Please reach out to a member of the K&L Gates' Washington, D.C.-based International Trade Group for any specific questions or if you need additional details.

I. ECONOMIC SANCTIONS

A. Blocking of Russian Banks and Other Parties

Among the [sanctions imposed on 24 February](#), the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) added the following four Russian banks to the Specially Designated Nationals and Blocked Persons List (SDN List): (1) VTB Bank; (2) Bank Otkritie; (3) Sovcombank OJSC; and (4) Novikombank, as well as numerous subsidiaries of each bank. In conjunction with these blocking sanctions, OFAC issued several general licenses ("GLs") authorizing U.S. persons to wind down certain categories of transactions with specified blocked banks by an appointed deadline. These include: [GL 8](#) (energy related transactions), [GL 9](#) (dealings in certain debt or equity), [GL 10](#) (dealings in derivative contracts), and [GL 11](#) (wind down of other transactions).

In addition, OFAC has imposed blocking sanctions on a host of other parties, including certain wealthy Russian individuals and their family members. Due to their support of the Ukraine invasion, OFAC has also designated numerous Belarusian individuals and entities to the SDN List, including certain state-owned banks, military institutions, and defense firms.

U.S. persons are barred from engaging in any transaction, directly or indirectly, involving these SDNs, and the property and property interests of these SDNs are blocked (frozen) within U.S. jurisdictions, including any such property that comes within the possession or control of a U.S. person. These restrictions apply not only to the entities expressly named on the SDN List, but also to any entity or property owned 50% or more by SDN(s).

B. Sberbank Restrictions

U.S. financial institutions are prohibited from opening or maintaining any "correspondent account" or "payable-through account" for Sberbank, Russia's largest financial institution, along with 25 of its subsidiaries. Although Sberbank is not subject to blocking sanctions, this measure does cut off its access to U.S. dollar transactions.

C. Debt Restrictions

U.S. persons are prohibited from engaging in any dealings in new debt of greater than 14 days maturity and new equity issued by the following 13 Russian state-owned enterprises and entities: Sberbank, AlfaBank, Credit Bank of Moscow, Gazprombank, Russian Agricultural Bank, Gazprom, Gazprom Neft, Transneft, Rostelecom, RusHydro, Alrosa, Sovcomflot, and Russian Railways. As a result of these sanctions, these entities will be prevented from accessing U.S. capital.

II. EXPORT CONTROLS

The U.S. Department of Commerce's Bureau of Industry and Security (BIS) has issued a [final rule](#) that vastly expands existing export restrictions for Russia as a destination as well as for specific Russian end-users. The following is an overview of these new restrictions.

A. Newly Controlled Items

New export license requirements for a broad array of microelectronics, telecommunications items, sensors, navigation equipment, avionics, marine equipment, aircraft components, and other items, classified under 58 different export control classification numbers on the Commerce Control List of the Export Administration Regulations (EAR) not previously controlled for Russia.

B. Policy of Denial & License Exceptions

BIS policy will be to deny most export license applications for Russia. Greater case-by-case consideration will be given for flight safety, maritime safety, humanitarian needs, government space cooperation, civil telecommunications infrastructure, and government-to-government activities, and to support limited operations of partner country companies in Russia. In addition, under the final rule, many of the EAR-based license exceptions that would normally relieve exporters from specific licensing requirements do not apply for Russia exports, re-exports, and transfers.

C. Military Use Restrictions

The final rule expands export restrictions for “military end uses” and “military end users” in Russia. Previously, this restriction applied to certain specified items, but now export restrictions will apply to all items subject to the EAR with limited exceptions.

D. Two “Foreign Direct Product Rules” for Russia

Also significantly, the final rule establishes two new versions of the “foreign direct product rule” (FDPR) for Russia. Under the FDPR, non-U.S. origin items are subject to the EAR and its licensing requirements if they are the “direct product” of certain U.S.-origin technology or software. In 2020, BIS implemented a more expansive version of the FDPR for the Chinese company Huawei and certain affiliates. This final rule establishes two special versions of the FDPR for Russia, one for exports, re-exports, and transfers to/for Russian military end users (Russia MEUs), which greatly expands the scope of non-U.S.-origin items subject to U.S. export controls, and one for all other exports, re-exports, and transfers to Russia. The FDPR for Russia MEUs does not apply to exports from the following partner countries: 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.

E. Entity List Designations

Forty-nine Russian entities have been added to the Entity List, which means a license is required to export, re-export, or transfer any item subject to the EAR to/for the listed entity. Most of these entities were transferred from the MEU List administered by BIS to the Entity List, where they carry the footnote 3 designation. This means the Russia MEU FDPR applies to these entities, broadening the scope of non-U.S. items that are controlled for the Russian MEUs.

III. CONCLUSION

K&L Gates will continue to follow the impact and changes to the United States' imposition of economic sanctions with respect to Russia. If you have any questions regarding the sanctions discussed in this alert, please do not hesitate to contact the K&L Gates International Trade team.

KEY CONTACTS



JEFFREY ORENSTEIN
PARTNER

WASHINGTON DC
+1.202.778.9465
JEFFREY.ORENSTEIN@KLGATES.COM



STEVEN F. HILL
PARTNER

WASHINGTON DC
+1.202.778.9384
STEVEN.HILL@KLGATES.COM



JEROME J. ZAUCHA
SENIOR OF COUNSEL

WASHINGTON DC
+1.202.778.9013
JEROME.ZAUCHA@KLGATES.COM



DONALD W. SMITH
PARTNER

WASHINGTON DC
+1.202.778.9079
DONALD.SMITH@KLGATES.COM

This publication/newsletter is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer. Any views expressed herein are those of the author(s) and not necessarily those of the law firm's clients.