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U.S., UK, and EU Impose Additional Sanctions and Export Controls Following Russian Invasion of Ukraine

February 25, 2022

International Trade Controls

On February 23 and 24, 2022, the United States, United Kingdom, and European Union, in coordination with other allies, announced a significant package of additional sanctions and export control restrictions targeting Russia, with many of the U.S. measures released following Russia's full-scale invasion of Ukraine. In a televised address, President Biden explained that the new measures are designed to "impose severe costs on the Russian economy" to "maximize the long-term impact on Russia" and minimize the impact on the United States and its allies.

As explained below, the new U.S. sanctions include property-blocking sanctions targeting Russian banks, the Nord Stream 2 pipeline company that would supply additional natural gas from Russia to Germany and its Chief Executive Officer, prominent Russian business leaders and their relatives, and Belarusian parties alleged to have supported the Russian invasion, as well as other targeted measures aimed at certain Russian banks and other businesses.

In addition, the United States has imposed new export controls designed to expand the range of items that require U.S. government authorization before they may be exported or reexported to, or transferred within, Russia; further restrict the supply of items to Russian military end users or military end uses; and expand U.S. jurisdiction over a greater range of non-U.S.-made items when destined for Russia or certain Russian parties.

The latest sanctions and export control restrictions build on those imposed on February 21 and 22 in response to Russia's recognition of the so-called Donetsk People's Republic ("DNR") and Luhansk People's Republic ("LNR") as independent states and not part of Ukraine, which were the subject of our client alert published February 22, 2022. Those measures imposed comprehensive U.S. sanctions on the DNR and LNR; imposed property-blocking sanctions against certain Russian banks, entities, and individuals; and prohibited U.S. financial institutions from participating in the secondary market for certain ruble or non-ruble denominated bonds issued after March 1, 2022.

The UK and EU also have announced substantial new sanctions against Russia, including a range of new asset-freezing designations, financial sector restrictions, export controls, and other restrictions. Those measures collectively represent, together with pre-existing Russia-related sanctions, one of the most substantial set of sanctions ever imposed by the EU or UK. Some of the measures in question have been implemented and are now in force, and others await implementing legislation that we expect will begin to be issued in the coming days.

New U.S. Sanctions and Export Controls

Russia-Related Sanctions

Property-Blocking Sanctions

On February 24, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") designated seven individuals and 60 entities to its List of Specially Designated Nationals and Blocked Persons ("SDN List") for property-blocking sanctions. The designated entities include VTB Bank PJSC ("VTB"), Russia's second-largest bank, and 20 of its subsidiaries; PJSC Bank Financial Corporation Otkritie ("Bank Otkritie") and 12 of its subsidiaries; Sovcombank OJSC ("Sovcombank") and 22 of its subsidiaries; and JSC Novikombank. OFAC noted in a press release that VTB is "one of the largest financial institutions Treasury has ever blocked."

The sanctioned individuals include oligarchs and powerful Russian elites, as well as their families. Sergei Borisovich Ivanov, who is reportedly one of Putin's closest allies and has served as the Chief of Staff of the Presidential Executive Office, Deputy Prime Minister, and Defense Minister of Russia, and who had previously been designated in March 2014, was re-designated February 24 under Executive Order 14024, along with his son Sergei Sergeevich Ivanov, who is the current CEO of the Russian state-owned diamond mining company Alrosa and a board member of Gazprombank. Nikolai Platonovich Patrushev, who is the Secretary of the Russian Federation Security Council and reportedly a longtime close associate of Russian President Putin, and who had previously been designated in April 2018, was re-designated along with his son, Andrey Patrushev, who works in Russia's energy sector and served in leadership roles at Gazprom Neft. OFAC also re-designated Igor Ivanovich Sechin, the CEO, Chairman of the Management Board, and Deputy Chairman of the Board of Rosneft, along with his son Ivan Igorevich Sechin, who also works at Rosneft. OFAC also sanctioned the following prominent individuals in Russia's financial sector: Alexander Aleksandrovich Vedyakhin (first deputy chairman of the executive board of PJSC Sberbank of Russia ("Sberbank")), Andrey Sergeyevich Puchkov and Yuriy Alekseyevich Soloviev (two high-ranking executives at VTB), and Galina Olegovna Ulyutina (wife of Yuriy Alekseyevich Soloviev).

In his televised remarks, President Biden stated that the United States will impose sanctions on additional Russian elites and their family members in the days ahead.

On February 23, OFAC imposed property-blocking sanctions related to the Nord Stream 2 Pipeline, designating Nord Stream 2 AG and its Chief Executive Officer Matthias Warnig to the SDN List. These designations came shortly after German Chancellor Scholz announced on February 22 that he had asked Germany's Ministry of Economics to halt the process of certifying the Nord Stream 2 gas pipeline. That certification is a necessary administrative step, under German law, without which the pipeline cannot be put into operation.

U.S. persons are broadly prohibited from transacting or dealing with SDNs and entities that SDNs own 50% or more, directly or indirectly, individually or in the aggregate with other SDNs. In addition, the property of SDNs and entities that they own 50% or more must be blocked, or frozen, when it comes into the United States or the possession or control of a U.S. person, except as licensed by OFAC. "U.S. persons" are U.S. entities and their non-U.S. branches; individual U.S. citizens and lawful permanent residents ("green-card" holders), no matter where located or employed; and persons present in the United States.

OFAC explained in accompanying guidance that U.S. funds "may not buy, sell, or otherwise engage in transactions related to debt or equity of the blocked Russian financial institutions and must block such holdings," unless authorized. *See* OFAC FAQ 982. However, U.S. funds containing such holdings generally are not themselves blocked, and U.S. persons may continue to invest in them, "as long as the blocked holdings represent less than a predominant share by value of debt or equity of blocked persons." *Id*.

In addition to the prohibitions applicable to U.S. persons described above, non-U.S. persons may be exposed to sanctions risk, i.e., the risk of being designated for property-blocking sanctions themselves, in relation to activities with persons subject to property-blocking sanctions pursuant to Executive Order 14024. Activities subject to sanctions risk include assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, *inter alia*, persons blocked pursuant to the Executive Order. *See* Sections 1(a)(vi) and 1(b) of Executive Order 14024 and OFAC FAQ 980. On the other hand, "non-U.S. persons generally do not risk exposure to U.S. blocking sanctions under E.O. 14024 for engaging in transactions with blocked persons, where those transactions would not require a specific license if engaged in by a U.S. person." *Id*.

Correspondent and Payable-Through Account Restrictions under Directive 2

An additional important development on February 24 was OFAC's designation of Sberbank, Russia's largest bank, and 25 of its subsidiaries on OFAC's Correspondent Account or Payable-Through Account Sanctions List ("CAPTA List"). These designations, which are not property-blocking sanctions, were made under a new Directive 2 issued by OFAC pursuant to Executive Order 14024. Directive 2 prohibits U.S. financial institutions from:

(i) opening or maintaining a correspondent account or payable-through account for, or on behalf of, foreign financial institutions designated pursuant to Directive 2, or their property or interests in property; and

(ii) processing a transaction involving foreign financial institutions designated pursuant to Directive 2, or their property or interests in property.

Directive 2 defines "correspondent account" as "an account established by a U.S. financial institution for a foreign financial institution to receive deposits from, or to make payments on behalf of, the foreign financial institution, or to handle other financial transactions related to such foreign financial institution." "Payable-through account" is defined as "a correspondent account maintained by a U.S. financial institution for a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States."

The prohibitions in Directive 2 take effect at 12:01 a.m. EDT on March 26, 2022. They apply to all foreign financial institutions owned 50% or more, directly or indirectly, by Sberbank or its designated subsidiaries. For any entities that are later targeted by the directive, the restrictions would apply 30 days after the date of determination that the foreign financial institution is subject to the directive. The prohibitions do not apply, however, to non-"foreign financial institutions," even if those non-"foreign financial institutions" are 50 percent or more owned, directly or indirectly, individually or in the aggregate, by one or more "foreign financial institutions" determined to be subject to this directive. *See* OFAC FAQs 969 and 971.

The prohibitions of Directive 2 apply regardless of the currency of the transaction. OFAC also clarified that "obligations under this directive apply to U.S. financial institutions only," and U.S. individuals and companies are not prohibited from processing transactions involving institutions designated under Directive 2. *See* OFAC FAQ 973.

Notably, OFAC explained in accompanying guidance that non-U.S. persons "generally do not risk exposure" to secondary property-blocking sanctions "for engaging in transactions with persons subject to the prohibitions of" Directive 2 (or Directive 3, described below). *See* OFAC FAQ 980.

Debt and Equity Restrictions under Directive 3

OFAC additionally designated numerous Russian banks and additional critical Russian businesses in a range of sectors for sanctions that prohibit U.S. persons from participating in transactions involving certain new debt and new equity of the sanctioned parties.

Entities designated under this new measure include: Credit Bank of Moscow PJSC, Gazprombank JSC, JSC Alfa-Bank, JSC Russian Agricultural Bank, JSC Sovcomflot, OJSC Russian Railways, PJSC Alrosa, PJSC Gazprom, PJSC Gazprom Neft, PJSC Rostelecom, PJSC RusHydro, Sberbank, and PJSC Transneft.[1]

These sanctions designations — which also are not property-blocking sanctions — were made under newly announced Directive 3 pursuant to E.O. 14024. Directive 3 prohibits U.S. persons from engaging in transactions involving:

(i) for new debt or new equity of entities designated under the Directive (or their property or interests in property), all transactions in, provision of financing for, and other dealings in, new debt of longer than 14 days' maturity or new equity where such new debt or new equity is issued after March 25, 2022 for entities designated pursuant to Directive 3; and

(ii) for new debt or new equity of entities designated under Directive 3 in the future, all transactions in, provision of financing for, and other dealings in new debt of longer than 14 days' maturity or new equity where such new debt or new equity is issued on or after 30 days after the designation of further entities.

For the purposes of this directive, "debt" includes "bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers acceptances, discount notes or bills, or commercial

[1] Gazprom Neft and Transneft were already subject to Directive 2 sectoral sanctions under Executive Order 13662 ("E.O. 13662"), and Gazprombank, Russian Agricultural Bank, and Sberbank were already subject to Directive 1 sectoral sanctions under E.O. 13662.

paper," and "equity" includes "stocks, share issuances, depositary receipts, or any other evidence of title or ownership." *See* OFAC FAQ 986.

As noted above with respect to Directive 2, non-U.S. persons generally do not face exposure to secondary property-blocking sanctions for engaging in transactions with persons subject to the prohibitions of Directive 3. *See* OFAC FAQ 980.

General Licenses

OFAC issued nine general licenses in connection with these newly issued sanctions, as follows:

- General License No. 4 authorizes transactions incident and necessary to the wind down of transactions involving Nord Stream 2 AG, through 12:01 a.m. EST on March 2, 2022.
- General License No. 5 authorizes certain transactions for the conduct of the official business of the International Centre for Settlement of Investment Disputes ("ICSID"), the Multilateral Investment Guarantee Agency ("MIGA"), the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank Group ("IDB Group"), the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies, as well as their employees, grantees, or contractors. (A note to General License No. 5 indicates that section 9 of Executive Order 14024 exempts transactions for the official business of the United Nations (including its specialized agencies, programs, funds, and related organizations) undertaken by its employees, grantees or contractors.)
- General License No. 6 authorizes transactions that are ordinarily incident and necessary to (i) the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices to, from, or transiting the Russian Federation, or (ii) the prevention, diagnosis, or treatment of COVID-19. As OFAC explained in accompanying guidance, because U.S. financial institutions may not maintain or open correspondent or payable-through accounts for entities subject to Directive 2, "in order for a U.S. financial institution to engage in transactions authorized under [General Licenses 6, 7, or 8], all such funds transfers must be processed indirectly through a non-sanctioned, non-U.S. financial institution." *See* OFAC FAQ 978.
- General License No. 7 authorizes transactions ordinarily incident and necessary to the receipt of, and payment of charges for, services rendered in connection with overflights of the Russian Federation, emergency landings in the Russian Federation by aircraft registered in the United States or owned or controlled by, or chartered to, U.S. persons, and the provision of air ambulances and related medical services to individuals in the Russian Federation. As noted above, pursuant to OFAC FAQ 978, authorized transactions involving foreign financial institutions sanctioned pursuant to Executive Order 14024 must be processed through non-sanctioned, non-U.S. financial institutions.
- General License No. 8 authorizes, through 12:01 a.m. EDT on June 24, 2022, transactions related to energy involving VEB, Bank Otkritie, Sovcombank, Sberbank, VTB, or any entity in which one or more of the stated entities own, directly or indirectly, a 50% or greater interest. The term "related to energy" means "the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished

oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources."

The license does not authorize the opening or maintaining of a correspondent account or payable-through account for, or on behalf of, any entity subject to Directive 2 under E.O. 14024, described above, or any transactions involving a blocked person other than the entities stated in the general license. As noted above, pursuant to OFAC FAQ 978, authorized transactions involving foreign financial institutions sanctioned pursuant to Executive Order 14024 must be processed through non-sanctioned, non-U.S. financial institutions.

- General License No. 9 authorizes, through 12:01 a.m. EDT on May 25, 2022, transactions ordinarily incident and necessary to dealings in debt or equity of one or more of the following entities issued prior to February 24, 2022: VEB, Bank Otkritie, Sovcombank, Sberbank, VTB, or any entity in which one or more of these entities own, directly or indirectly, a 50% or greater interest, provided that any divestment or transfer of, or facilitation thereof, covered debt or equity must be to a non-U.S. person.
- General License No. 10 authorizes, through 12:01 a.m. EDT on May 25, 2022, transactions ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. EST on February 24, 2022, that include one of the following entities as a counterparty or are linked to the debt or equity of one of the following entities: VEB, Bank Otkritie, Sovcombank, Sberbank, VTB, or any entity in which one or more of the stated entities own, directly or indirectly, a 50% or greater interest, provided that any payments to a blocked person are made into a blocked account.
- General License No. 11 authorizes, through 12:01 a.m. EDT on March 26, 2022, transactions ordinarily incident and necessary to the wind down of transactions involving one or more of the following blocked entities: Bank Otkritie, Sovcombank, VTB, or any entity in which one or more of the stated entities own, directly or indirectly, a 50% or greater interest. Authorized wind-down activities for U.S. persons include "transactions ordinarily incident and necessary to terminate their relationship with specified blocked Russian financial institutions, including withdrawing funds and securities, cancelling letters of credit, and amending or cancelling performance guarantees." *See* OFAC FAQ 973.
- General License No. 12 authorizes, through 12:01 a.m. EDT on March 26, 2022, U.S. persons to reject (rather than block) all transactions prohibited by E.O. 14024 involving one or more of the following entities: Bank Otkritie, Sovcombank, VTB, or any entity in which one or more of the stated entities own, directly or indirectly, a 50% or greater interest.

Belarus Sanctions Designations

In addition to the designation of Russian individuals and entities, OFAC designated to the SDN List, pursuant to Executive Order 14038, eight individuals and 12 entities who are involved in the Belarusian defense sectors; two Belarusian banks, Belarussian Bank of Development and

Reconstruction Belinvestbank JSC ("Belinvestbank") and Bank Dabrabyt JSC; Belinvestbank-affiliated LLC Belinvest-Engineering; and CJSC Belbizneslizing.

As with the Russia-related property-blocking sanctions, the property and property interests of these SDNs, and of entities owned 50% or more, directly or indirectly, individually or in the aggregate, by one or more SDNs, that are or come into the United States or the possession or control of a U.S. person must be blocked (or frozen) and U.S. persons are broadly prohibited from transacting or dealing with these sanctioned entities, except as licensed by OFAC.

OFAC also issued Belarus-related General License No. 6, which authorizes all transactions for the conduct of official business of the U.S. government by employees, grantees, or contractors thereof, and General License No. 7, which authorizes all transactions that are for the conduct of the official business of the United Nations, ICSID, MIGA, the African Development Bank Group, the Asian Development Bank, the European Bank for Reconstruction and Development, the IDB Group, the International Committee of the Red Cross, and the International Federation of Red Cross and Red Crescent Societies.

New U.S. Export Controls

In parallel with the new economic sanctions measures, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a Final Rule amending and supplementing the Export Administration Regulations ("EAR") to impose significant and complex new export control measures against Russia. At a high level, the new rules: (1) expand the range of items subject to U.S. export controls that require a license for export or reexport to, or transfer within, Russia; (2) expand the range of items to which the existing EAR "military end use" and "military end user" rules apply with respect to Russia; and (3) create two new sections of the "foreign-produced direct product rule" that establish U.S. export controls jurisdiction over many items produced outside the United States when they are destined for Russia or a specified user in Russia (depending on the applicable section of the rule), and are the direct product of certain U.S. software or technology, or produced by plants or components of plants that are the direct product of certain U.S. software or technology. In addition, the Final Rule imposes comprehensive export, reexport, and transfer (in-country) restrictions for the LNR and DNR regions of Ukraine, with limited exceptions.

Licensing Requirements for Additional U.S. Items

BIS added new license requirements with respect to Russia for exports, reexports, and transfers (in-country) of a significant number of items controlled under the EAR. *See* EAR § 746.8(a)(1). In particular, BIS added license requirements for all items specified under any Export Control Classification Number ("ECCN") in Categories 3-9 of the EAR's Commerce Control List ("CCL"). Such items include a number of products, such as microelectronics, telecommunications items, marine equipment, and aircraft components controlled only for anti-terrorism ("AT") reasons, as well as related software and technology, that were not previously controlled for export to Russia.

In addition, under new EAR § 746.8(b), BIS imposed a strict new license review policy under which applications to export and reexport to and transfer items within Russia will be reviewed under a policy of denial. License applications for certain limited categories will, however, be reviewed on a case-by-case basis to determine whether the transaction will benefit the Russian government or defense sector. These categories include, among others, exports or reexports of items for humanitarian operations, government-to-government cooperation, or flight or maritime safety, or to specified subsidiaries and joint ventures of U.S. companies and the companies of certain allied countries.

As a result of the new license requirements, the application of the EAR's "*de minimis*" rule also will now apply more broadly to exports and reexports to Russia of non-U.S. items incorporating U.S.-origin content. Under that rule, non-U.S. items destined for Russia that incorporate more than 25% "controlled" U.S.-origin content are subject to the EAR. The additional items on the CCL now requiring a license for export or reexport to, or transfer within, Russia also will now count as "controlled" U.S.-origin content for purposes of calculating this 25% *de minimis* threshold when incorporated into items manufactured outside of the United States, thereby expanding the *de minimis* rule's reach and requiring a license before additional foreign-made items may be supplied to Russia. Notably, however, there is an exclusion from the *de minimis* rule for non-U.S. items that incorporate U.S.-origin content designated under ECCNs as controlled only for AT reasons or classified under ECCN 9A991, *and* being reexported or exported from abroad from partner countries specified at Supplement No. 3 to Part 746 of the EAR. In addition, because Russia was not moved to the EAR's more restrictive Country Group E, the relevant *de minimis* rule threshold for Russia will remain at 25%, as opposed to the 10% threshold for Country Group E destinations.

In conjunction with expanding the number of items subject to a licensing requirement for Russia, BIS also significantly restricted the availability of license exceptions for Russia-bound exports, reexports, and transfers (in-country). Under Section 746.8(c), only limited license exception provisions remain available for exports, reexports, or transfers under § 746(a)(1), including among others: (i) License Exception TMP for items for use by the news media; (ii) License Exception TSU for software updates for civil end users that are subsidiaries or joint ventures of U.S. companies or companies of allied countries in the EAR's Country Groups A:5 or A:6; (iii) License Exception ENC, but excluding Russian government end users and Russian state-owned enterprises; and (iv) License Exception CCD, which previously was limited to Cuba, and which now authorizes exports and reexports to Russia of certain consumer communications devices and software to and for the use of individuals and independent non-governmental organizations in Russia.

Expanded Military End Use / Military End User Rule

BIS also expanded the scope of "military end use" and "military end user" restrictions on Russia under EAR § 744.21. These restrictions prohibit the export, reexport, or transfer of certain items to or within Russia (as well as Burma, Cambodia, China, and Venezuela) if the items are intended for a "military end use" or "military end user," as defined in Section 744.21. As previously formulated, these restrictions with respect to Russia applied to items listed in Supplement No. 2 to Part 744 of the EAR, which includes 47 different ECCNs. Under the new restrictions imposed on February 24, the "military end use" and "military end user" restrictions on exports and reexports to and transfers within Russia apply to all items subject to the EAR except (1) food and medicine designated as EAR99; and (2) certain mass-market encryption commodities and software classified as ECCN 5A992.c or 5D992.c, provided they are not for Russian government end users or Russian state-owned enterprises.

In conjunction with these changes, 45 Russian entities that were previously listed on the Military End User List in Supplement No. 7 to Part 744 of the EAR were transferred to the Entity List in Supplement No. 4 to Part 744 of the EAR. In addition to the new foreign direct product rule targeting certain military end users discussed below, each entity is now subject to license requirements for exports, reexports, and transfers of any items subject to the EAR when the entity is a party to a transaction as described in EAR § 748.5(c-f), and license exceptions are unavailable for all but two of the entities added to the Entity List (which can use License Exception GOV for certain U.S. government activities).

New Russia-Specific Foreign-Produced Direct Product Rules

BIS established two new foreign direct product ("FDP") rules with respect to Russia under Section 734.9 of the EAR. These new rules will significantly curtail Russia's access to non-U.S.-made products that are the direct product of U.S. software or technology, or the direct product of plants or major components of plants that are themselves the direct product of U.S. software or technology.

Russia FDP Rule

The first new FDP rule under EAR § 734.9(f), which applies to all of Russia (the "Russia FDP rule"), applies to foreign-produced items that are not designated EAR99 and are (1) the direct product of certain U.S.-origin technology or software subject to the EAR, or (2) produced by certain plants or major components of plants that are themselves the products of certain U.S.-origin technology or software subject to the EAR. The software and technology covered by this rule includes that which is specified in any ECCN in product groups D (software) and E (technology) in Categories 3-9 of the CCL. This includes an expansive range of software and technology, which will result in many more foreign-made products being subject to the EAR for purposes of export or reexport to, or transfer within, Russia. An item meets the scope of the Russia FDP rule if it is known that the item is destined for Russia, or will be incorporated into or used in the production or development of parts, components, and equipment not designated EAR99 and produced in or destined for Russia.

Under EAR § 746.8(a)(2), a license is required for exports or reexports to, or transfers within, Russia of the items described above. However, items that previously qualified for a license exception or could be reexported or transferred (in-country) without a license, and were en route to a foreign destination on March 26, 2022, may proceed to that destination under the rule's savings clause. License applications for products covered under this rule will be reviewed under a policy of denial under EAR § 746.8(b), subject to case-by-case review for limited exceptions such as humanitarian operations and government-to-government activities. Limited license exceptions are available under § 746.8(c), discussed above.

Russia-MEU FDP Rule

The second FDP rule (the "Russia-MEU FDP rule") applies to a specific group of Russian "military end users" designated in Footnote 3 of the EAR's Entity List in Supplement No. 4 to Part 744 of the EAR. Of the 49 entities designated in Footnote 3 of the Entity List, 45 were previously listed on the EAR's "military end user" list and are being transferred to the EAR's Entity List. Under § 734.9(g) of the EAR, the Russia-MEU FDP rule applies to foreign-produced items that are (1) the direct product of any software or technology subject to the EAR (except EAR99 items); or (2) produced by certain plants or major components of plants that are themselves the direct product of U.S.-origin technology or software subject to the EAR (except EAR99 items). Thus, an even more expansive range of U.S.-origin software and technology is encompassed by this rule than the Russia FDP rule discussed above. An item falls within the scope of the Russia-MEU FDP Rule if a Footnote 3 entity is a party to the transaction, or if there is knowledge that the item will be incorporated into or used in the production or development of any part, component, or equipment produced, purchased, or ordered by a Footnote 3 entity.

Under EAR § 746.8(a)(3), a license is required for exports or reexports to, or transfers within, Russia of the items described above. However, items that previously qualified for a license exception or could be reexported or transferred (in-country) without a license, and were en route to or within a foreign destination on March 26, 2022, may proceed to that destination under the rule's savings clause. Unlike the Russia FDP rule, all license applications under the Russia-MEU FDP rule will be reviewed under a policy of denial, and no license exceptions are available under § 746.8(c) except those specified in the specific Entity List entry for a particular entity.

Partner Country Exceptions

Notably, under § 746.8(a)(4) of the EAR, exports or reexports from, or transfers within, certain partner countries that are adopting, or have expressed intent to adopt, substantially similar export control measures will not be subject to the new FDP-related license requirements outlined above. The application of the *de minimis* rule to exports and reexports from these countries to Russia also is more limited, as discussed above. These countries, which are identified in a new Supplement No. 3 to Part 746 of the EAR, include Australia, Canada, Japan, New Zealand, the UK, and members of the EU.

EU Measures

On February 23, the EU implemented four separate regulations that amend and expand existing EU sanctions measures against Russia, and one regulation that introduces trade restrictions involving the Donetsk and Luhansk regions of Ukraine. A consolidated version of those measures can be found here.

In addition, the EU announced on February 24 that it is preparing an additional, and potentially broader, package of sanctions against Russia, in light of Russia's full-scale invasion of Ukraine (which commenced after the finalization of the February 23 EU measures). Although the details of these further new sanctions are still unclear, the EU Commission's president Ursula von der Leyen stated in a press conference that the EU intends to block Russia's access to critical technology and other markets that are "key for Russia." Press reports suggest that this could include export controls on technology — including technology with links to the oil and transport sector. Ms. von der Leyen furthermore announced that the EU intends to introduce additional asset-freeze measures and restrict the access of Russian banks to European financial markets. Press reports furthermore suggest that the EU intends to prepare new sanctions against Belarus for its support of the Russian invasion.

The following summarizes the sanctions measures implemented by the EU on February 23.

Expansion of Preexisting Sanctions against Russia

The EU Council adopted the following four regulations that amend the existing framework of EU-Russia sanctions:

- Council Implementing Regulation (EU) 2022/260 adds 22 individuals and four entities to the EU asset-freezing list. Persons subject to EU sanctions jurisdiction are broadly restricted from dealing with those listed persons, or with any non-listed entity in which any designated person(s) holds a 50% or greater ownership interest or otherwise controls. The updated EU list notably includes (among other parties) VEB and Promsvyazbank PJSC ("PSB") – which were both targeted for U.S. property-blocking sanctions issued on February 22 – as well Bank Rossiya (which also is subject to U.S. property-blocking sanctions and also was added to the UK asset-freezing list earlier this week).

- Council Regulation (EU) 2022/259 implements a derogation mechanism allowing EU Member States to authorize the release of certain frozen funds or economic resources belonging to the three foregoing banks or the making available of certain funds or economic resources to those banks where it is necessary for the termination of contracts/operations with these entities by August 24, 2022.
- Council Implementing Regulation (EU) 2022/261 imposes asset-freezing sanctions on 351 members of the Russian State Duma.
- Council Regulation (EU) 2022/262 expands upon pre-existing EU debt/equity sanctions in Council Regulation 833/2014, which imposed restrictions on dealings in transferable securities or money market instruments, or the issuance of loans and credits, to certain Russian banks and energy sector companies. The new measures implemented on February 23 extends those sanctions to:
  - restrict EU persons from dealing in transferable securities or money-market instruments issued after March 9, 2022 by: (i) the Russian government; (ii) the Central Bank of Russia; or (iii) a legal person, entity, or any entity acting on behalf of or at the direction of the Central Bank of Russia; and
  - restrict EU persons from directly or indirectly making or being part of any arrangement to make any new loans or credit available to any of the foregoing parties after February 23, 2022 (subject to certain limited exemptions).

  The regulation also amends the pre-existing definition for the term "transferable securities" that was applicable under Regulation (EU) No 833/2014. The pre-existing definition of the term "transferable securities" covered the following classes of securities: (i) shares in companies and other securities equivalent to shares in companies, partnerships or other entities, and depositary receipts in respect of shares; (ii) bonds or other forms of securitised debt, including depositary receipts in respect of such securities; and (iii) any other securities giving the right to acquire or sell any such transferable securities. The new regulation amends this definition to now also include "any other securities giving rise to a cash settlement determined by reference to transferable securities."

Restrictions on Economic Relations with the Non-Government Controlled Areas of the Donetsk and Luhansk Regions

The EU also has adopted Council Regulation 2022/263, which targets various trading activities involving the Donetsk and Luhansk regions of Ukraine. The regulation introduces a range of measures, which are broadly framed along the lines of the pre-existing EU-Crimea sanctions (implemented in 2014), including the following:

- Import ban: The regulation prohibits the import into the EU of goods originating in the "specified territories," which the regulation defines as the "non-government controlled areas of the Donetsk and Luhansk oblasts of Ukraine."

  It is furthermore prohibited to provide, directly or indirectly, financing or financial assistance as well as insurance and reinsurance related to the import of the goods originating in the specified territories.

  The prohibitions do not apply to the execution until May 24, 2022 of contracts concluded before February 23, 2022 or of ancillary contracts necessary for the execution of such contracts, provided that the person seeking to execute the contract has notified, at least 10 working days in advance, the activity to the competent member state authority.

- Restrictions on trade and investments: The regulation furthermore introduces restrictions on trade and investments related to certain economic sectors in the specified territories. In particular, the regulation prohibits actions to: (i) acquire any new, or extend any existing participation in ownership of, real estate located in the specified territories; (ii) acquire any new, or extend any existing participation in ownership or control of, entities in the specified territories; (iii) grant or be part of any arrangement to grant any loan or credit or otherwise provide financing, including equity capital, to an entity in the specified territories; (iv) create any joint venture in the specified territories or with an entity in the specified territories; and (v) provide investment services directly related to the foregoing activities.

- Export ban for certain goods and technologies: The regulation introduces an export ban with regards to certain goods and technology listed in Annex II of the regulation for use in the specified territories. Annex II includes goods and technology suited for the following sectors: transport, telecommunication, energy, and the prospecting, exploration, and production of oil, gas, and mineral resources.

  The regulation furthermore prohibits the provision of technical assistance, brokering services, financing, or financial assistance related to the goods and technology listed in Annex II.

  The regulation also prohibits the provision of technical assistance or brokering, construction, or engineering services directly relating to infrastructure in the specified territories in the sectors referred to above, independently of the origin of the goods or technology.

- Prohibition to supply tourism services: Lastly, the regulation prohibits the provision of tourism activities in the specified territories.

  The foregoing prohibitions are subject to targeted exemptions for certain transactions that are required pursuant to contracts executed before February 23, 2022.

UK Measures

In a statement to the House of Commons on February 24, 2022, UK Prime Minister Boris Johnson announced a number of further UK sanctions in response to Russian military action in Ukraine, including the designation of further entities and individuals under the existing UK Russia sanctions regime as well as a number of measures for which secondary legislation will be required in the coming days and weeks.

New UK Sanctions under the Existing UK Russia (Sanctions) (EU Exit) Regulations 2019

- Asset freezes: The UK has added five individuals, including Vladimir Putin's ex son-in-law Kirill Shamalov, and six entities to the UK's consolidated list of those designated under its Russia sanctions regime, all of which are now subject to asset freezes in the UK. The entities designated under this measure include VTB Bank and five Russian companies operating in the defense sector: Rostec, Uralvagonzavod, Tactical Missile Corporation, United Aircraft Corporation, and United Shipbuilding Corporation.
- Further designations planned: The UK Foreign Office has confirmed in an official press release that the UK intends to add further individuals and entities to the consolidated list of designated entities in the coming days and weeks, including the introduction of asset freezes on additional Russian banks and 120 businesses and individuals.

New UK Sanctions Measures for which Secondary Legislation is Required

The UK Government also announced a series of sanctions measures targeting Russian businesses and individuals for which specific secondary legislation is required in order to bring the measures into effect. These measures include:

- Excluding Russian banks from the UK financial system: The UK Government intends to prevent designated Russian banks from accessing sterling and clearing payments through the UK.
- Preventing Russian companies from raising finance through the UK financial markets: The UK Government intends to prevent Russian companies from borrowing on the UK financial markets, a measure which follows the previously announced ban on the Russian state raising funds through UK markets.
- Limiting the amount of money Russian citizens can hold in UK bank accounts: Russian citizens will be subject to restrictions preventing them from holding more than £50,000 in UK bank accounts.
- Suspending all licenses for the export of dual use items from the UK to Russia: The export of all "dual use" items, which can be used for both civil and military purposes, including components used in the aerospace and oil and gas sectors, from the UK to Russia will be suspended "within days."
- Banning Russian national airline Aeroflot from operating in the UK: Aeroflot will be banned from UK airspace.
- Imposing equivalent sanctions on Belarus: The UK will also impose economic sanctions on Belarus as a result of its role in Russia's military activity in Ukraine.

Further UK Measures against Russia

As part of the same announcement of sanctions against Russia, the UK Government also indicated that it will take a number of additional economic crime measures in relation to Russia's actions and reiterated that it may yet seek to impose further economic sanctions on Russia. Outside of the context of economic sanctions, the UK Government indicated that it would bring forward legislation relating to Unexplained Wealth Orders, a type of court order that gives law enforcement authorities the power to compel the subject to reveal sources of wealth or otherwise have assets confiscated, before Easter (in mid-April 2022). A fuller Economic Crime

Bill, the content of which is not yet clear, will be brought forward in the next Parliamentary Session (from May 2022), and the UK National Crime Agency will establish a specialist "Kleptocracy Cell," the purpose and remit of which is not yet clear.

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We are closely monitoring developments concerning the U.S., UK, and EU sanctions against Russia, and will issue further updates in the event of material developments. In the meantime, we would be happy to address any questions you may have.

Covington's International Trade Controls team—which includes lawyers in the firm's offices in the United States, London, Brussels, and Frankfurt—regularly advises clients across business sectors, and would be well-placed to provide support in connection with the emerging Russia sanctions. Our trade controls lawyers also work regularly with Covington's Global Public Policy team—consisting of over 120 former diplomats and policymakers in the United States, Europe, the Middle East, Latin America, Africa, and Asia—many of whom have had substantial government experience in sanctions and export controls matters, and who regularly advise our clients on emerging sanctions policy matters and related engagements with government stakeholders. Moreover, as the Ukraine crisis continues to unfold, Covington is exceptionally well-positioned to assist clients in navigating their most complex challenges, drawing on the multidisciplinary capabilities of additional practices in areas such as international arbitration and disputes, cybersecurity, anti-money laundering, and corporate restructuring.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade Controls team:

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