

CLIENT ALERT

MARCH 11, 2022

U.S. President Biden Imposes Third Tranche of Economic Sanctions Against Russia

a. Introduction

On February 26, 2022, President Biden released a Joint Statement along with Canada, the European Commission, France, Germany, Italy and the UK imposing coordinated economic sanctions against Russia in response to Russia's military operations in Ukraine ("Tranche 3 Sanctions").¹ Japan later joined the effort as well.²

The Tranche 3 Sanctions: (1) prohibit certain Russian banks from participating in the Society of Worldwide Interbank Financial Telecommunication ("SWIFT") messaging system, (2) impose further sanctions on Russian banks, (3) add to the Specially Designated Nationals ("SDN") List, and (4) issue new regulations titled the "Harmful Foreign Activities Sanctions Regulations."³

b. Russian Banks Removed from SWIFT

The U.S. and its partner countries have committed to removing "selected Russian banks" from the SWIFT messaging system.⁴ The SWIFT messaging system is a financial messaging service for cross-border payments that are communicated between financial institutions in different countries. According to SWIFT, it has a network of "more than 11,000 banks, financial institutions and corporations in more than 200 countries and territories."⁵ Since SWIFT operates under Belgian authority, and U.S. sanctions would not be able to directly prohibit SWIFT from processing financial messages, removing

¹ Joint Statement on Further Restrictive Economic Measures (hereafter, "Joint Statement"), Feb. 26, 2022, available at: <https://www.whitehouse.gov/briefing-room/statements-releases/2022/02/26/joint-statement-on-further-restrictive-economic-measures/>.

² "ウクライナ情勢に関する我が国の対応についての会見," Prime Minister's Office of Japan, Feb. 27, 2022, available at: https://www.kantei.go.jp/jp/101_kishida/statement/2022/0227kaiken.html.

³ See U.S. Department of Treasury announcement at "Issuance of Russian Harmful Foreign Activities Sanctions Regulations," U.S. Department of Treasury, Feb. 28, 2022, available at: https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220228_33, and FR notice at "Russian Harmful Foreign Activities Sanctions Regulations" (hereafter, "Harmful Foreign Activities Sanctions Notice"), 87, Fed. Reg. 11,297, available at: <https://www.federalregister.gov/documents/2022/03/01/2022-04281/russian-harmful-foreign-activities-sanctions-regulations>.

⁴ Joint Statement.

⁵ *SWIFT and sanctions*, SWIFT, available at: <https://www.swift.com/about-us/legal/compliance-o/swift-and-sanctions>.

Russian banks from SWIFT will ultimately require approval by SWIFT.⁶ While the joint statement did not specify which banks would be removed from the SWIFT system, the European Union later adopted Council Decision (CFSP) 2022/346⁷ and Council Regulation (EU) 2022/345,⁸ prohibiting the following banks from using SWIFT:

- Bank Otkritie
- Novikombank
- Promsvyazbank
- Bank Rossiya
- Sovcombank
- VNESHECONOMBANK (VEB)
- VTB BANK, and
- Any legal person, entity or body established in Russia whose proprietary rights are directly or indirectly owned more than 50% by an entity listed above.⁹

SWIFT also made an official announcement following issuance of the EU regulation, removing the Russian banks from its system.¹⁰ Russia's second-largest bank, VTB Bank, has been removed but, as Reuters has pointed out, the EU regulation "stopped short of including those handling energy payments."¹¹ Given the possibility that more banks could be added to the list, all companies engaged in transactions using Russian banks must closely monitor any possible additions to the list of banks removed from SWIFT.

⁶ International Financial Messaging Systems, Congressional Research Service, Jul. 19, 2021, available at: <https://sgp.fas.org/crs/row/R46843.pdf>.

⁷ Council Decision (CFSP) 2022/346 of March 1, 2022 amending Decision 2014/512/CFSP concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 63, 2.3.2022, pp. 5–7, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.063.01.0005.01.ENG&toc=OJ%3AL%3A2022%3AO63%3ATOC.

⁸ Council Regulation (EU) 2022/345 of March 1, 2022 amending Regulation (EU) No 833/2014 concerning restrictive measures in view of Russia's actions destabilizing the situation in Ukraine, OJ L 63, 2.3.2022, pp. 1–4, available at: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2022.063.01.0001.01.ENG&toc=OJ%3AL%3A2022%3AO63%3ATOC.

⁹ See Article 1e of the Council Decision 2022/346, and Article 5h of the EU Council Regulation 2022/345.

¹⁰ *An update to our message for the SWIFT Community*, SWIFT, Mar. 2, 2022, available at: <https://www.swift.com/news-events/news/message-swift-community>.

¹¹ *EU bars 7 Russian banks from SWIFT, but spares those in energy*, Reuters, Mar. 2, 2022, available at: <https://www.reuters.com/business/finance/eu-excludes-seven-russian-banks-swift-official-journal-2022-03-02/>.

c. Additional U.S. Sanctions Imposed on the Central Bank of the Russian Federation

On February 28, 2022, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") issued a number of additional sanctions measures against Russia. Specifically, OFAC issued (1) Directive 4, issued under Executive Order 14024, "Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation"¹² and (2) Russia-related General License 8A.¹³

(1) Directive 4 under Executive Order 14024:

Directive 4 prohibits United States citizens from engaging in "any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities."¹⁴

An updated list of entities determined to be subject to the prohibitions of Directive 4 can be found on OFAC's Non-SDN Menu-Based Sanctions List.¹⁵

OFAC has also issued a number of FAQs concerning, among others, the interpretation of Directive 4:

- FAQ 1001 clarifies that the "50 Percent Rule" does not apply to Directive 4.
- FAQ 1002 clarifies that U.S. Persons may not engage in indirect transactions with Directive 4 entities unless those transactions are exempt or authorized by OFAC. This includes any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities. The FAQ further reminds that any conspiracy formed for violation of sanctions or any transaction that avoids or evades a prohibition has the same effect as a violation.
- FAQ 1004 clarifies that although the prohibitions of Directive 4 effectively immobilize any assets of Directive 4 entities that are held in the United States

¹² Directive 4 under Executive Order 14024 (hereafter, "Directive 4"), OFAC, Feb. 28, 2022, available at: https://home.treasury.gov/system/files/126/eo14024_directive_4_02282022.pdf.

¹³ Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation: GENERAL LICENSE NO. 8A (hereafter, "General License 8A"), OFAC, Feb. 28, 2022, available at: https://home.treasury.gov/system/files/126/russia_gl8a_1.pdf.

¹⁴ Directive 4.

¹⁵ <https://home.treasury.gov/policy-issues/financial-sanctions/consolidated-sanctions-list-non-sdn-lists/non-sdn-menu-based-sanctions-list-ns-mbs-list>.

or by a U.S. person, they are not “blocking sanctions.” U.S. persons must reject transactions involving the Directive 4 entities, unless exempt or authorized by OFAC.

- FAQ 1005 provides that Directive 4 does not prohibit trading debt or equity of Directive 4 entities in secondary markets, provided that no Directive 4 entity is a counterparty to such a transaction.

(2) Russia-related General License 8A:

OFAC also issued General License 8A, which authorizes certain energy-related transactions until June 24, 2022.¹⁶

- The following entities are covered under the general license:
 - State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank
 - 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
 - Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest
 - Central Bank of the Russian Federation
- General License 8A does not authorize:
 - Any transactions prohibited by Directive 1A, issued under E.O. 14024, titled “Prohibitions Related to Certain Sovereign Debt of the Russian Federation”¹⁷
 - The opening or maintaining of a correspondent account or payable-through account for or on behalf of any entity subject to Directive 2, issued under E.O. 14024, titled “Prohibitions Related to Correspondent or Payable-

¹⁶ General License 8A.

¹⁷ Directive 1A under E.O. 14024, Prohibitions Related to Certain Sovereign Debt of the Russian Federation, OFAC, Feb. 22, 2022, available at: https://home.treasury.gov/system/files/126/russia_directive_1a.pdf.

Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions”¹⁸

- Any debit to an account on the books of a U.S. financial institution for the Central Bank of the Russian Federation
- Any transaction involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized

OFAC has also issued several rounds of Frequently Asked Questions related to General License 8A.¹⁹

d. Additions to the SDN List:

On February 28, 2022, OFAC added the following individual and entities to the SDN List:²⁰

- Individual: Kirill Aleksandrovich Dmitriev (CEO of RDIF and JSC RDIF)²¹
- Entities:
 - The Russian Direct Investment Fund (“RDIF”)²²
 - Joint Stock Company Management Company of the Russian Direct Investment Fund (“JSC RDIF”)²³
 - Limited Liability Company RVC Management Company (“LLC RVC”)²⁴

¹⁸ Directive 2 under E.O. 14024, Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions, OFAC, Feb. 24, 2022, available at: https://home.treasury.gov/system/files/126/correspondent_accounts_directive_2.pdf.

¹⁹ See Frequently Asked Questions - Newly Added, U.S. Department of Treasury, Mar. 4, 2022, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/faq/added/2022-03-04>, and “Frequently Asked Questions - Newly Added” U.S. Department of Treasury, Mar. 8, 2022, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/faq/updated/2022-03-08>.

²⁰ Russia-related Designations; Issuance of Russia-related Directive 4 and Russia-related General License 8A, U.S. Department of Treasury, Feb. 28, 2022, available at: <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20220228>.

²¹ See Sanctions List Search for “Kirill Aleksandrovich Dmitriev,” available at: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=34336>.

²² ²² See Sanctions List Search for “The Russian Direct Investment Fund,” available at: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=34036>.

²³ See Sanctions List Search for “Joint Stock Company Management Company of the Russian Direct Investment Fund,” available at: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=34337>.

²⁴ See Sanctions List Search for “Limited Liability Company RVC Management Company,” available at: <https://sanctionssearch.ofac.treas.gov/Details.aspx?id=35244>.

e. Russian Harmful Foreign Activities Sanctions Regulations

On February 28, 2022, OFAC issued the Russian Harmful Foreign Activities Sanctions Regulations to implement E.O. 14024.²⁵ These regulations are intended to provide structure to the series of sanctions recently announced by the Biden administration, and also to provide important definitions to terms used in recent releases.

OFAC noted that “intends to supplement these regulations with a more comprehensive set of regulations, which may include additional interpretive guidance and definitions, general licenses, and other regulatory provisions.”²⁶

About Curtis

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²⁵ See Harmful Foreign Activities Sanctions Notice.

²⁶ Harmful Foreign Activities Sanctions Notice, available at: <https://www.federalregister.gov/d/2022-04281/p-3>.

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