Sanctions Year-in-Review 2022

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In early 2022, as the world watched the events in Ukraine unfold, our global sanctions team followed the conflict and the ensuing geopolitical developments that reshaped our world. The global economy suffered as the invasion created serious trade disruptions, food supply shortages and fuel price shocks. These factors and others contributed to high inflation and surging energy prices amid large reductions in Russian energy supply. In response to the invasion, the US, UK, EU and Canada imposed the furthest-reaching sanctions against Russia to date, making it on some measures the most sanctioned country in the world. Amid rising oil prices, all G7 countries introduced a price cap on Russian oil, prohibiting persons and entities in G7 countries from dealing with shipments of Russian oil to third countries unless the price per barrel fell below the cap.

In addition to Russia's invasion of Ukraine, another important geopolitical event of 2022 was the protests in Iran against the killing of Mahsa Amini, a 22-year old Kurdish Iranian woman. The protests began in September when "morality police" in Tehran arrested Amini and took her into custody, where she later died. Protests in response to her death soon swept the country and have been characterized as potentially the most serious challenge to the Islamic government's rule since it took power in 1979. The events also made the potential for a return to the Joint Comprehensive Action and the easing of US sanctions against Iran far more remote and threatened the potential for continued diplomacy between Iran and the West. Additionally, the UK and EU designated more than 40 individuals and the Iranian Morality Police as a whole under their existing frameworks of sanctions relating to human rights in Iran.

Meanwhile, tensions between China and the West continued to intensify in 2022. In October, US President Biden took action to limit China's technological capabilities by denying it access to the advanced semiconductor chips and technology essential to dominating fields like artificial intelligence. And while some expected the easing of some of the trade restrictions imposed on China by the Trump administration, 2022 saw these restrictions remain in place. Canada likewise released its new Indo-Pacific Strategy which sets out that country's evolving approach to the Indo-Pacific region, including a statement that Canada will "challenge China" in areas of profound disagreement. Concerns about the national security threat posed by China as well as its treatment of its Uyghur minority remain points of sensitivity in Europe and North America, as do the tensions around Taiwan, highlighted by China's response to then US Speaker Pelosi's visit to Taiwan, and China's unwillingness to censor Russia in relation to its invasion of Ukraine.

2022 also saw the easing of the COVID-19 pandemic and the restrictions associated with it. The success of vaccines and therapeutic treatments developed to treat Covid proved largely successful (eventually) at mitigating the spread of the pandemic, leading the World Health Organization to declare the end of the pandemic in sight. Climate change continued to pose global challenges and resulted in numerous "rare" weather events throughout the world, including record heat waves and hurricanes, strengthening the sense of urgency in achieving international measures to tackle climate change.

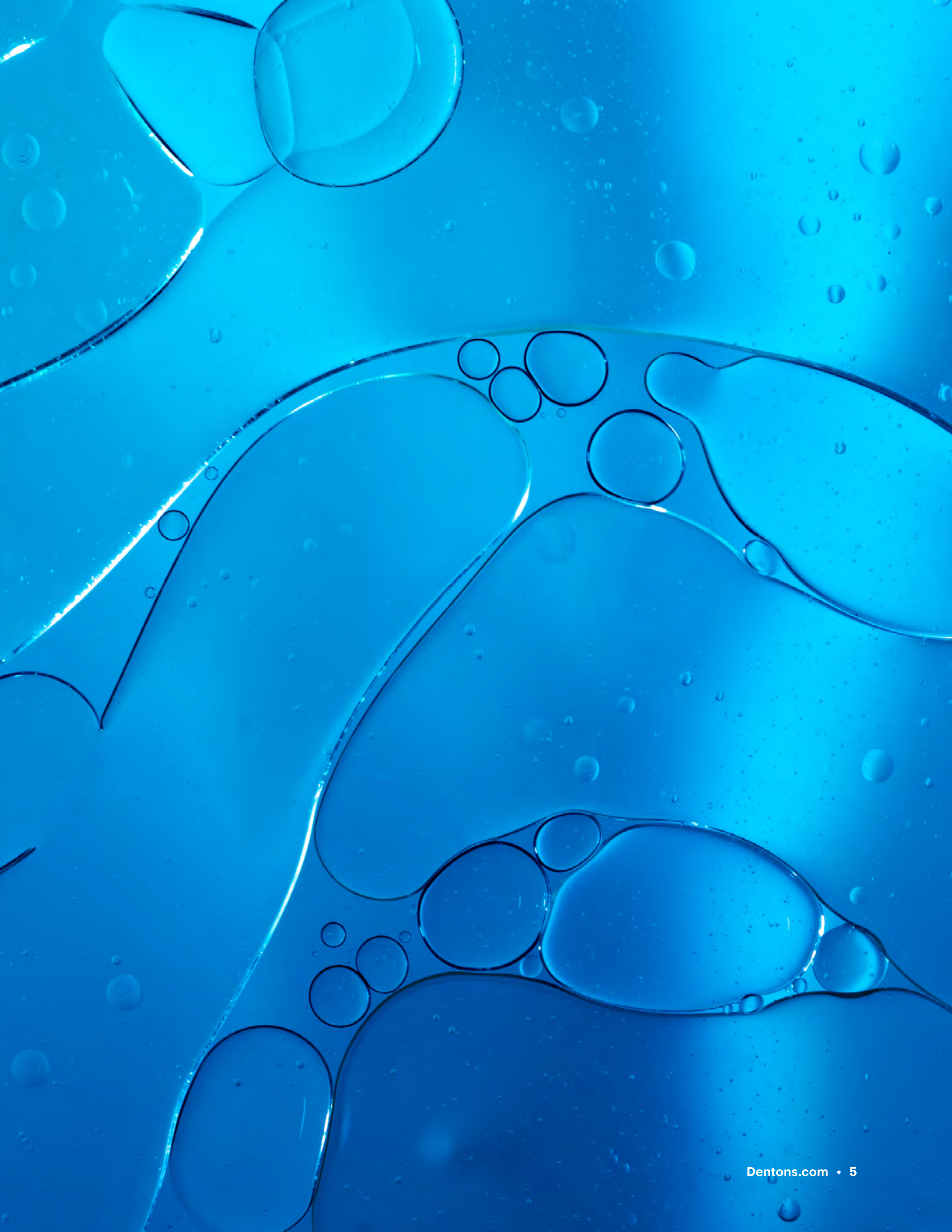
In the following report, we discuss highlights of recent sanctions that companies doing business in North America and Europe should be aware of, as well as predictions on what to expect in 2023.

I. Russia

*Because sanctions change swiftly, and are highly complex and detailed, clients are advised to consult their Dentons team before discussing or entering into specific dealings in connection with Russia or Russian persons or entities.

Canada: Canada's use of sanctions in response to the Russian invasion of Ukraine is the most significant use of sanctions since the adoption of Canada's modern sanctions regime in the early 1990s. Over the course of 2022, Canada amended the Special Economic Measures (Russia) Regulations—the regulations used to implement Canadian sanctions against Russia—34 times. Canada has sanctioned 1,104 Russian individuals and 263 Russian entities that are now subject to broad dealings bans with persons in Canada and Canadians abroad. New Canadian sanctions adopted and implemented in 2022 against Russia also included:

- Prohibition on docking or passing through Canada for any ship that is registered in Russia or used, leased or chartered, in whole or in part, by or on behalf of or for the benefit of Russia, a person in Russia or a designated person.
- Prohibitions on petroleum product imports, purchases or acquisitions from Russia or from any person in Russia.
- Prohibitions on the export, sale, supply or shipping of certain restricted goods.
- Prohibitions on insurance in the aviation and aerospace industry.
- Prohibitions on the export, sale, supply or shipping of certain luxury goods.
- Prohibitions on the export, sale, supply or shipping of certain goods related to the manufacturing of weapons.
- A broad ban on providing certain services related to 15 industries, including mining of metal ores; extraction of crude petroleum and natural gas; manufacture of chemicals and chemical products; and manufacture of computer, electronic and optical products, among others.
- Prohibition on the import, purchase or acquisition of certain gold products from Russia or any person in Russia.



Related sanctions were also imposed against Belarus, targeting individuals and entities that are considered to be supporting Russia's invasion of Ukraine. Likewise, broad sanctions were imposed in relation to the Crimea, Luhansk and Donetsk regions of Ukraine, in addition to dealings prohibitions targeting individuals and entities that are considered supportive of Russia in Ukraine.

Canada was one of the first nations to deny most favored nation treatment to Russia and Belarus. The Most Favored-Nation Tariff Withdrawal Order (2022-1) results in the application of the General Tariff for goods imported into Canada that originate from Russia or Belarus. Under the General Tariff, a tariff rate of 35 percent is applicable to imports into Canada from Russia or Belarus.

More generally, the imposition of the broad services ban, and the prohibitions on exports, sales and supply included on the Restricted Goods and Technology List, in addition to the previous prohibitions on oil exploration and production, among the other prohibitions and dealings bans Canada has imposed, significantly restrict trade with Russia.

Year over year, reported exports from Canada to Russia and Canadian imports of Russian goods have significantly declined since February 2022.

European Union: By way of ten separate sanctions packages, the EU imposed unprecedently broad and far-reaching sanctions vis à vis Russia. Taken together, these sanctions now:

- Target significant areas of the Russian economy
- Impose asset-freeze measures on hundreds of individuals and legal entities
- Block trade movements to and from Russia as regards certain products and commodities
- Impose restrictions on the provision of certain services

On April 11, 2022, Operation Oscar was started by Europol, jointly with EU member states, Eurojust and Frontex, to support financial investigations by EU member states targeting criminal assets owned by individuals and legal entities sanctioned in relation to the Russian invasion of Ukraine.

EU sanctions targeting Russia consist of:

- Individual listings of people and entities. As of the end of 2022, the EU maintained asset-freeze measures against over 1,000 individuals and over 150 entities in connection with Russia's actions in Ukraine. These targets are expected to actively disclose assets within the EU.
- Financial and business service measures. To target Russia's financial sector and its links to the international financial system, the EU has:
    - Prohibited lending to and dealing in securities issued by certain Russian banks and government, including the Central Bank of Russia.
    - Frozen assets of and banned financing with a number of Russian banks.
    - Banned all transactions with certain Russian state-owned enterprises.
    - Prohibited the export of banknotes and the sale of transferrable securities denominated in any EU official currency, as well as cryptocurrency, as regards Russia.
    - Banned the rating of Russia and Russian companies by EU credit rating agencies, and restricted the provision of rating services to Russian clients.
    - Prohibited providing high-value crypto asset services to Russia.
    - Banning deposits exceeding EUR 100 000 in EU banks from Russian persons.
    - Banning key Russian banks from SWIFT.
    - Prohibiting EU persons from investing in projects co-financed by the Russian Direct Investment Fund.
    - Prohibited Russian nationals from holding posts in governing bodies of critical infrastructure and entities.
    - Prohibited EU persons from providing gas storage capacity to Russian persons or natural persons.
- Prohibited business services. The EU has banned—directly or indirectly—services to the Russian government, as well as to legal persons, entities or bodies established in Russia. The services include accounting, auditing, statutory audit, bookkeeping and tax consulting services, IT consultancy, legal advisory, architecture and engineering services, business and management consulting, trust advisory, and public relations services.
- The Russian energy sector is subject to the ban of exports of key materials and related services. The import of Russian coal and oil (subject to certain exceptions) is prohibited, as is investment in the Russian energy, mining and quarrying sectors. A price cap applies to oil transports.
- The Russian transport sector is subject to significant restrictions in terms of key goods and operational activities. The EU's airspace is closed to Russian registered airplanes and its ports to Russian vessels.
- The export to Russia of dual-use materials, advanced technology items and luxury goods is banned.
- Key Russian exports are banned, including steel, cement, rubber, wood and gold.
- Russian entities are banned from EU procurement contracts.

- The EU has suspended its visa facilitation agreement with Russia.
- The EU is targeting certain Russian media channels in the EU.

In addition to the above, EU sanctions also target Belarus and Iran for their actions supporting Russia.

The impact of the EU measures on flows of trade regarding Russia has been significant. While figures differ per sector, in terms of oil imports for example, nearly 90 percent of Russian oil imports to the EU were said to be targeted by the end of 2022. This has prompted the development of new supply networks for energy needs, relying more on US natural gas (LPG) and energy provision from other countries.

Ukraine: In 2022, Ukraine continued to implement its autonomous sanctions policy. While closely aligning sanctions designation of individuals and legal entities with the EU, Ukrainian legislation largely kept deviating in terms of sanctions implementation, compliance and control rules. Ukrainian sanctions legislation does not grant specific enforcement powers to regulatory authorities in Ukraine, contains no industry-specific provisions, and no authority issues guidance on the interpretation of sanctions or the related compliance requirements. There are also no provisions for the licensing of specified activities prohibited by Ukrainian sanctions.

While there is no single competent sanctions authority in Ukraine, in practice, however, it is the nature of the restrictive measure adopted that dictates which government agency will be responsible for its implementation. When a specific restrictive measure falls under the purview of a given government agency, such agency will be responsible for overseeing the enforcement and implementation of the measure, from Ukraine's Border Control to the National Bank of Ukraine or the Security Service of Ukraine, etc. Therefore, even though the sanctions legislation does not identify competent authorities, these are informed by principles of administrative law.

In terms of major developments, in May 2022, Ukraine introduced a new type of sanctions – the seizure of assets during the period of martial law belonging to certain designated individuals or legal entities. This sanctions type is subject to several conditions, first, a designated individual or entity has already been subject to an asset freeze. Second, their actions must pose a significant threat to Ukraine's national security, sovereignty or territorial integrity (including through armed aggression or terrorist activities) or significantly contributed (including through financing) to such actions by other persons. An asset seizure is implemented via a court decision.

United Kingdom: The UK government amended its Russia sanctions regime 17 times during 2022, adding extensively to its list of designation targets

and, additionally, adding an unprecedented raft of sectoral and other non-list-based measures. While many measures have clearly been coordinated with EU, US and/or Canada at a high level, the UK regime is distinct in a number of ways from the other regimes described in this note. By the end of 2022, wide-ranging sanctions prohibited most investment into Russia, prohibited the provision of loans and professional services, and restricted large areas of trade, including luxury goods and critical-industry items.

The UK's restrictions on investment into Russia are particularly broad, prohibiting UK persons and entities from, for example, acquiring any land in Russia or ownership interest in a "person connected with Russia," and banning the formation of joint ventures with Russian companies. The measures in relation to oil and gas also go significantly further than those of the EU sanctions regime.

The UK sanctions use the concept of "persons connected with Russia" to see that measures could be deployed in relation to the widest range of persons and entities.

The key financial measures are (in summary; each of these is subject to certain exceptions and derogations):

- Asset freeze on designated persons. The UK government has now designated over 1,500 people and over 180 businesses in response to Russia's invasion of Ukraine (with restrictions applying also to entities owned/controlled by them).
- Designation of Russian banks. The UK has targeted more Russian banks than other regime, which has a far-reaching impact.
- Restrictions on dealing in transferable securities and money market instruments issued by any non-foreign-owned Russian company after March 1, 2022.
- Prohibitions on making loans and credit available to Russian companies.
- Broad restrictions on investment into Russia, including banning joint ventures between UK and Russia companies.
- Banning the provision of trust services to persons connected with Russia.

The key trade measures are (again, in summary only):

- Banning the export to Russia of extensive lists of goods, including dual-use goods and technology, oil refining and other energy-related goods and technology, luxury items worth over £250, jet fuel, revenue-generating goods, "vulnerable goods," goods used in critical industries, and items for which Russia depends on the G7 nations.

- Related restrictions on UK persons participating in (e.g., by insuring) or financing the supply of many such goods to Russia.
- Banning the provision of a vast range of services including in relation to all prohibited goods and technology, but also in other areas such as maintenance of aircraft and ships, maritime transportation services (in connection with oil), provision of internet services (in connection with designated persons).
- Banning the import into the UK of oil, oil products, coal and coal products, iron and steel products, gold and related products, and liquefied natural gas (LNG).
- Banning UK persons from participating in (e.g., by insuring) or financing the sale of Russian oil to third countries if the oil price is above a cap (currently USD 60).

In addition to these, there are specific measures in relation to ports, ships and aircraft, and to activities relating to the Russian-occupied regions of Ukraine.

The UK has also imposed significant restrictions in relation to Belarus, although less broad than those that apply in relation to Russia.

From June 15, 2022, the UK made all financial sanctions breaches subject to a partial "strict liability test"[1]. This enables the Office of Financial Sanctions Implementation (OFSI), the UK financial sanctions authority, to impose civil monetary penalties without any need to show intention; i.e. a person may now be fined for a breach of sanctions even if he or she did not know or have reasonable grounds to suspect that their activity was in breach of sanctions legislation.

OFSI and the NCA published a "red alert" in July 2022 on financial sanctions evasion typologies: Russian elites and enablers. This identified indicators of frozen-asset transfers, enablers and suspicious payments, and states that the NCA had surged officers into the Combating Kleptocracy Cell with the aim of targeting "corrupt elites" through their assets in the UK and their "key enablers". Activities of the type identified in this red alert, such as assisting designated persons to transfer funds, are likely to be a key enforcement target.

United States: The US issued multiple rounds of sanctions targeting Russia and its economy. These sanctions included blocking sanctions on numerous significant players in Russia's government and economy, including Russian President Vladimir Putin, Prime Minister Mikhail Mishustin, and members of Russia's Security Council and administration; Russia's legislature (the State Duma and Federation Council); seven of Russia's largest banks, including the largest two (Sberbank and VTB Bank); Rostec, a Russian defense, industrial and technology conglomerate; Alrosa, the world's largest diamond-mining company; and major Russian steel producers Severstal and MMK.

The impact of these designations was felt beyond their immediate targets. First, under the Office of Foreign Assets Control's

1 Amendment introduced by the Economic Crime (Transparency and Enforcement) Act 2022

(OFAC) 50 Percent Rule, entities owning 50 percent or more, directly or indirectly, individually or in the aggregate, by designated persons are also subject to sanctions irrespective of whether they appear on US sanctions lists. This stands in contrast to the EU and UK approach, under which sanctions applicable to a parent apply to entities "controlled" by the sanctioned entity.

The impact of these designations was also further expanded by virtue of US anti-facilitation prohibitions. Not only are US persons prohibited from dealing with these (and any other) blocked persons, but US persons are also prohibited from approving, financing, facilitating or guaranteeing such transactions by foreign persons. As a result, for example, US persons cannot alter their policies to permit one of their foreign affiliates to engage in a transaction with a blocked person if that transaction previously required US-person approval and was prohibited as to the US person.

The US also imposed restrictions on transactions with Russia's central bank, limiting its ability to draw on dollar-denominated foreign reserves, as well as on transactions with Russia's Ministry of Finance and National Wealth Fund. In addition, the US also adopted a ban on the import into the US of various Russian-origin energy products, including oil and coal; and Russian-origin gold, diamonds, seafood and alcoholic beverages.

The US also prohibited new investments by US persons in the Russian Federation; the export to Russia of certain products, including US-origin luxury goods and dollar-denominated banknotes; and the provision to persons located in the Russian Federation of management consulting, accounting, trust and corporate formation, and quantum computing services. The US also imposed restrictions on secondary-market transactions by US financial institutions in Russian sovereign debt.

US authorities also significantly expanded US export controls on Russia's defense, aerospace and maritime sectors; energy production; and a wide range of commercial and industrial operations. Finally, in coordination with allies, the US implemented a cap on the price of Russian crude oil, including by providing a "safe harbor" under which US persons could provide certain services in connection with Russian crude oil sold below that price cap.

For more information, visit our Ukraine/Russia Hub here.

II. Regional highlights and developments

Canada: In late 2022, Canada released its new Indo-Pacific Strategy, which sets out Canada's evolving approach to the Indo-Pacific region. Since the release of the new strategy, Canada has not imposed any additional sanctions on China.

Sanctions against Iran, Myanmar and Haiti were also imposed in 2022. However, their impact on business has been modest compared to the Russia sanctions.

Like many Western countries, Canada's sanctions can target countries, sectors and individuals. Canadian sanctions are applicable to Canadians anywhere in the world. Canadian sanctions are adopted and implemented by Canada's federal government. Based on Canada's constitutional order, Canadian sanctions are criminal in nature, and therefore require the same levels of due process and evidentiary standards as other criminal proceedings. In brief, there are no civil penalties for sanctions at the federal level. Canadian provinces have not adopted sanctions legislation or related penalties.

One new element of Canada's sanctions regime is the power to bring an application in Canadian courts for forfeiture of assets frozen by sanctions.

We have previously written about this here. This is a new amendment to the Special Economic Measures Act that was passed in 2022 under which the property of designated individuals and entities may be seized, forfeited and the proceeds of such forfeiture remitted for purposes of reconstruction or restoration of international peace and security, or to victims. So far, no property has been forfeited under this new regime. However, the government has announced the first case.

Canadian sanctions are broadly and, in some respects ambiguously, drafted. Unlike many of its counterparts, Global Affairs Canada, the ministry responsible for Canada's sanctions program, has not provided any formal guidance on how it interprets and applies Canada's sanctions programs. While Global Affairs Canada has suggested that guidance is being prepared, uncertainty in several situations remains. For example, while it is generally understood that secondary-market trading in the shares of designated entities is permitted, there has been no formal confirmation published.

Global Affairs Canada keeps an up-to-date website of Canadian sanctions.

European Union: 2022 continued to reflect close cooperation among certain EU neighboring countries that aligned themselves to most EU sanctions regimes.

In 2022, the EU also renewed most of its existing sanctions regimes, and amended those in relation to Afghanistan, Belarus, the Central African Republic, the Democratic Republic of the Congo (DRC), Iran, Mali, Myanmar/Burma, Nicaragua, North Korea and Syria. The most important developments were in relation to the sanctions regimes vis à vis Afghanistan, where the EU included

a new humanitarian exemption, Belarus, where in March 2022, the EU significantly strengthened sanctions, both for the ongoing internal situation and Belarus' involvement in the conflict in Ukraine. Further notable changes were made in relation to the DRC sanctions regime, where a new notification obligation relating to arms-and-related-material was imposed; and to Iran, which saw the introduction of new human rights-related designations due to the crackdown on internal protests.

In terms of other important developments, as part of the eighth sanctions package, and for the first time in its sanctions history, the EU included the restriction on facilitation of circumvention of EU sanctions by EU persons. Accordingly, while an underlying circumvention by EU persons is still required, individuals and legal persons can now become sanctioned directly for assisting an EU person in breaching applicable EU sanctions. As a result, while the EU traditionally was said not to adopt secondary or extraterritorial sanctions, this development shows an increased willingness to enforce EU sanctions outside the EU.

Individual sanctions designations are subject to judicial review in the EU. As a result, sanctions targets are able to submit a request for annulment before the EU Courts. This has generated significant case law in European courts in the last decade, which provides useful guidance as to the scope of authorities in EU sanctions. Notable litigation developments were the unsuccessful action for annulment against the EU's broadcast ban (T-125/22, *RT France v. Council*), the clarification of the economic links between businesspersons and a government required to designate such person under EU sanctions (T-108/21, *Ilunga Luyoyo v. Council*) and, at the end of 2021, a ruling on the EU Blocking Statute, aimed to shield EU operators from liability for non-compliance with US extraterritorial sanctions (C-124/20, *Bank Melli Iran v. Telekom Deutschland*).

Other noteworthy procedural aspects include the clarification that the Council's failure to sign sanctions decisions does not amount to an annulment of a decision to designate a person or entity, and that a request for review of a listing decision is not bound to specific formalities to be valid. Further case law focused on the limitation of the right to be heard and the importance of the respect of fundamental rights in the context of a listing decision based on a foreign decision.

The Council of the EU has a dedicated webpage explaining its sanctions policies, available at https://www.consilium.europa.eu/en/policies/sanctions/. The legal texts are found in EU Decisions and Regulations.

United Kingdom: The UK sanctions framework remains superficially similar in many respects to the EU framework in terms of its overall shape and conceptual approach; however the UK is increasingly looking to the US to inform its sense of how to structure and apply measures, as well as taking some distinctive positions and approaches of its own.

UK sanctions are particularly broad as to the provision of services—concepts such as investment services are applied broadly, and trade restrictions typically extend also to those who provide a range of ancillary or related services. The UK sanctions have some devices/elements which are distinct—for example measures that are targeted at *"persons connected with"* a country. It has used this concept regularly in relation to Russia, both in a trade and financial sanctions context, ushering in restrictions that go much further than seemingly corresponding EU measures.

OFSI has stated an intention to focus on circumvention activities and on those who enable or facilitate breaches or circumvention of sanctions. This is likely to continue into 2023.

OFSI has issued extensive guidance as new measures are introduced, particularly on the oil price cap. Each new amendment to the sanctions regime is also accompanied by an Explanatory Memorandum which serves as a guide to the purpose of the measures.

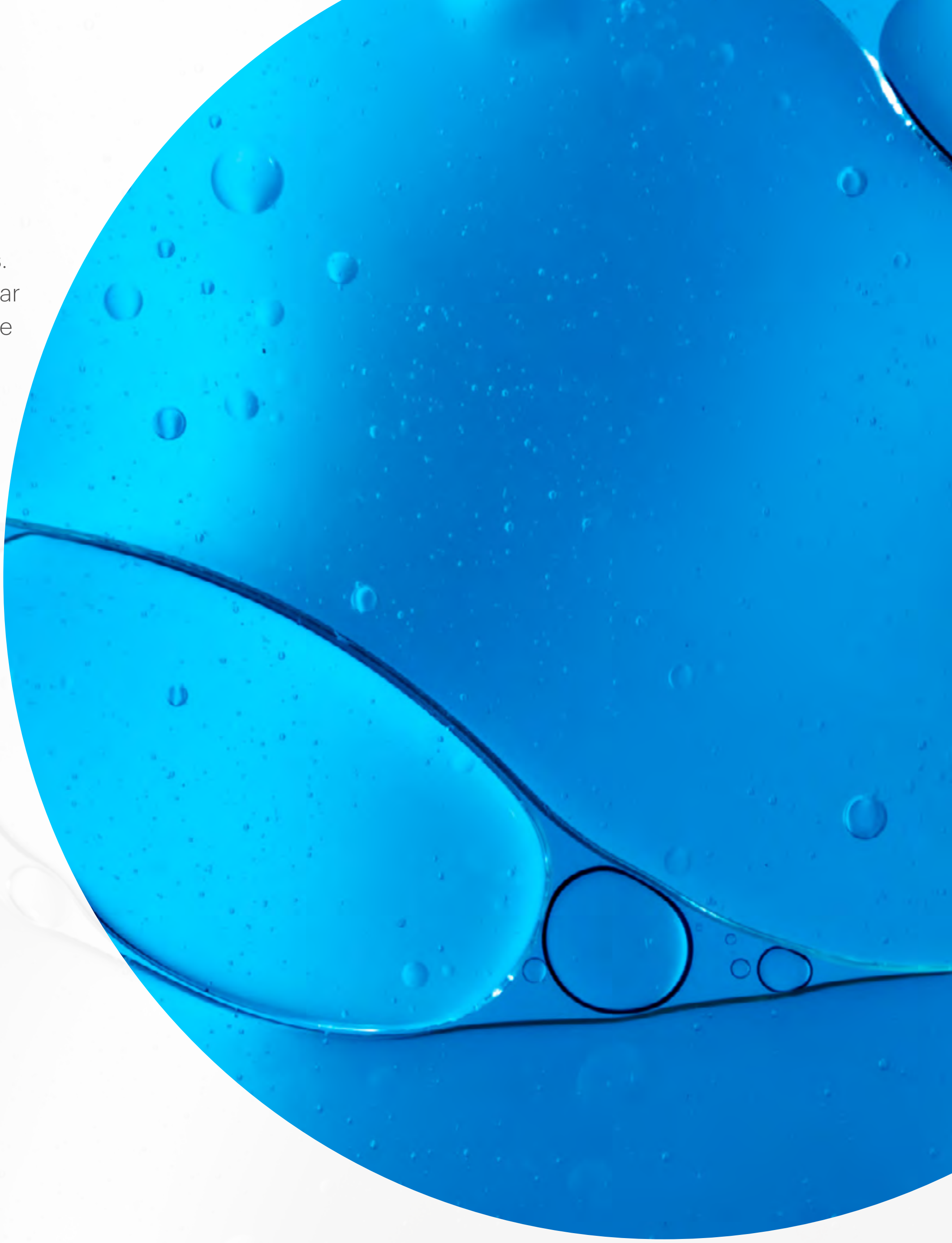
Cases deriving from sanctions against Russia have started to come through the English courts. These are of global relevance, even where a contract has no UK nexus, due to the prevalence of English law as governing law in international commercial contracts. For example, a Court of Appeal case in October 2022 addressed issues (in a shipping context) of whether a counterparty was obliged to accept payment in euros instead of US dollars, when US sanctions made a dollar payment impossible.

United States: The US eased restrictions with respect to Venezuela via the renewal of a general license authorizing Chevron Corp. to resume certain petroleum production activities in Venezuela. The lifting of these restrictions followed the resumption of talks between the Maduro regime and a coalition of opposition political figures.

China remained a significant focus of concern. As in prior years, the US deployed a combination of sanctions and export controls-based measures directed at China to both address malign activity and restrict China's access to sensitive and emerging technology. Sanctions designations targeted persons, entities and vessels believed to be involved in human rights, nuclear proliferation and sanctions evasion. New export controls continued to restrict China's access to technology, software and equipment for developing and producing semiconductors and microprocessors, while BIS continued to use its Entity List to bar Chinese entities from access to US-origin items.

US authorities increased regulatory focus on the crypto sector, including via the imposition of blocking sanctions on certain crypto technologies, civil enforcement actions targeting crypto exchanges, and the publication of guidance relating to the crypto sector. Notably, in October 2022, OFAC announced a large-sum settlement agreement exceeding $24 million with Bittrex, Inc. (Bittrex), a virtual currency exchange and hosted wallet service provider based in Bellevue, WA. According to OFAC, Bittrex's sanctions compliance procedures suffered from deficiencies that allegedly resulted in persons in the Crimea region of Ukraine, Cuba, Iran, Sudan and Syria using its platform to engage in more than $26 million worth of virtual currency-related transactions. Such enforcement was accompanied by several crypto-related designation actions, including the designation of two virtual currency mixers, Blender.io and Tornado Cash, on grounds that these anonymity-enhancing technologies had facilitated money laundering, including in relation to the malicious cyber activities of the US's foreign adversaries.

As with years before, the US liberally applied extraterritorial, or "secondary," sanctions, reaching activities by non-US persons outside of the US. The US is commonly regarded as more aggressive than others, including EU, UK and Canada in its willingness to deploy broad sanctions to achieve its foreign policy goals. Russia's unprecedented actions in Ukraine has provoked a robust sanctions response from all of these regions. However while there has been clear international coordination on some headline aspects of the response, there are significant divergences in the precise restrictions that apply in each jurisdiction. A key issue for businesses is to understand which jurisdictions are relevant to their situation, and to understand the risks that arise and the restrictions that apply as a result.



The geopolitical landscape continues to evolve rapidly. For current updates, you may visit our Sanctions page here.

III. Enforcement

Canada: There were no public enforcement actions reported in 2022. As of December 23, 2022, the Royal Canadian Mounted Police reports that since February 2022, a total approximate CAD equivalent of $122,245,984.50 of assets in Canada have been effectively frozen, and a total approximate CAD equivalent of $292,256,439.13 in financial transactions have been blocked as a result of the prohibitions in the *Special Economic Measures (Russia) Regulations*.

In October 2022, Canada announced an additional 76 million in funding for a new bureau dedicated to sanctions enforcement. Further details on this announcement have not yet been made public.

In late December 2022, Canada announced that it will commence the first court procedures to seize and forfeit the assets of Roman Abramovich in Canada. The proceedings target Granite Capital Holdings Ltd, a company reportedly owned by Mr. Abramovich. Other than the initial announcement, there is little public information currently available about these proceedings. This matter will be closely watched over the course of 2023 and is considered by many as a test case for the government's new power to seize but also cause the forfeiture of the assets of a sanctioned party.

Given sparse sanctions enforcement in the past, it is not clear that any particular industry or jurisdiction will be targeted in Canada. On the basis of the significant focus on energy, we believe, particularly in Europe, energy and dealings with sanctioned Russian energy partners would appear to be a logical focus of increased enforcement.

European Union: Given the nature of sanctions, the most likely business sectors that could become the focus of enforcement actions appear to be exporters of advanced technology items and/or dual-use items, as well as downstream industries in the oil sector. However, due to the broad application and adoption of asset-freeze measures, sanctions violations can occur in any business sector.

United Kingdom: Enforcement continues to lag in the UK. In all of 2022, the OFSI imposed monetary penalties on just two entities for breaching sanctions law:

- Tracerco Limited was fined £15,000 in relation to two payments it made to a designated entity in Syria.
- Hong Kong International Wine and Spirits Competition Ltd was fined £30,000 for dealings with designated persons under the Ukraine sanctions.

OFSI has cited enforcement among its key sanctions priorities for 2023, and its task has been made easier by partial strict liability approach to sanctions adopted in 2022. We expect to see more investigations commenced and more penalties issued, although the director of OFSI has made it clear that OFSI *"will only impose monetary penalties where it is appropriate, proportionate and in the public interest to do so"*.

HM Revenue and Customs issued 18 fines for export control violations between January and October 2022, totaling just over £3.2 million. The lowest fine was £1,000 and the largest individual fine was for £2.7 million.

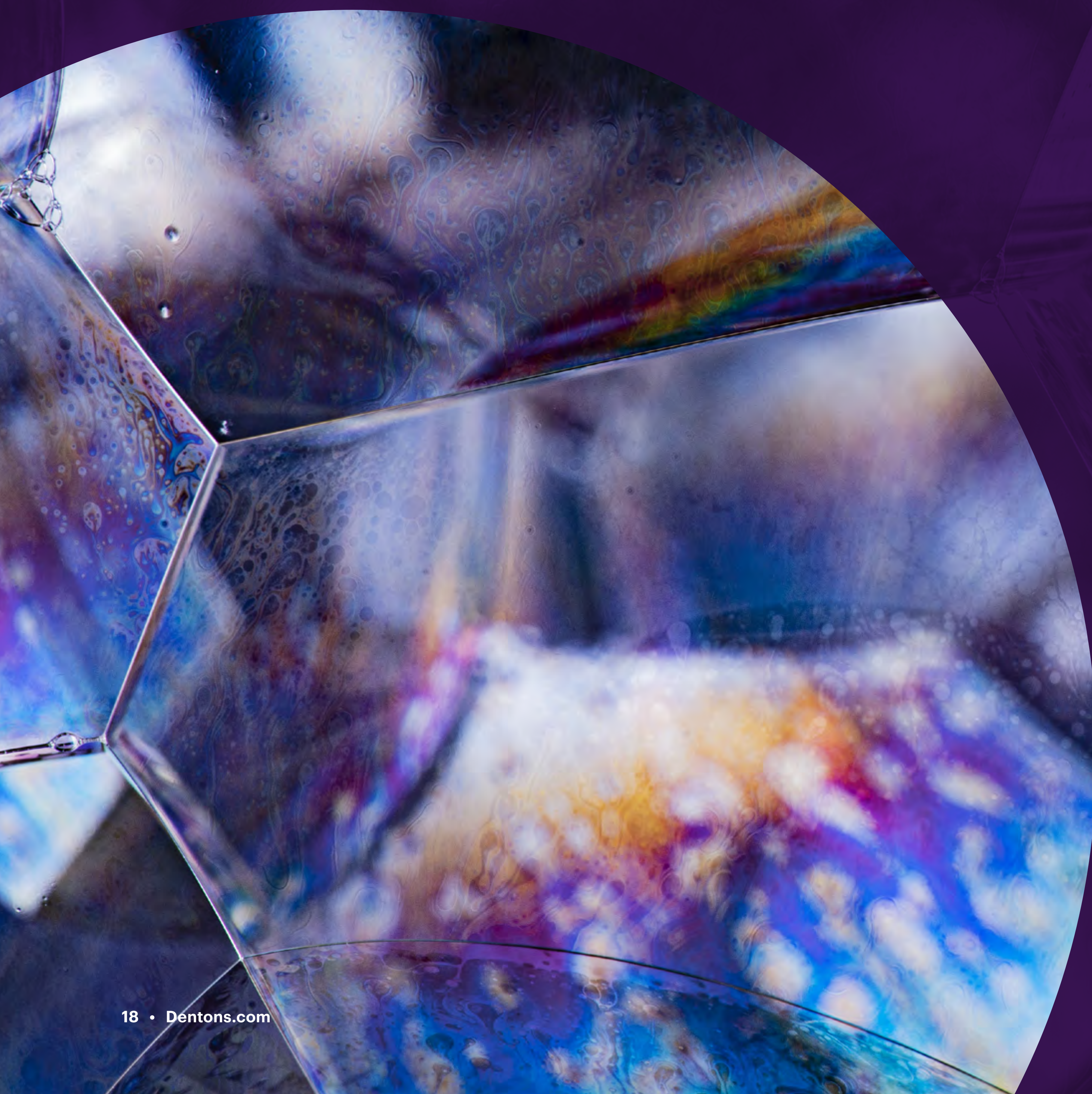
As seen with recent enforcement actions, there is an increasing trend of cooperation among regulators across the US, UK and EU. For this reason, entities and individuals conducting business across multiple jurisdictions, and those with global offices, must remain alert to the far-ranging consequences of breaches.

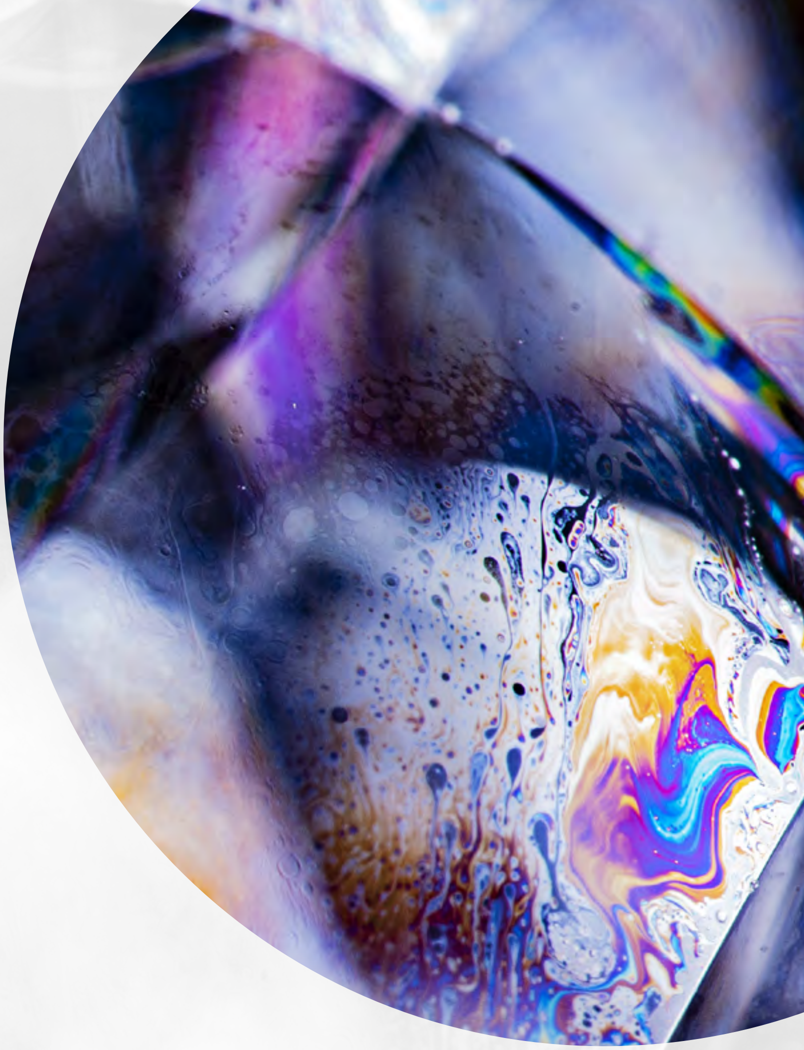
United States: OFAC reported 16 concluded civil enforcement actions in 2022, with an aggregate penalty value of approximately $43 million. These figures, however, only reflect a small percentage of the total volume and cost to business of OFAC's enforcement efforts over the past year. This is because the vast majority of enforcement investigations are not made public by OFAC or the involved parties, and the aggregate penalty value does not include the resources that companies committed to improve their compliance programs in response to sanctions violations, or the resources that companies have invested in investigating and addressing potential violations.

The 16 concluded enforcement actions spanned across a wide range of OFAC's sanctions programs. This included several matters based on more traditional fact patterns, such as the provision of travel services involving Cuba, dealing in Iranian-origin items, and processing payments involving people in sanctioned jurisdictions through the US financial system.

It also included actions based on dealings in cryptocurrency, continuing a recent trend by OFAC to look at this emerging technology (and digital currency more generally) from a sanctions compliance perspective. 2022 also saw OFAC publish enforcement actions relating to apparent violations of US sectoral sanctions on Russia—a regulatory and penalty regime that had, until 2022, been the focus of very few public actions.

IV. ESG focus





We generally see a convergence in sanctions compliance risk and ESG risk, notably under the "social" heading. Significant human rights abuses and broader compliance issues are relevant to ESG scores and sanctions compliance. For example, in 2021 Canada implemented sanctions against four Chinese individuals and one entity in relation to the treatment of China's Uyghur population. ESG supply chain issues, such as the use of goods sourced from Xinjiang, China, are critical in assessing ESG metrics and developing disclosure material.

Financing, insurance and proxy-voting recommendations or guidance have made it clear that social metrics, which include sanctions compliance, are relevant risks that a board must take into consideration. Notably, while company disclosure of such risks remains relevant, increasingly social aspects are being reported by third parties, for example, Nasdaq's ESG data hub. Robust sanctions compliance programs in a company can be one indicator that ESG risks are being taken seriously.

Many of the challenges that face businesses from an ESG perspective are present in the need to ensure sanctions compliance as well. While the objectives of sanctions and ESG often do not overlap, certain screening, KYC and compliance processes that businesses often launch within the framework of their ESG ambitions can and should be applied to tackle sanctions-compliance questions and challenges. Mostly, these relate to the need for due diligence investigations into the identity, business activities and connections of your trading partners.

It remains conceivable that the UK may press ahead with a sanctions framework targeting entities (or persons) on the basis of environmental damage criteria. This has been much talked about but at present looks unlikely to be considered a priority.

Compliance programs, supply chain audits and due diligence can be enhanced through the ESG lens to account for a wider array of risks and stakeholder concerns.

V. Forecast for 2023

Given the ongoing conflict in Ukraine, continued sanctions targeting the Russian Federation and supporters of the Russian government are also likely to remain a target for enhanced sanctions. We also expect continued coordination among Western allies concerning such sanctions. To the extent that EU member states are able to further gain independence from Russian energy sources, it is increasingly likely that the US government will tighten sanctions against Russian energy companies – which until now have been largely excluded from the most severe economic sanctions such as those that have targeted Russian financial institutions, technology companies, and ministries of the Russian state. As for other sanctions regimes, we anticipate that certain novelties of EU sanctions targeting Russia, such as the possibility to designate non-EU persons assisting with the circumvention of sanctions by EU persons or the broad financing or transactional prohibitions, as well as commodity-related restrictions and price caps will find their way to other sanctions regimes.

Other major enforcement target areas that are emerging as we head into 2023 include a continued focus on post-merger/acquisition integration, human rights and anti-corruption under the Global Magnitsky Sanctions Program (GLOMAG), sales into sanctioned markets due to inadequate screening tools, and sanctions evasions schemes. For companies that have global operations, OFAC continues to have high expectations regarding customer screening and diligence, particularly in circumstances where companies are involved in sales to higher risk jurisdictions. In the context of GLOMAG, OFAC will likely continue to use its designation authority to target malign activity in circumstances where other US statutes (such as the Foreign Corrupt Practices Act (FCPA) or Anti-Money Laundering (AML) laws) cannot reach the conduct of foreign actors in an effort to bring attention to corrupt actions by foreign companies and individuals, or where there are allegations of human rights abuses – in particular, with respect to supply chain sourcing where inputs have been produced with forced labor. OFAC has also been focused on exploitation of natural resources and as an area of GLOMAG focus – a trend expected to continue.

Given the rapidly hardening Western stance (especially in United States and Canada) towards China, it is also reasonable to expect that we will see in 2023 further sanctions on China, particularly in connection with Xinjiang Province and the treatment of the Uyghur people there, and that more forceful border enforcement (including the seizure of goods allegedly produced from forced labour) will be observed. We also expect continued deployment of export controls, sanctions, and foreign investment controls tools directed at China's use and development of critical technologies, as well as its other foreign surveillance and intelligence-gathering activities.

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