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Moving SWIFTly: What You Need to Know Now About the Rapidly Evolving Sanctions Against Russia

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In response to Russia's invasion of Ukraine, President Biden announced sanctions against Russia. Following an executive order issued on February 21, 2022, the U.S. Department of Treasury's Office of Foreign Assets Control ("OFAC") has begun to implement sanctions by rolling out a series of new directives, general licenses, and guidance on a nearly daily basis. The UK and EU have, in parallel, announced their own sanctions against Russia. Below, we outline some of these new sanctions and highlight the compliance challenges they raise.

EXECUTIVE ORDER BLOCKING PROPERTY AND PROHIBITING TRANSACTIONS WITH RESPECT TO RUSSIAN EFFORTS TO UNDERMINE THE SOVEREIGNTY AND TERRITORIAL INTEGRITY OF UKRAINE

Executive Order 14065 issued by President Biden on February 21, 2022 sanctions Russia for its recognition of the so-called Donetsk People's Republic (DNR) and Luhansk People's Republic (LNR) regions of Ukraine. The Order broadly prohibits:

- New U.S. investment in the so-called DNR or LNR regions of Ukraine;
- Imports from those regions;
- Exports, sales, or supply from or by the U.S. to those regions; and
- U.S. approval, financing, facilitation, or guarantee of transactions by a foreign person engaged in the above prohibited categories.

The Executive Order also blocks and prohibits the transfer, payment, export, and withdrawal of all property and interests in property in the U.S. of any person determined by the Secretary of the Treasury:

- to operate in DNR or LNR;
- to be a leader, official, senior executive officer, or member of the board of directors of an entity operating in those regions;

- to be owned or controlled by, or to have acted for any person whose property and interests in property are blocked; or
- to have materially assisted or provided support for or goods/services to any person whose property and interests in property are blocked.

The Executive Order further notes that there will be no prior notice given to a determination of a person falling into one of these categories, putting the onus on U.S. persons to make that determination.

Following the Executive Order, OFAC issued General Licenses 17, 18, 19, 20, 21, and 22, authorizing certain transactions such as those involving agriculture and medicine, telecommunications and mail, personal remittances, and wind-down transactions.

SANCTIONS INVOLVING RUSSIAN SOVEREIGN DEBT

On February 22, OFAC issued Directive 1A, concerning trading in Russian sovereign debt, which expands previously issued Directive 1 under Executive Order 14024 (which was issued last year, on April 15, 2021).

Directive 1A prohibits U.S. financial institutions from participating in the primary market for ruble or non-ruble bonds issued by or lent to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, and from participating in the *secondary market for ruble or non-ruble bonds issued by the same entities after March 1, 2022*. "U.S. financial institutions" is defined broadly, and includes "any U.S. entity (including its foreign branches) that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent."

SANCTIONS AGAINST RUSSIAN FINANCIAL INSTITUTIONS AND STATE-OWNED ENTITIES

On February 24, 2022, Treasury announced a range of sweeping sanctions against Russian financial institutions — including the two largest banks, Sberbank and VTB — and also designated many other major banks and state-owned entities as Specially Designated Nationals ("SDNs"). On February 26, 2022, the U.S. announced, with the UK and EU, that it would remove some Russian banks from the SWIFT financial messaging system, but did not specify which ones.

OFAC imposed full blocking sanctions on VTB Bank, freezing all assets in U.S. financial institutions, as well as broadly prohibiting U.S. persons from transactions and other dealings with VTB. OFAC imposed similar blocking sanctions against three other major Russian financial institutions, including Public Joint Stock Company Bank Financial Corporation Otkritie, Joint Stock Commercial Bank Novikombank, and Open Joint Stock Company Sovcomflot.

As for Sberbank, OFAC issued Directive 2 which prohibits U.S. financial institutions from opening or maintaining correspondent accounts or payable-through accounts, or processing any financial transaction for Sberbank and a number of its affiliates and subsidiaries, listed on Annex 1.

Directive 2 provides for a wind-down period allowing prohibited activity until 12:01am EDT on March 26, 2022. For foreign financial institutions not listed on Annex 1, but "otherwise determined to be subject to the prohibitions of this Directive," (signaling that the list may expand), the wind-down period extends to 12:01am 30 days following the date of such determination.

On February 24, OFAC also designated Russia's Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank ("VEB") and Promsvyazbank Public Joint Stock Company ("PSB") as SDNs, which prohibit U.S. persons from any transactions involving or dealings with these entities.

In conjunction with these sanctions, OFAC issued General Licenses 5, 6, 7, 8, 9, 10, 11, and 12, which authorize limited exceptions for certain transactions involving international organizations and entities, agriculture and medicine, overflight and emergency landings, energy, certain dealings in debt and equity, derivative contracts, wind-down of transactions with blocked persons, and rejection of blocked transactions.

Just today, February 28, OFAC issued Directive 4, which prohibits any transaction by a U.S. person involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, including any transfer of assets to these entities or any foreign exchange transaction for or on behalf of these entities.

General License 8A, also issued today, provides a wind-down period through 12:01am EDT, June 24, 2022, for any prohibited transactions "related to energy" with VEB, PSB, Public Joint Stock Company Bank Financial Corporation Otkritie, Sovcombank Open Joint Stock Company, Public Joint Stock Company Sberbank of Russia, VTB Bank Public Joint Stock Company, (or any entities 50% or more owned in the aggregate by these persons), and the Central Bank of the Russian Federation. Significantly, General License 8A *does not authorize* otherwise prohibited transactions involving Russian sovereign debt, the opening or maintaining of correspondent accounts or payable-through accounts with entities subject to Directive 2, any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, or any other blocked person not identified in the license.

RESTRICTIONS ON TRANSACTIONS INVOLVING NEW DEBT OR EQUITY

On February 24, OFAC also issued Directive 3, which prohibits all U.S. persons, not just U.S. financial institutions, from conducting transactions for new debt of longer than 14 days maturity where such new debt or new equity is issued after 12:01am EDT on March 26, 2022. Annex 1 to Directive 3 includes not only Sberbank, but a host of major Russian banks and companies, including GazpromBank, Gazprom, Rostelecom, Transneft, Alfa-Bank, Russian AgriculturalBank, and others.

Directive 3, like Directive 2, provides for a wind-down period allowing prohibited activity until 12:01am EDT on March 26, 2022 for companies listed on Annex 1, or 30 days after the date that a company is "otherwise determined to be subject to the prohibitions of this Directive."

DESIGNATION OF INDIVIDUALS AS SDNs

On February 25, Treasury announced new sanctions against Vladmir Putin himself, along with Sergei Victorovich Lavrov, the Minister of Foreign Affairs of the Russian Federation and a permanent member of Russia's Security Council, and other Russian Security Council members and enablers of Putin.

Last Friday's sanctions against Putin and his cohorts follow OFAC's other new designations, over the past week, of a number of Russian elites as SDNs, including families and other kleptocrats associated with Putin, and financial sector elites.

With these sanctions, all property and interests in property of the designated individuals that are in the United States or in the possession or control of U.S. persons are blocked and must be reported to OFAC. OFAC's 50% rule also applies, which means that any entities that are owned, directly or indirectly, 50 percent or more by one or more blocked persons, individually or in the aggregate, are also blocked.

Similarly, OFAC recently added Nord Stream 2 AG, and its officers, to the SDN list, and on February 23, 2022, issued General License 4 (to Executive Order 14039), which provides for a wind-down period allowing transactions ordinarily incident and necessary to wind-down prohibited Nord Stream 2 activities, through 12:01am EST, on March 2, 2022.

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PARALLEL DEVELOPMENTS IN THE EU AND UK

In the run-up to and following Russia's invasion of Ukraine, both the EU and UK have announced extensive sanctions against Russia, with the aim to cripple Russia's economy and inhibit its ability to sustain its war effort in Ukraine. We have set out below the key measures that have been announced.

These new sanctions will create significant disruption for anyone conducting business with Russia or Russian entities in general, and those which have investments or other financial interests in Russia, such as fund investors and noteholders.

Entities that have accounts with or hold any funds or economic resources for any of the sanctioned individuals or entities will also have to take specific steps to comply with the new sanctions regime. These could include freezing affected accounts, refraining from dealing with affected funds or assets, reporting any findings to the relevant authority (in the UK this is the Office of Financial Sanctions Implementation (OFSI)), and to comply with the relevant authority's/law enforcement's information requests. Failure to comply with sanctions legislation or seeking to circumvent its provisions can be a criminal offence. Accordingly, companies should carefully consider their potential obligations under the new regimes, and seek legal advice where necessary.

What sanctions has the UK announced?

On 24 February 2022, Prime Minister Boris Johnson announced a sanctions package (in addition to the UK's existing sanctions regime against Russia which have been in place since Brexit), which he described as "*the largest and most severe package of economic sanctions that Russia has ever seen*". The new sanctions include:

- The UK will bring forward parts of the Economic Crime Bill before the Easter recess relating to Unexplained Wealth Orders to crack down on "unexplained wealth" in the UK. The Bill will also include reforms to Companies House and the register of overseas property ownership.
- Asset freezes of all major Russian banks and exclusion from the UK financial system. This will stop these entities from accessing sterling and clearing payments through the UK. This includes a full and immediate freeze of VTB bank.
- Legislation will be introduced to stop major Russian companies and the state from raising finance or borrowing money on UK markets. This is in addition to the prohibition of the Russian state raising sovereign debt in the UK announced earlier this week.
- Asset freezes on 100 new individuals or businesses with direct links to the Russian defence industry and security services and President Putin's inner circle. The list of individuals and entities, as of today, is available here: (OFSI Notice): Among others, these newly sanctioned entities include
    - UralVagonZavod – Russian machine building company, major battle tank manufacturer;
    - PJSC United Aircraft Corporation – Russian aerospace and defense corporation, major military aircraft manufacturer;
    - PJSC United Shipbuilding Corporation – the largest Russian shipbuilding company;
    - Rostec – state-owned Russian conglomerate specialising in investing in defense and high-tech industries;
    - JSC Tactical Missiles Corporation – a major Russian weapons manufacturer, lead supplier of air and sea missiles; and
    - VTB Bank – state-owned Russian bank, Russia's second biggest lender.
- Aeroflot (Russia's national airline) to be banned from landing in the UK.
- There will be a suspension of dual-use export licences to cover components which can be used for military purposes and the UK will stop exports of high-tech items

and oil refinery equipment.

- There will be a limit on deposits Russians can make in UK bank accounts.

On 28 February 2022, the government announced further sanctions in addition to the above. These include:

- Restrictions to prohibit UK natural and legal persons from undertaking financial transactions involving the Russian Central Bank (to prevent it from deploying its foreign reserves to undermine the impact of sanctions imposed, and to undercut its ability to engage in foreign exchange transactions to support the Russian rouble), the Russian National Wealth Fund and the Ministry of Finance of the Russian Federation;
- Sanctions on 571 members of the Duma and Federation Council who sanctioned the invasion of Ukraine; and
- All Russian commercial and private jets banned from UK airspace, in addition to the existing ban on Aeroflot; and
- Further asset freezes of three Russian entities (VEB.RF, Bank Otkritie Financial Corporations PJSC and PJSC Sovocombank, see OFSI Notice)

Similar financial sanctions will be extended to Belarus for its role in the assault on Ukraine.

What sanctions has the EU announced?

On 23 February 2022 the EU also announced sweeping sanctions against Russia. In summary, the EU agreed to impose:

- Sanctions against the 351 members of the Russian parliament who voted in favour of the recognition;
- Sanctions against 27 individuals and entities over their actions against the territorial integrity, sovereignty and independence of Ukraine;
- Restrictions on economic relations with the non-government controlled areas of Donetsk and Luhansk oblasts; and
- Restrictions on Russia's access to the EU’s capital and financial markets and services.

This was supplemented on 24 February 2022 following a special summit of EU leaders by "*further restrictive measures that will have massive and severe consequences for Russia*". The additional measures cover the financial sector, the energy and transport sectors, dual-use goods, export control and export financing, visa policy, additional sanctions against Russian individuals and new listing criteria.

In the early hours of 25 February 2022, European Commission President Ursula von der Leyen announced in a series of Tweets that the "package of massive and targeted sanctions" includes:

- Financial sanctions targeting 70 percent of the Russian banking market, but also key state-owned companies including the field of defense;
- Sanctions targeting the energy sector, saying that "our export ban will hit the oil by making it impossible for Russia to upgrade its oil refineries";
- A ban on the sale of aircrafts and equipment to Russian airlines;
- Limiting Russia's access to crucial technology, such as semiconductors or cutting-edge software;
- When it comes to visas, "diplomats and related groups and business people will no longer have privileged access to the European Union."

The European Council will adopt the proposals without delay.

In addition, Germany has frozen the approval of the Nord Stream 2 gas pipeline to Russia.

Similar sanctions are expected to be announced against Belarus shortly.

On 25 February 2022, the EU imposed further sanctions on Vladimir Putin and Foreign Minister Sergei Lavrov. The additional sanctions are understood to include an asset freeze and not a travel ban. Although the practical effect of these sanctions may be limited (as the pair are unlikely to hold substantial assets in the EU), the EU has stressed its symbolic importance — the only world leaders sanctioned by the EU are President Bashar al-Assad from Syria, and Alexander Lukashenko from Belarus and now Mr Putin and Mr Lavrov.

The UK made a similar announcement shortly thereafter to freeze Mr. Putin and Mr. Lavrov's assets in the UK and to block them from any future business in UK.

Finally, on 27 February 2022 the EU announced a further raft of sanctions to include:

- The purchase and delivery of weapons and other equipment to Ukraine, for the first time in history;
- Ban of all Russian owned, registered and controlled aircraft from the EU's airspace, including the private jets of Russian oligarchs;
- Ban on the "Kremlin media-machine", including state-owned Russia Today and Sputnik (and their subsidiaries) to ban "toxic and harmful disinformation in Europe"; and
- Widening of existing sanctions against Belarus to target Belarus' most important sectors and export products.

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