

INTERNATIONAL BUSINESS ALERT

FEB. 14, 2022

MATT LAPIN

202.778.3030

mlapin@porterwright.com

Potential new sanctions, export controls on Russia: How to assess business risk

The U.S. and other countries have indicated a range of economic sanctions and export controls could be imposed on Russia as result of the current conflict in Ukraine. It's important that potentially affected businesses stay aware of and be prepared for such possible actions.

Potential sanctions and export controls actions

While it is still not clear exactly what new sanctions or export controls may be implemented, options that have been discussed include:

- Additional designations by the U.S. Department of Treasury, Office of Foreign Assets Control (OFAC) of Russian entities or individuals as Specially Designated Nationals (SDNs). This action would prohibit U.S. persons — including non-U.S. subsidiaries — and most global banks (that make use of the U.S. financial system) from conducting business with these SDNs or entities in which they have greater than 50% ownership. This likely would include Nord Stream 2 and other projects or parties involved in the Russian energy sector.
- Additional sectoral sanctions, possibly on Russia's energy or financial sectors, enhancing existing sectoral sanctions on existing parties or projects in these sectors and/or adding new sectoral sanctions on other sectors such as mining or aerospace.
- U.S. Department of Commerce, Bureau of Industry and Security (BIS) designation of Russian entities as subject to the Foreign Direct Product Rule (FDP). This could restrict exports of items to Russia containing certain U.S. technology or components. This has been employed against Huawei such that companies manufacturing electronics outside

This law alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. It does not necessarily reflect the views of the firm as to any particular matter or those of its clients. Please consult an attorney for specific advice regarding your particular situation.

Please see our other publications at www.porterwright.com/media.

the U.S., where their item contains a chip manufactured anywhere in the world using U.S. technology, cannot sell their finished electronics products to Huawei.

- Designation of certain parties as subject to secondary sanctions, which prohibit non-U.S. persons from transacting business with designated parties. This could be applied against Russian banks, in particular.
- In coordination with other countries, denying Russian banks access to the global Society for Worldwide Interbank Financial Telecommunications (SWIFT) banking communication system, making financial transactions in or out of Russia nearly impossible. This could have a similar potential impact as secondary sanctions against banks.
- Imposition of a comprehensive embargo of Russia, similar to those imposed on Cuba, Iran, Syria and North Korea. Although this has not been publicly discussed by the Biden Administration to date, it is within the U.S. government's administrative and legislative powers.

It should be noted that the United Kingdom recently passed legislation authorizing use of some of the same sanctions noted above, though none have been implemented to date.

How to assess and mitigate potential business risk

If a company may be affected by impending sanctions or export controls on Russia, the following actions should be considered:

- Assess operations involving business transactions within Russia and/or Russian entities operating outside of Russia, including:
 - Sales of goods/services to Russia or Russian entities
 - Supplies of goods/services from Russia or Russian entities
 - Technology transfers with Russia or Russian entities
 - Employment of Russian nationals as employees or contractors
 - Financial transactions involving Russia or Russian entities
- Identify contractual relationships with any noted parties under the above. Verify if contracts contain sanctions or export controls compliance language and/or force majeure provisions that define grounds for contract termination. Prepare communications plans with commercial teams to halt transactions quickly, as imposition of sanctions or export controls often happen without advance notice or grace period for compliance.
- If the FDP is applied to Russian entities, identify exposure with those entities and review inputs to those products (e.g. bill of materials/ manufacturing inputs) sold to those entities. This determines if there are inputs that would subject them to export controls under the FDP.
- Review outstanding payments due and determine if payments can be accelerated and/or prepared to handle potential freezing of such payments. This may include application for licenses from OFAC to receive payment, as financial institutions may not process payments

from a sanctioned party.

- Ensure sanctions and export controls due diligence and screening policies, procedures, and work instructions are up to date. Effectively monitor changes to laws and regulations. Review prior due diligence on Russian entities to verify complete information on beneficial ownership.
- To the extent potential exposure is identified, develop planning for alternative sourcing, servicing or other critical inputs to a business that may be interrupted by sanctions or export controls restrictions.
- Be prepared to interface with U.S. government agencies (including OFAC, BIS and Department of State) regarding compliance with any new requirements.

For more information about how potential sanctions and export controls on Russia could affect your business, contact [Matt Lapin](#) or any member of Porter Wright's [International Business and Trade Group](#).