

CLIENT ALERT

OFAC Imposes Sovereign Debt Restrictions and Additional Sanctions on Belarusian Regime

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In an action that continues the Biden administration's focus on human rights and democracy building, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") expanded sanctions related to Belarus by imposing restrictions on dealings in new issuances of Belarusian sovereign debt and designating various Belarusian persons for blocking sanctions. In a [press release](#) issued alongside the announcement, OFAC cited the Lukashenka regime's blatant disregard for international norms and the wellbeing of its own citizens as the impetus for OFAC's actions. These new measures – which were taken in coordination with the European Union, the United Kingdom, and Canada – were taken pursuant to Executive Order 14038, signed on August 9, 2021, which expanded the scope of the national emergency previously declared with respect to Belarus and authorized the imposition of blocking sanctions on persons operating in identified sectors of the Belarusian economy. You can read more about this prior action in our [previous client alert](#).

a. Restrictions on Belarusian Sovereign Debt

Most significantly, OFAC issued [Directive 1](#), which prohibits all transactions in, provision of financing for, and other dealings in new debt¹ (on both the primary and secondary markets)² with a maturity of greater than 90 days issued on or after December 2, 2021 by the Ministry of Finance of the Republic of Belarus or the Development Bank of the Republic of Belarus, by U.S. persons unless authorized by OFAC. These prohibitions apply to dealings in new debt and do not apply

¹ OFAC defines the term "debt" to include bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers' acceptances, discount notes or bills, or commercial paper. See OFAC Frequently Asked Question # 944, [available here](#).

² See OFAC Frequently Asked Question # 941, [available here](#).

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to contractual agreements made prior to December 2, 2021 so long as such agreements are not modified on or after that date.

OFAC established in guidance that the restrictions on dealing in new debt do not apply to entities in which the Belarus Ministry of Finance and Development Bank own a 50 percent or greater interest, thereby narrowing the scope of the Directive.³ In addition, Directive 1 makes clear that the Ministry of Finance and the Development Bank are not blocked entities, so U.S. persons are not generally prohibited from engaging in transactions involving these entities.

b. Blocking Sanctions

The new sanctions also target 20 individuals, 12 entities, and three aircraft, including government officials and state-owned entities involved with orchestrating and facilitating irregular migration and migrant smuggling into the EU, the Lukashenka regime's public corruption and human rights abuses, and the Belarusian defense and security sectors. OFAC also designated additional entities that are involved in the exportation of potash, which follows the designation of Belaruskali OAO ("Belaruskali") on August 9, 2021. Belaruskali is one of the largest producers of potash, a key fertilizer ingredient, and OFAC cited Belaruskali as a key source of tax revenue and foreign currency for the Lukashenka regime. Open Joint Stock Company Belarusian Potash Company ("BPC"), one of the entities designated in OFAC's most recent action, handles the trading and exportation of potash for Belaruskali and Belaruskali has an ownership interest in BPC. Agrorozkvit LLC is a subsidiary of BPC that was also designated alongside BPC.

OFAC issued a wind-down general license, [General License 5](#), to authorize transactions ordinarily incident and necessary to the winding down of transactions involving two of the newly designated entities, BPC or Agrorozkvit LLC, and entities owned 50 percent or more by such entities, through April 1, 2022. Notably, the general license includes authorization for transactions to wind down activity with BPC or Agrorozkvit in which Belaruskali also has a property interest. While General License 4, which provided for the winding down of transactions with Belaruskali and entities in which it owns a 50 percent or greater interest, expired on December 8, 2021, General License 5 authorizes wind-down transactions involving both BPC or Agrorozkvit and Belaruskali through April 1, 2022.

c. Implications for Companies Doing Business in Belarus

While the new sanctions remain targeted and list-based, Directive 1 expands the impact of the Belarusian sanctions and adds a layer of complexity that companies with dealings in Belarus will need to build into their compliance programs. Furthermore, OFAC's sanctions on Belarus have been made in close coordination with counterparts in the European Union, United Kingdom, Switzerland, and Canada, and parallel restrictions recently issued under those countries' sanctions programs establish additional restrictions on companies subject to the jurisdiction of these authorities.

³ See OFAC Frequently Asked Question # 943, [available here](#).

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