

March 8, 2023

On One-Year Anniversary of Russia's Invasion of Ukraine, OFAC and BIS Announce Expansive New Sanctions and Export Controls Targeting Russia and Belarus, While DOJ Increases Resources Targeting Sanctions Evasion

On February 24, 2023, exactly one year after Russia began its invasion of Ukraine, the U.S. government announced a new wave of sweeping sanctions and export controls targeting Russia as well as Belarus for its role in continuing to support Russia's invasion of Ukraine. The U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") (i) issued a new determination that authorizes the imposition of blocking sanctions on individuals and entities determined to operate or have operated in the metals and mining sector of the Russian economy; (ii) designated 14 additional Russian financial institutions (including Credit Bank of Moscow PSJ, one of the 10 largest Russian banks by asset value) on its Specially Designated Nationals and Blocked Persons List (the "SDN List"); and (iii) designated dozens of Russian, Belarussian, and third country individuals and entities on the SDN List for engaging in sanctions evasion activities as well as a number of companies determined to be in Russia's military supply chain.¹

On the same day, in a separate action, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a number of expanded export controls targeting Russia in an effort to further align the U.S. Export Administration Regulations ("EAR") with export controls that have been implemented by allied nations.² These BIS actions included: (i) expanding restrictions in the EAR with regard to the scope of the EAR's Russian and Belarussian industry sector prohibition (including with regard to oil and gas production, certain commercial and industrial items, and chemical and biological precursors); (ii) significantly expanding restrictions in the EAR prohibiting the export or reexport of "luxury goods" to Russia to cover a wider range of items (including, e.g., engines, vehicles parts, household and restaurant appliances, and electronics (including smart phones)); (iii) adding 86 entities located in a variety of countries to the Entity List for their support of the Russian military; and (iv) targeting the apparent incorporation of U.S.-origin parts and components in unmanned aerial vehicles ("UAVs") that Iran has supplied to Russia.³

On March 2, 2023, the U.S. Department of Justice ("DOJ") along with OFAC and BIS issued a joint compliance note on Russia-related sanctions and export control evasion attempts.⁴ The compliance note focuses in particular on the use of third-party intermediaries by Russian and Belarussian SDNs or Entity List persons to obscure the true identities of Russian or Belarussian end users and thereby evade U.S. sanctions and export controls. The compliance note includes a list of red flags that may indicate that

an intermediary may be engaged in efforts to evade sanctions or export controls and identifies certain techniques used by such third party intermediaries to evade sanctions and export controls.

In a speech the same day, Deputy Attorney General Lisa Monaco reiterated that “in today’s world, sanctions are the new FCPA” and specifically noted that DOJ was adding over 25 prosecutors to a unit focused on the investigation and prosecution of sanctions evasion, export control violations, and similar economic crimes.⁵ Deputy Attorney General Monaco also noted the following regarding DOJ’s increased focus on sanctions and export control evasion:

- “What was once a technical area of concern for select businesses should now be at the top of every company’s risk compliance chart;”
- “[W]e are handling corporate investigations that involve sanctions evasion – in industries a varied as transportation, fin tech, banking, defense, and agriculture;”
- “[S]tarting today, the [National Security Division (“NSD”)] will issue joint advisories with the Commerce and Treasury Departments [regarding sanctions evasion];”
- “[W]e will also be making a substantial investment in the Bank Integrity Unit (“BIU”) in the Criminal Division’s Money Laundering and Asset Recovery Section” which “has a significant track record of prosecuting global financial institutions for sanctions violations, and these additional resources will allow it to build upon that record and be a strong partner to NSD.”⁶

Below we provide more detail on OFAC’s, BIS’s, and DOJ’s actions.

Additional OFAC Sanctions

Metals and Mining Sector Sanctions

The executive order authorizing the Russian Harmful Foreign Activities Sanctions program provides the Secretary of the Treasury with the authority (in practice delegated to OFAC) to make a determination that any sector of the Russian economy will be the target of sanctions and then, pursuant to such a determination, to designate as an SDN any individual or entity operating or having operated in such sector(s).⁷ On February 24, 2023, OFAC used this authority to make a determination regarding the metals and mining sector of Russia and to designate four Russian entities as SDNs pursuant to this determination.⁸ The mining and metals sector now joins the quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors of the Russian economy as being specifically targeted for sanctions under this authority.

In newly-issued frequently asked questions (“FAQs”), OFAC provided additional guidance about the implications of this determination:

- **FAQ 1115** – OFAC defines the “metals and mining sector” of the Russian economy “to include any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials in [Russia], or any act of procuring, processing, manufacturing, or refining such geological materials, or transporting them to, from, or within [Russia].”⁹
- **FAQ 1116** – The determination does not automatically make all persons that operate or have operated in the metals and mining sector of Russia SDNs, rather that this determination exposes persons that operate or have operated in this sector to the risk of being designated as a SDN on this basis.¹⁰
- **FAQ 1117** – Any non-U.S. persons (*i.e.*, not just Russian persons) may be exposed to the risk of potential sanctions designation if they operate in or have operated in the Russian metals and mining sector.¹¹ However, OFAC further

clarified that (i) OFAC does not intend to target non-U.S. persons for operating in the metals and mining sector of Russia where the provision of goods or services is solely for the safety and care of personnel, protection of human life, prevention of accidents or injuries, maintenance or repair necessary to avoid environmental or other significant damage, or activities related to environmental mitigation or remediation; and (ii) non-U.S. persons generally do not risk exposure to U.S. blocking sanctions, even where they are engaging with SDNs active in this sector, where the transaction would not require a specific license if engaged in by U.S. persons, in other words, non-U.S. persons can effectively rely on applicable OFAC general licenses, even if there is no U.S. nexus to the transaction.

Financial Institution and Financial Services Companies Sanctions Designations

Since Russia's invasion of Ukraine began in February 2022, OFAC has imposed tranches of sanctions targeting an increasing number of Russian financial institutions, including most major Russian financial institutions. After the February 24, 2023 designation of an additional 14 Russian financial institutions as SDNs,¹² OFAC estimated that over 80 percent of the total Russian banking sector's assets are now targeted by U.S. sanctions.¹³ OFAC also issued two new general licenses in conjunction with these sanctions, permitting the wind down and rejection of transactions with and the divestment or transfer of debt or equity of some, but not all, of these sanctioned financial institutions through 12:01 am eastern daylight time on May 25, 2023.¹⁴

OFAC also designated over a dozen Russian wealth management companies and certain members of their senior management on the SDN List as a part of this new wave of sanctions. OFAC noted the increasing prevalence of wealth management and other types of financial services companies in recent Russia sanctions evasion schemes, given that so many prominent Russian banks and other financial institutions are now SDNs.

Sanctions Evasion Designations

OFAC noted that Russian intelligence services have been directed to find channels and partners outside of Russia for sanctions evasion schemes and the backfilling of critical resources needed by the Russian military. OFAC indicated that, in response, it is actively investigating international sanctions evasion schemes and will impose sanctions on third country individuals and entities that assist Russian companies or the Russian government in these endeavors.¹⁵ As a part of this tranche of sanctions, OFAC designated over a dozen individuals and entities (located in Bulgaria, Italy, Malta, Switzerland, and the United Arab Emirates) for procuring U.S. and allied nation technologies and equipment for the Russian war effort. OFAC also designated a dual Russia-Turkey national and his Cyprus-headquartered arms dealing company for reportedly funneling weapons to the Russian military. Finally, OFAC designated a Russian oligarch, Aleksandr Yevgenyevich Udodov ("Udodov"), and a number of companies associated with Udodov as SDNs for having operated in the management consulting sector of the Russian economy and allegedly engaging in illicit financial activity related to the war in Ukraine.

Sanctions Targeting Russia's Military Supply Chains

Noting that Russia's military-industrial complex is the largest consumer in Russia of carbon fiber and other related advanced materials, OFAC designated the largest producer of carbon fiber and related items in Russia, UMATEX Joint Stock Company, and three of its subsidiaries for having operated in the technology sector of the Russian economy.¹⁶ OFAC also designated five additional Russian aerospace companies and two Russian defense contractors as SDNs. OFAC also targeted for designation as SDNs over a dozen Russian entities that are involved in the importation of microelectronics or that sell such microelectronics or provide consulting services related to such microelectronics to the Russian military.

Clarification Regarding Russian "Exit Tax"

In newly-issued FAQ 1118,¹⁷ OFAC clarified that newly revised and re-issued Russia General License 13D¹⁸ (which generally authorizes payments of certain Russian taxes and duties that are "ordinarily incident and necessary" to day-to-day operations in Russia) does not authorize U.S. persons to engage in transactions involving the Central Bank of Russia or Russia's Ministry of Finance that relate to the payment of so-called "exit taxes" related to divestments of Russian businesses or assets and that U.S.

persons would have to apply for a specific license from OFAC to be able to pay such “exit taxes.” The Russian government has reportedly been imposing so-called “exit taxes” on U.S. and allied country companies that engage in divestment transactions with respect to their Russia businesses.

Additional Export Controls

On February 24, 2023, BIS issued four new final rules targeting Russian and third country entities that support or provide equipment to the Russian military and also further restricted the types of U.S.-origin items that may be exported to Russia without an export license. As a part of this effort, BIS issued a final rule that expanded the scope of the EAR’s Russian and Belarusian industry sector prohibition (including with regard to oil and gas production, certain commercial and industrial items, and chemical and biological precursors) as well as expanding the scope of the “luxury goods” controls targeting Russia.¹⁹

BIS also noted that recent investigations had determined that pieces of Iranian UAVs had been found on the battlefield in Ukraine after having been used as weapons by the Russian military and that some of these UAVs included U.S.-branded parts and components, indicating that despite the sanctions and export controls targeting Iran, the Iranian UAV manufacturers were apparently still able to obtain significant amounts of U.S. parts and equipment.²⁰ As a result, BIS issued a final rule imposing license requirements for a subset of low technology (*i.e.*, classified as EAR99) items used in UAVs, including semiconductors, that are to be reexported to Iran.²¹ Given that U.S. export controls generally “follow the item” anywhere in the world, BIS noted that these license requirements would apply regardless of whether a U.S. person was involved in the transaction or whether there was otherwise a U.S. nexus to the transaction. The rule also creates a new foreign direct product rule specific to Iran through which certain enumerated UAV parts and components (even those that are EAR99) produced outside of the United States will be considered to be U.S.-origin (*i.e.*, “subject to the EAR”) for purposes of U.S. export controls if they are the “direct product” of certain U.S.-origin software or technology.

In addition, through two separate actions, BIS added 86 entities to the Entity List for a variety of reasons related to their activities in support of Russia’s defense-industrial sector and Russia’s invasion of Ukraine.²² While the significant majority of these entities are located in Russia or Belarus, there were 10 entities added to the Entity List through this action that are located in other countries, including China, France, Luxembourg, and the Netherlands. 76 of the 86 entities were also designated as “Russian/Belarusian Military End Users,” a designation which imposes some of the most sweeping export restrictions maintained by BIS (and which expand to cover even certain items produced outside of the United States).

BIS, DOJ, and OFAC Combined Compliance Note

In their joint compliance note, BIS, DOJ, and OFAC stressed the importance of financial institutions and other entities conducting business with a U.S. nexus to be vigilant against efforts by individuals and entities to evade U.S. sanctions and export controls.²³ The compliance note also stressed the importance of companies maintaining a risk-based sanctions and export control compliance program that “should include management commitment (including through appropriate compensation incentives), risk assessment, internal controls, testing, auditing, and training.”

The compliance note also included a list of common red flags, similar to those issued in past OFAC and BIS guidance, that could indicate that a third party intermediary may be engaged in efforts to evade U.S. sanctions or export controls, including:

- “Use of corporate vehicles (*i.e.*, legal entities, such as shell companies, and legal arrangements) to obscure (i) ownership, (ii) source of funds, or (iii) countries involved, particularly sanctioned jurisdictions);
- A customer’s reluctance to share information about the end use of a product, including reluctance to complete an end-user form;
- Use of shell companies to conduct international wire transfers, often involving financial institutions in jurisdictions distinct from company registration;
- Declining customary installation, training, or maintenance of the purchased item(s);

- IP addresses that do not correspond to a customer's reported location data;
- Last-minute changes to shipping instructions that appear contrary to customer history or business practices;
- Payment coming from a third-party country or business not listed on the End-User Statement or other applicable end-user form;
- Use of personal email accounts instead of company email addresses;
- Operation of complex and/or international businesses using residential addresses or addresses common to multiple closely-held corporate entities; or
- Routing purchases through certain transshipment points commonly used to illegally redirect restricted items to Russia or Belarus. Such locations may include China (including Hong Kong and Macau) and jurisdictions close to Russia, including Armenia, Turkey, and Uzbekistan."²⁴

The compliance note also encouraged companies to review OFAC and BIS enforcement actions as well as criminal cases brought by DOJ for more examples of ways in which third party intermediaries have been determined to be attempting to evade sanctions or to transship items in violation of U.S. export controls. The compliance note ended with a reminder that the U.S. government is very focused on the issue of sanctions and export control evasion, particularly, although not exclusively, in the Russia context and that OFAC, BIS, and DOJ will continue to aggressively crack down on sanctions evasion attempts and to pursue criminal prosecutions and civil enforcement actions as well as imposing additional sanctions or export control designations where warranted.

Implications

These additional sanctions and export controls reflect the U.S. government's continuing whole-of-government focus on punishing the Russian economy and, in particular, the sectors of the Russian economy that support the Russian military, as a result of Russia's ongoing invasion of Ukraine. This new tranche of sanctions and export controls further expands U.S. restrictions targeting Russia and Belarus (an OFAC fact sheet²⁵ issued the same day as these sanctions noted that in waves of sanctions over the last year OFAC has designated over 2,500 Russian individuals, entities, vessels, and aircraft as SDNs, and this figure does not include the hundreds of Russian individuals and entities on the BIS Entity List). As a result, Russia and (to a lesser extent) Belarus continue to be effectively quasi-comprehensively sanctioned jurisdictions for U.S. persons.

Although we expect the U.S. government to make additional sanctions designations and export controls restrictions targeting Russia and Belarus for as long as the war in Ukraine continues, the recent combined compliance note and remarks from the Deputy Attorney General regarding the creation of a new unit at DOJ dedicated to investigating sanctions and export control evasion may also signal a redoubling of efforts throughout the U.S. government to aggressively enforce the existing broad sanctions and export controls targeting Russia and Belarus (as well as investigating sanctions or export control evasions in other contexts).

As a result and as the joint compliance note suggests, U.S. and non-U.S. companies alike would be well-advised to review and, as necessary, enhance their sanctions and export control compliance policies and procedures regarding, among other things: (i) the screening of customers and counterparties (and their owners and directors); (ii) the monitoring for, and appropriate escalation and investigation of negative news and red flags (including the red flags included in the compliance note around sanctions evasion and diversion risks); and (iii) the performing of periodic export control classification assessments (and reviews or audits of end user statements). Companies would be well advised to engage in such a review not only if they still engage in business in or with Russia or Belarus, but also if they engage in business with the countries that border Russia and Belarus or other known diversion points that were described in the compliance note. Additionally, all companies engaging in international business would be well advised to review the sanctions and export control evasion red flags in the compliance note and to consider how their compliance framework could be enhanced to better identify and escalate such red flags if presented.

We will continue to monitor sanctions and export controls targeting Russia and Belarus and will provide further updates as appropriate.

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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:

H. Christopher Boehning
+1-212-373-3061
cboehning@paulweiss.com

Jessica S. Carey
+1-212-373-3566
jcarey@paulweiss.com

John P. Carlin
+1-202-223-7372
jcarlin@paulweiss.com

David Fein
+44-20-7367-1608
dfein@paulweiss.com

Michael E. Gertzman
+1-212-373-3281
mgertzman@paulweiss.com

Roberto J. Gonzalez
+1-202-223-7316
rgonzalez@paulweiss.com

Brad S. Karp
+1-212-373-3316
bkarp@paulweiss.com

Richard S. Elliott
+1-202-223-7324
relliott@paulweiss.com

David Kessler
+1-212-373-3614
dkessler@paulweiss.com

Associate Joshua R. Thompson contributed to this memorandum.

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- ¹ OFAC, *Targeting Key Sectors, Evasion Efforts, and Military Supplies, Treasury Expands and Intensifies Sanctions Against Russia* (Feb. 24, 2023), available [here](#) (the “OFAC Press Release”).
 - ² BIS, *Commerce Imposes Additional Export Restrictions in Response to Russia’s Brutal War on Ukraine* (Feb. 24, 2023), available [here](#) (the “BIS Press Release”).
 - ³ *Id.*
 - ⁴ DOJ, *Departments of Justice, Commerce, and Treasury Issue Joint Compliance Note on Russia-Related Sanctions Evasion and Export Controls* (Mar. 2, 2023), available [here](#); BIS, DOJ, OFAC, *Department of Commerce, Department of the Treasury, and Department of Justice Tri-Seal Compliance Note: Cracking Down on Third Party Intermediaries Used to Evade Russia-related Sanctions and Export Controls* (Mar. 2, 2023), available [here](#) (the “Compliance Note”).
 - ⁵ DOJ, *Deputy Attorney General Lisa Monaco Delivers Remarks at American Bar Association National Institute on White Collar Crime* (Mar. 2, 2023), available [here](#).
 - ⁶ *Id.*
 - ⁷ See Executive Order 14024 (Apr. 15, 2021), available [here](#).
 - ⁸ OFAC, *Determination Pursuant to Section 1(a)(i) of Executive Order 14024* (Feb. 24, 2023), available [here](#).
 - ⁹ OFAC, *FAQ 1115* (Feb. 24, 2023), available [here](#).
 - ¹⁰ OFAC, *FAQ 1116* (Feb. 24, 2023), available [here](#).
 - ¹¹ OFAC, *FAQ 1117* (Feb. 24, 2023), available [here](#).
 - ¹² These 14 newly-sanctioned Russian financial institutions are: (i) Credit Bank of Moscow Public Joint Stock Company, (ii) Joint Stock Company Commercial Bank Lanta Bank, (iii) Public Joint Stock Company Commercial Bank Metallurgical Investment Bank, (iv) Public Joint Stock Company MTS Bank, (v) Novosibirsk Social Commercial Bank Levoberezhny Public Joint Company, (vi) Bank Saint-Petersburg Public Joint Stock Company, (vii) Joint Stock Commercial Bank Primorye, (viii) SDM-Bank Public Joint Stock Company, (ix) Public Joint Stock Company Ural Bank for Reconstruction and Development, (x) Public Joint Stock Company Bank Uralsib, (xi) Bank Zenit Public Joint Stock Company, (xii) OOO Zenit Finance, (xiii) OOO Zenit Leasing, and (xiv) OOO Zenit Factoring MSP.

¹³ OFAC Press Release.

¹⁴ OFAC, *Russia General License No. 60* (Feb. 24, 2023), available [here](#); OFAC, *Russia General License No. 61* (Feb. 24, 2023), available [here](#).

¹⁵ OFAC Press Release.

¹⁶ *Id.*

¹⁷ OFAC, *FAQ 1118* (Feb. 24, 2023), available [here](#).

¹⁸ OFAC, *Russia General License No. 13D* (Feb. 24, 2023), available [here](#).

¹⁹ BIS, *Implementation of Additional Sanctions Against Russia and Belarus Under the Export Administration Regulations (EAR) and Refinements to Existing Controls* (Feb. 24, 2023), available [here](#).

²⁰ BIS Press Release.

²¹ BIS, *Export Control Measures on Iran Under the Export Administration Regulations (EAR) to Address Iranian Unmanned Aerial Vehicles and Their Use by Russia Against Ukraine* (Feb. 24, 2023), available [here](#).

²² BIS, *Additions of Entities to the Entity List; Revisions of Entities on the Entity List* (Feb. 24, 2023), available [here](#); BIS, *Additions of Entities to the Entity List* (Feb. 24, 2023), available [here](#).

²³ The Compliance Note.

²⁴ *Id.*

²⁵ OFAC, *FACT SHEET: Disrupting and Degrading – One Year of U.S. Sanctions on Russia and its Enablers* (Feb. 24, 2023), available [here](#).