

April 12, 2022

President Biden Prohibits “New Investment” in Russia; Additional Russian Companies and Individuals Are Added to SDN List

In yet another significant expansion of U.S. sanctions targeting Russia and in response to the atrocities in Ukraine, on April 6, 2022, President Biden issued an executive order (the “Order”) prohibiting “new investment” in Russia by U.S. persons, wherever located.¹ As of this writing, OFAC has not yet issued guidance interpreting the scope of this prohibition, which could have a potentially broad reach. The Order also authorizes prohibitions on the export of certain classes of services, to be determined by the Secretary of the Treasury, from the United States or by U.S. persons to any person located in Russia; however, to date, no such categories of services have been identified by the Treasury Department. Any company with business in Russia, including companies contemplating investment activity in or involving Russia, would be well-advised to carefully consider the impact of the Order and monitor for additional OFAC guidance.

On April 5, 6, and 7, the U.S. government also imposed blocking sanctions and added additional Russian companies and individuals to the SDN List, including:

- Sberbank and Alfa Bank, Russia’s largest financial institution and largest private bank, respectively (and dozens of their subsidiaries).² These banks had previously been subject to more limited sanctions.
- Two major Russian state-owned enterprises, Public Joint Stock Company Alrosa (“Alrosa”) and United Shipbuilding Corporation (“USC”) (and dozens of their subsidiaries).³

¹ The White House, “Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression,” (Apr. 6, 2022), available [here](#) (the “Order”).

² The White House, “Fact Sheet: United States, G7, and EU Impose Severe and Immediate Costs on Russia,” (Apr. 6, 2022), available [here](#).

³ OFAC, Press Release, “The United States Sanctions Major Russian State-Owned Enterprises,” (Apr. 7, 2022), available [here](#).

- President Putin’s adult children and members of Russia’s Security Council.⁴ This adds to prior rounds of U.S. sanctions targeting Russian politicians and their families, including the March 24, 2022 OFAC action to add the Russian Duma itself and 328 of its members to the SDN List.⁵
- Russia-based Hydra Market, the world’s largest and most prominent darknet market, and Garantex, a Russian virtual currency exchange associated with illicit actors and darknet markets. OFAC also designated over 100 associated virtual currency addresses.⁶

OFAC also took steps to prohibit Russia from accessing its funds that are currently blocked pursuant to U.S. sanctions to make debt payments. Finally, OFAC issued several new and amended general licenses relating to the new sanctions. The White House noted that a number of U.S. allies, including the United Kingdom and the European Union, were also implementing additional sanctions targeting Russia.

Below we provide more detail on the U.S. government’s actions targeting Russia and their implications.

The Prohibition on “New Investment” in Russia

The Order includes two broad prohibitions. First, the Order states that it prohibits “new investment” in Russia by a U.S. person wherever located.⁷ The Order also includes a relatively standard prohibition of any “approval, financing, facilitation, or guarantee” by a U.S. person, wherever located, of a transaction by a non-U.S. person, if a U.S. person would be prohibited from performing the transaction at issue, as well as a standard prohibition of attempts to evade the prohibitions of the Order.

The Order does not define “new investment” and does not provide any examples or identifying information regarding the types of “new investments” that the Order prohibits. As noted above, OFAC has yet to issue Frequently Asked Questions (“FAQs”) or other guidance about the Order or its scope and therefore the full scope and reach of the Order is not entirely clear.

As a starting point to consider the intended scope of the Order, one can look to Executive Order 14066 (“EO 14066”) issued on March 8, 2022, and which included a prohibition on “new investment in the energy sector” in Russia by U.S. persons wherever located.⁸ On the same day, OFAC issued FAQ 1,019, which clarified that “investment in the energy sector in [Russia]” 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.”⁹ Likewise, OFAC has in the context of several comprehensive sanctions programs defined “new investment” to mean a commitment or contribution of funds or other assets, or a loan or extension of other credit.¹⁰

FAQ 1,019 went on to state that for purposes of this definition:

⁴ OFAC, Press Release, “U.S. Treasury Escalates Sanctions on Russia for its Atrocities in Ukraine,” (Apr. 6, 2022), available [here](#).

⁵ OFAC, Press Release, “U.S. Treasury Sanctions Russia’s Defense-Industrial Base, the Russian Duma and Its Members, and Sberbank CEO,” (Mar. 24, 2022), available [here](#).

⁶ OFAC, Press Release, “Treasury Sanctions Russia-Based Hydra, World’s Largest Darknet Market, and Ransomware-Enabling Virtual Currency Exchange Garantex,” (Apr. 5, 2022), available [here](#).

⁷ The Order at 1.

⁸ “Executive Order 14066 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,” 87 Fed. Reg. 13625 (Mar. 10, 2022), available [here](#).

⁹ OFAC, “Frequently Asked Question 1,019,” (Mar. 8, 2022), available [here](#).

¹⁰ See *e.g.*, Syria Sanctions Regulations, 31 C.F.R. 542.311; North Korea Sanctions Regulations, 31 C.F.R. 510.318; Iran Transactions Sanctions Regulations (31 C.F.R. 560.316).

“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.¹¹

However, there is also precedent for a more narrow interpretation. In the context of the prior iteration of the Burma sanctions program, OFAC defined new investment as (1) the entry into a contact that includes economic development of resources in Burma; (2) the entry into a contact that provides for the general supervision and guarantee of another person’s performance under such a contract; (3) the purchase of a share of ownership—including an equity interest—in the economic development of resources in Burma; or (4) the entry into a contract providing for the participation in royalties, earnings, or profits in the economic development of resources located in Burma.¹² This definition explicitly excluded from its scope the entry into, performance of, or financing of a contract to sell or purchase goods, services, or technology unless such contract included the activities enumerated in 2-4.¹³

The interpretation OFAC will take with regard to the Order is uncertain. Until any such guidance is issued in the context of the Order, companies would be well advised to consider the possibility that the scope of the Order may ultimately be broader than the similarly phrased prohibitions in EO 14066, as clarified by OFAC, or in the context of the prior Burma sanctions and to consider the implications on their business if the Order were to apply more broadly.

Notably, OFAC also has not issued any general licenses affecting the Order (unlike, *e.g.*, the wind-down general licenses OFAC has issued for some new SDN List designations and other recently imposed sanctions targeting Russia) meaning that the Order has ostensibly taken immediate effect as of the date of its issuance, April 6, 2022. For this reason, U.S. companies and many non-U.S. companies with U.S. operations or employees may take a conservative approach with respect to actions that could potentially be viewed as “new investment” in Russia, pending further clarifications or guidance from OFAC, such that the Order could potentially have a significant chilling effect on wide range of transactions and dealings involving Russia. Companies with any business in Russia, including companies contemplating investment activity in or involving Russia, would be well-advised to carefully consider the impact of this prohibition and monitor for additional OFAC guidance.

The Prohibition on As-Yet-Determined Categories of Services to Russia

The Order also states that it prohibits the “exportation, reexportation, sale or supply, directly or indirectly,” from the United States or by U.S. persons wherever located of certain categories of services to be determined by the Secretary of the Treasury, in consultation with the Secretary of State.¹⁴ The Order does not define “services” and the Order does not include a preview or other identifying information regarding what categories of U.S. services may be likely to be targeted under the Order. The Order also does not include a timeframe by which the Secretary of the Treasury must make the determination with regard to the categories of services that will be targeted. As noted above, OFAC has yet to issue Frequently Asked Questions (“FAQs”) or other guidance about the Order and its scope and therefore the potential scope and reach of this prohibition is also not entirely clear.

Additional SDN List Designations Targeting Russia

Designations of Sberbank and Alfa Bank. In a significant escalation of sanctions targeting the Russian financial sector, on April 6, 2022, OFAC designated Sberbank and Alfa Bank (and dozens of their subsidiaries as well as, through OFAC’s 50 percent rule,

¹¹ *Id.* Analogous definitions of “loans or extensions of credit” have also been used in comprehensive sanctions programs, including Iran (*see* 31 C.F.R. 560.317); North Korea (*see* 31 C.F.R. 31 C.F.R. 316); and Syria (*see* 31 C.F.R. 542.310).

¹² 31 C.F.R. 537.311. These regulations were removed on June 16, 2017.

¹³ *Id.*

¹⁴ The Order at 1.

entities owned 50 percent or more in the aggregate, directly or indirect, by Sberbank or Alfa Bank) onto the SDN List, which broadly prohibits U.S. nexus transactions or dealings with these entities. Both Sberbank and Alfa Bank had been the target of earlier, less restrictive sanctions issued shortly after Russia’s invasion of Ukraine began. With this action and the effects of prior rounds of sanctions, many, if not most, of the largest Russian financial institutions are now on the SDN List.

As a part of this action, OFAC issued three general licenses permitting wind-down transactions with these sanctioned entities of the following duration: (i) for Sberbank (including entities owned 50 percent or more by Sberbank) until 12:01 am eastern daylight time on April 13, 2022¹⁵; (ii) for Alfa Bank (including entities owned 50 percent or more by Alfa Bank) until 12:01 am eastern daylight time on May 6, 2022¹⁶; and (iii) for Sberbank CIB USA, Inc. (or any entity owned 50 percent or more by Sberbank CIB USA, Inc.) until June 7, 2022 (this general license only authorizes such transactions so long as they do not involve any other entity that is on the SDN List pursuant to the Russian Harmful Foreign Activities Sanctions program, which would include, *e.g.*, their corporate parent Sberbank).¹⁷

Designations of Alrosa and USC. In a separate action, on April 7, 2022, OFAC designated Russian state-owned entities, Alrosa and USC, onto the SDN List as well as the members of these entities’ boards of directors and dozens of their subsidiaries. According to OFAC, Alrosa is the world’s largest diamond mining company and USC manufactures a majority of the ships used by the Russian Navy. OFAC issued a general license permitting wind-down transactions with Alrosa until 12:01 am eastern daylight time on May 7, 2022.¹⁸ OFAC also amended the general license it had issued the day before with respect to Sberbank CIB USA, Inc. to also now include Alrosa USA, Inc. (including entities owned 50 percent or more by Alrosa USA, Inc.) and to permit transactions with these entities until 12:01 am eastern daylight time, June 7, 2022 (subject to the same limitations regarding the involvement of no other sanctioned Russian persons noted above). OFAC did not issue a similar wind-down license for USC, meaning that the prohibitions of the SDN List took effect with respect to USC and entities owned 50 percent or more by USC as of the date of their designation, April 7, 2022.

Designation of Additional High-Profile Russians. As noted above, OFAC also added a number of individuals with ties to the Russian government, including President Putin’s adult children, members of the family of Russian Foreign Minister Sergey Lavrov (who, like President Putin, had himself been designated onto the SDN List in a prior round of recent sanctions targeting Russia), and members of the Russian Security Council as well as additional individuals OFAC described as “Putin facilitators.”¹⁹ As is its common practice, OFAC did not issue any general licenses authorizing transactions with these newly designated individual SDNs.

Issuance of Telecommunications and Internet-Enabled Communications. Finally, on April 7, 2022, OFAC also issued a general license to clarify that despite the sanctions currently in place targeting Russia: (i) transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving Russia are permitted and (ii) the “exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, [to Russia] of services, software, hardware, or technology incident to the exchange of communications over the internet, such as instant messaging, videoconferencing, chat and email, social networking, sharing of photos, movies, and documents, web browsing, blogging, web hosting, and domain name registration services” is permitted.²⁰ This general license is generally consistent with similar general licenses that exist for most comprehensively sanctioned jurisdictions.

¹⁵ OFAC, “General License No. 22,” (Apr. 6, 2022), available [here](#).

¹⁶ OFAC, “General License No. 23,” (Apr. 6, 2022), available [here](#).

¹⁷ OFAC, “General License No. 21A,” (Apr. 7, 2022), available [here](#).

¹⁸ OFAC, “General License No. 24,” (Apr. 7, 2022), available [here](#).

¹⁹ OFAC, Press Release, “U.S. Treasury Escalates Sanctions on Russia for its Atrocities in Ukraine,” (Apr. 6, 2022), available [here](#).

²⁰ OFAC, “General License No. 25,” (Apr. 7, 2022), available [here](#).

Implications

Similar to the earlier waves of U.S. sanctions targeting Russia since its invasion of Ukraine discussed in our prior memoranda,²¹ the Order and the other sanctions targeting Russian individuals and entities are the latest round of what has been a flurry of sanctions targeting Russia over the last month and a half. The result of these waves of sanctions, including the most recent designations, has been that many, if not most, large Russian financial institutions and state-owned entities are the target of some form of U.S. sanctions. Additionally, Russia is subject to recently imposed, country-wide restrictive U.S. export controls for many types of higher technology U.S. items (including software and technology). As a result of all of these actions and depending upon the scope of (i) the Order’s new investment prohibition and (ii) the categories of U.S.-origin or U.S. person-provided services that the Secretary of the Treasury may prohibit from being exported or otherwise provided to Russia, Russia may become a quasi-comprehensively sanctioned country, for U.S. companies in particular. However, these additional sanctions will also be relevant to many non-U.S. companies, particularly those with U.S. operations and/or U.S. person employees, as will the other restrictive sanctions targeting Russia that allied nations of the United States have imposed.

As a result, both U.S. and non-U.S. companies with any exposure to the Russian economy or Russian companies should carefully assess the potential implications of the Order and the recent SDN List designations on their business. Additionally, given the lack of guidance from OFAC to date on the scope of prohibition on new investment in Russia, it will be important for companies with any exposure to Russia to closely monitor OFAC’s press releases for additional guidance that OFAC may publish in the coming days and weeks. Companies should also monitor for announcements from the Treasury Department regarding categories of U.S. services that may become prohibited from being provided to Russia in the coming weeks and months.

We will continue to monitor sanctions the U.S. government imposes on Russia and provide further updates as appropriate.

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²¹ See Paul, Weiss “The Biden Administration’s First Week of Sweeping Sanctions on Russia/Ukraine,” (Feb. 26, 2022), available [here](#).

This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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