DENTONS

Sanctions Year-in-Review 2023

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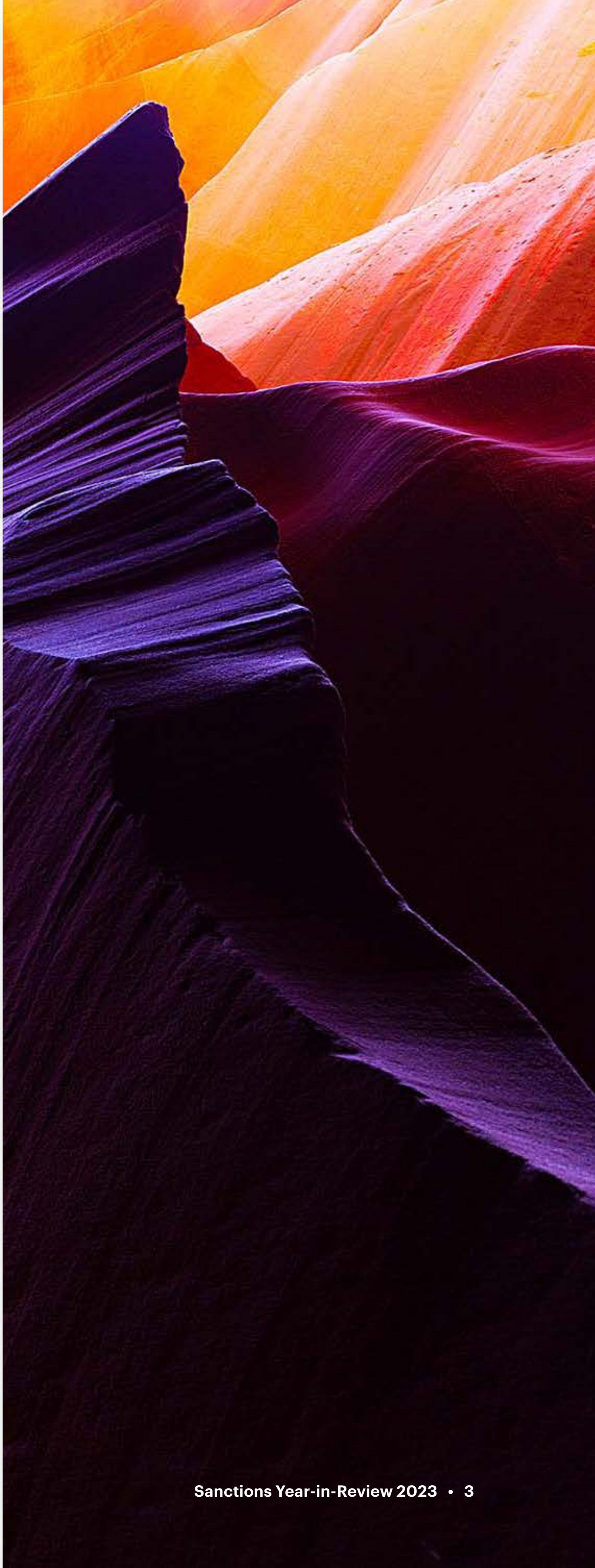


I. Executive Summary

2023 reflected a continued trend of coordination across multiple geographies, including shared resources among the UK, US, and Europe in response to continued Russian aggression. With sanctions remaining a key foreign policy tool, in jurisdictions across the globe 2023 saw sanctions targeting traditional financial and trade transactions with sanctioned jurisdictions such as Russia and Iran, but also the growing use of sanctions against China, expansion of human rights sanctions, and court challenges and decisions regarding the scope of sanctions. In this year's Sanctions Year in Review, our global team synthesizes major developments, and looks ahead to the trends that are likely to make an appearance in 2024. It is our pleasure to present this overview, and we look forward to working with many of you in the coming year.

II. Russia

Canada

Since its invasion of Ukraine, Canada has imposed some of the most restrictive sanctions against Russia that it has ever imposed on any country. As of December 2023, Canada has imposed a strict dealings prohibition on a total of 1,475 Russian individuals, 492 Russian entities, as well as imposing a variety of other sectoral and other sanctions, including:

- a prohibition on importing aluminum and steel products originating from Russia;
- an interdiction on Russian owned and registered vessels; and
- prohibition on persons in Canada and Canadians abroad from exporting, selling, supplying, or shipping arms and related material to Russia or any person in Russia, as well as the provision of any financial, technical, or other services in relation to those activities.

On October 12, 2023, Canada and its Price Cap Coalition partners (a group formed by the G7, the European Union, and Australia) issued an advisory for the maritime oil industry and related sectors to share best practices for the maritime oil industry. This advisory reflects joint efforts to promote responsible practices in the industry, prevent and disrupt sanctioned trade, and enhance compliance with the price caps on crude oil and petroleum products of Russian origin that were put in place by the Coalition. This was followed by an announcement in late December to revisions of the price cap. While such revisions have not yet been implemented into Canadian sanctions laws, the announcement outlines the intent of the price cap revisions.

In addition to sanctions against Russia, Canada has implemented various sanctions regimes against Belarus, Moldova, and Ukraine related to the Russian invasion. Under the Belarus regime, Canada has sanctioned a total of 190 individuals and 71 entities. As for Moldova, Canada has sanctioned a total of 16 individuals and 7 entities. Lastly, for Ukraine, Canada has sanctioned a total of 483 individuals and 60 entities, which are linked to Russia's ongoing violation of Ukraine's sovereignty and territorial integrity and illegal occupation of Crimea.

Further, Section 17.1 of the *Special Import Measures Act* was amended in early 2023 by adding the Russian Federation and Republic of Belarus to the list of countries with which the Canada Border Services Agency requires a reduced burden of proof to use a "non-market-economy" methodology for the purpose of calculating margins of dumping.

European Union

EU sanctions targeting Russia are set out in two main instruments, i.e., Council Regulation 269/2014 (**Regulation 269**) and Council Regulation (EU) 833/2014 (**Regulation 833**), both as amended.

Regulation 269 imposes an asset freeze on listed persons and entities and prohibits EU Persons from making available funds and resources directly or indirectly to or for the benefit of such persons. At the time of writing, EU asset freeze measures apply to almost 1,800 persons and entities.
These measures are moreover extended to entities "owned or controlled" by designed persons. The EU has frozen EUR 21.5 billion worth of assets in the EU.

Regulation 833 imposes a broad variety of sectoral sanctions, i.e., measures short of a full asset freeze that restrict or prohibit specific actions, including a total transaction ban with designated persons; restrictions on financing of designated persons or of specified activities; and other measures.

The broad list of products subject to export prohibitions ranges from high-technology, transportation, energy goods, aviation and space industry, dual-use items and technology, as well as luxury goods and industrial goods. Simultaneously, various Russian products are subject to an import ban, including include oil (due to the G7 oil ban and related price cap), coal, steel, gold, and certain specialty items. In total, EU authorities claim to have sanctioned EUR 43.9 billion worths of exports to Russia, and EUR 91.2 billion of Russian imports.

Regulation 833 also broadly targets Russian economic sectors, such as the energy, mining, quarrying, aviation, and road and maritime transport sectors. Moreover, the SWIFT ban means that Russian banks' access to the international financial system is blocked.

Regulation 833 imposes broad service prohibitions to Russian entities, including IT consultancy, legal advice, architecture and engineering services, as well as accounting, auditing, bookkeeping and tax consulting services, and business and management consulting and public relations services. The EU has also prohibited broadcasting of certain Russia media outlets in the EU.

Regulations 269 and 833 both also prohibit the participation, knowingly and intentionally, in activities the object or effect of which is to circumvent the measures set out therein.

The EU has taken measures to exempt transactions in the context of food security and humanitarian aid out of the scope of its sanctions targeting Russia.

Ukraine

Ukraine did not adopt specific legislation to impose sanctions against Russia. The Law of Ukraine on Sanctions № 1644-VII of 14 August 2014 (the "Sanctions Law" serves as the new legal basis for the implementation of autonomous (such as restrictions *vis-à-vis* Russia and Belarus) and UN-endorsed sanctions.

In Article 3, the Sanctions Law sets out four basic grounds on which sanctions against foreign natural and legal persons, as well as against foreign states and organizations can be adopted:

- Actions of a foreign state, foreign legal entities or natural persons, or other entities, that pose a real and/or potential threat to the national interests, national security, sovereignty and territorial integrity of Ukraine, facilitate terrorist activity and/or violate human and civil rights and freedoms, or interests of the society and the state, result in occupation of territories, expropriation or restriction of property rights, material damages, or obstacles to sustained economic development and full-fledged exercise of rights and freedoms by Ukrainian citizens;
- Resolutions of the General Assembly and Security Council of the United Nations;
- Decisions and Regulations of the Council of the European Union;
- Violations of the Universal Declaration of Human Rights and the Charter of the United Nations.

Pursuant to item 3 above, Ukraine has effectively committed to align its sanctions regime with that of the EU. Nevertheless, as drafted, this provision does not cause a person designated in the EU to become automatically subject to sanctions in Ukraine. It merely serves as a basis for a possible designation in Ukraine. Accordingly, the designated persons' list in Ukraine does not coincide with the EU list of designated persons.

The Sanctions Law provides for the adoption of individual sanctions, i.e., targeting specific natural persons, legal entities and/or other types of organizations, as well as sectoral sanctions that extend to certain economic activities, geographical areas or group of entities.

In Article 4, the Sanctions Law also provides the list of measures that can be adopted as sanctions. Other restrictive measures and sanctions can be adopted as deemed necessary by the Ukrainian authorities to achieve the purpose and goals of the Sanctions Law.

The Sanctions Law does not address some of the practical issues of sanctions' implementation, such as the respective roles of different actors in this process, definition of the various terms used, jurisdictional scope of the sanctions, transparent mechanisms for sanctions implementation, control over sanctions compliance, and penalties for non-compliance with the sanctions.

United Kingdom

The UK Government has made numerous amendments to its Russian sanctions regime (the Russia (Sanctions) (EU Exit) Regulations 2019) throughout 2023. Some of the most notable financial and trade sanctions developments include:

Financial Sanctions

- *Designations:* The UK Government made over 300 new designations (individuals and entities) in 2023.
- *Trust Services:* In March 2023, the Foreign, Commonwealth and Development Office ("FCDO") confirmed that all persons designated under the UK's financial sanctions regime for Russia have also automatically been designated under the trust services restrictions (Regulation 18C).

Trade Sanctions

- *Iron and Steel:* The UK Government has prohibited a UK person from importing, acquiring, suppling, or delivering listed iron and/or steel products which are of Russian-origin or located/consigned from Russia. Such prohibitions apply where the relevant iron and steel products from Russia are consigned on or after 21 April 2023 and imported into the UK on or after 21 May 2023.

  From September 2023, the prohibitions were expanded to prohibit a UK person from importing listed iron and steel products that incorporate Russian-origin iron and steel. The prohibitions also apply to the provision of technical assistance, financial services and/or funds, or brokering services in relation to the above.
- *Oil Price Cap:* Following the introduction of the oil price cap last year, in June 2023, the Office of Financial Sanctions Implementation ("OSFI") published updated guidance for the Maritime Services Ban and Oil Price Cap, which confirmed a 45-day wind-down period for any future Oil Price Cap changes. A General Licence was issued exempting trading in derivatives and futures from the Oil Price Cap.
- *Legal Services Ban:* In June 2023, the UK Government prohibited UK persons from providing legal advisory services to any non-UK person *"in relation to, or in connection with, any activity which would be prohibited under the UK sanctions regime if the activity was done by a UK person or was taking place in the UK."* Only very limited exemptions applied, including for the provision of UK sanctions advice. A subsequent General Licence has extended this to permit all sanctions advice and other criminal law advice.

  This broad prohibition had effects at odds with its stated policy aims, and the UK government has subsequently conceded that, as drafted it was having "*unintended consequences*" for UK law firms and clients wanting UK legal advice. The legal community led by the UK Law Society (in which Dentons' sanctions team plays an active role) has worked to convey to the Government the range of difficulties caused and is working with the Government to propose steps to minimise the apparently unintended impact of the measure.

- *New Licencing Ground - Divestment from Russia:* In October 2023, the UK Government updated its Russia Guidance to add an additional licencing ground for trade activities that would otherwise be prohibited. A licence may be granted for certain activities if the activity is necessary for the purpose of divestment from Russia, e.g., making available or transferring oil refining goods and technology, energy-related goods, luxury goods, and the provision of technical assistance, brokering services, financial services or funds related to the above.
- *Increased Financial Conduct Authority ("FCA") role in sanctions:* The UK financial regulator, the FCA, has entered into an information-sharing memorandum with OFSI (the financial sanctions authority), and has published its own report on its sanctions compliance expectations of regulated firms. These steps strengthen the role of the FCA in sanctions enforcement for the financial sector.

United States

In 2023, the United States continued to impose sanctions and export controls targeting Russia and its economy. These measures aimed to disrupt supply chains for high priority products that support Russia's military efforts, to reduce Russia's revenue from vital sectors of Russia's economy, to inhibit Russia's future energy capabilities, and to further degrade Russia's access to the international financial system.

The measures included blocking sanctions on numerous entities and individuals, targeting, among others, the Wagner Group, a Russian private military company, its associates, and other companies enabling the Russian military-industrial complex, as well as a growing number of targets in third countries for facilitating transactions in violation of existing sanctions. While a majority of large Russian banks are already subject to restrictions, the US imposed further sanctions on smaller banks in Russia and prominent members of Russia's financial elite. Under US blocking sanctions, all property and interests in property within US jurisdiction of blocked persons and vessels are frozen and US persons are prohibited from doing business with blocked targets (as well as their 50%-or-greater owned affiliates).

In 2023, the US imposed sanctions in connection with the "price cap" rules, blocking several oil tankers and their registered owners for transporting Russia-origin crude oil sold above the set price of $60 per barrel. In coordination with allies, in February 2023, the US issued an advisory for the maritime oil industry and related sectors, outlining best practices to reduce risks in maritime trade of oil and petroleum products. The US updated the advisory in December 2023, adding two key expectations for certain service providers: (i) to receive attestations within a specified timeframe for each lifting or loading of Russian oil or Russian petroleum products; and (ii) to retain, provide, or receive itemized ancillary cost information as required.

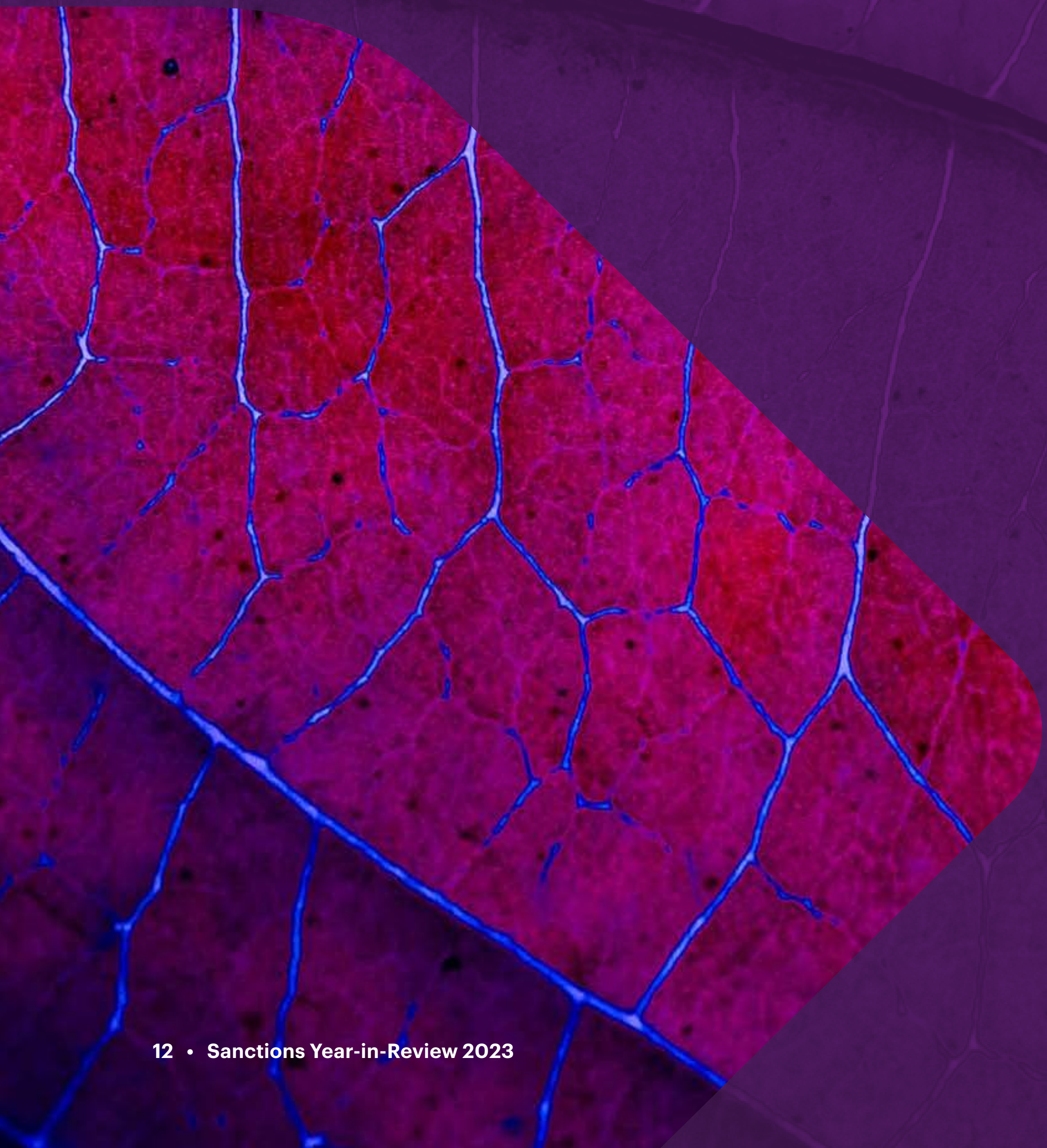
The US utilized sanctions in 2023 to target Russia's domestic industrial base. In May 2023, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") prohibited the supply of "architecture" and "engineering" services by US persons to persons located in Russia. The US issued determinations targeting the "metals and mining" and "architecture, engineering, construction, manufacturing, and transportation" sectors of Russian economy, authorizing the imposition of sanctions on any person determined to operate or have operated in such sectors. The US imposed blocking sanctions on numerous persons involved in key Russian energy and associated infrastructure projects, such as the Arctic LNG 2 liquified natural gas project and development of Arctic coking coal deposits. In addition to targeting Russian energy and infrastructure activities, the US authorized imposition of sanctions on foreign financial institutions that facilitate significant transactions relating to Russia's military-industrial base, including transactions denominated in non-US dollar denominated currency. To assist foreign financial institutions with compliance efforts, the US published an advisory, providing practical guidance on how to identify sanctions risks and implement corresponding controls.

The US also focused on sanctions evasion, targeting third-country proxies connected to Russia's sanctions evasion efforts, including those related to arms trafficking and illicit finance. For example, the US imposed blocking sanctions on a company involved in the procurement of high priority electronic components of US- and European-origin for end-users based in Russia, and sanctioned a virtual currency money launderer who helped Russian individuals circumvent US sanctions to access Western financial markets. In March 2023, the US agencies issued a joint compliance note on the prohibited use of third-party intermediaries to help evade Russia-related sanctions and export controls, highlighting common red flags that may indicate heightened evasion risk.

The US also collaborated with allies in 2023, coordinating with the UK to sanction individual members of the Russia-based cybercrime gang Trickbot that was first identified in 2016.

Finally, the US expanded prohibitions restricting the import of Russian-origin salmon, cod, pollock, and crab (and their products) into the United States.

III. Regional highlights and developments



Canada

In June 2023, Canada amended the ownership provisions of the *Special Economic Measures Act* (SEMA) and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (PCMLTFA). These amendments provide greater clarity on the property and entities deemed to be owned by sanctioned persons and sanctioned asset reporting obligations under the various statutes, and to expand the list of other Canadian government departments with whom Global Affairs Canada coordinates and shares information on sanctions matters. More specifically, under SEMA and the PCMLTFA, the amendments included altering the basis of ownership in Canadian sanctions, particularly through a new deemed control provision. This deemed control provision differs from other common legal definitions of control included in other Canadian legislation. Further information on these amendments is available in our regulatory blog. More generally, the Government of Canada advised it is undertaking consultations on further amendments relating to sanctions under the *Justice for Victims of Corrupt Foreign Officials Act* (Sergei Magnitsky Law).

In addition to the expansion of sanctions imposed on Russia, the Government of Canada has also implemented various sanctions against Haiti, Iran, Burma, and Lebanon, among others. Furthermore, under Canada's Sergei Magnitsky Law, the Government of Canada sanctioned three Lebanese nationals who, in the opinion of the Governor in Council, were involved in acts of significant corruption, including the misappropriation of public assets for personal gain and the transfer of the proceeds of corruption to foreign states.

Canada is a highly dynamic user of international trade sanctions as a foreign policy tool, resulting in a significant number of individuals and entities being listed. Individuals and entities subject to these sanctions may submit a request to Global Affairs Canada to be delisted from a particular schedule. In 2023, at least three delisting applications were the subject of court proceedings, one from a former prime minister of Haiti, one from a Russian Formula 1 driver who was added to the Russian regulations under *SEMA* in May 2022, and an aviation company, with aircraft held at Lester B. Pearson Airport. Additional information on these applications can be found in our previous blog post.

European Union

In the EU, 2023 saw the adoption of two additional sanctions packages targeting Russia (the tenth and eleventh package respectively), as well as further measures specifically targeting Belarus to fight circumvention of applicable sanctions.

Outside of the Russia context, the EU has set up and/or further developed its sanctions regimes as regards the following jurisdictions:

- **Niger:** On 23 October 2023, the EU introduced a framework sanctioning individuals and entities responsible for actions that undermine the stability, democracy, and rule of law in Niger, and constitute a threat to peace and security in the region. The Niger sanctions consist of asset freezes, travel bans, and the prohibition to make funds available and include a humanitarian exemption.
- **Haiti:** On 28 July 2023, the EU introduced an autonomous sanctions regime targeting Haiti, allowing to impose sanctions on individuals and entities responsible for threatening the peace, security or stability of Haiti, or for undermining democracy or the rule of law in Haiti.

- **Sudan:** On 9 October 2023, the EU established a new sanctions framework imposing asset freezes on people and entities engaged in actions that threaten the peace, stability or security of Sudan, obstruct or undermine efforts to resume the political transition in Sudan, obstruct the delivery of, access to, or distribution of humanitarian assistance, or engage in acts that constitute serious human rights violations. The Sudan sanctions consist of asset freezes, travel bans, and the prohibition to make funds available.
- **Belarus**: In 2023, in addition to the above-mentioned sanctions against Belarus for circumvention of applicable sanctions, the EU has also expanded its Belarus sanctions list to include further individuals and entities "who are responsible for serious human rights violations, contribute to the repression of civil society and democratic forces, as well as those who benefit from and support the Lukashenko regime".

In 2023, the EU has implemented the humanitarian exemption to UN sanctions in respect of its Iran, DRC, Sudan, South Sudan, Libya, North Korea, terrorism, Mali, Somalia, CAR, Yemen, Haiti, Iraq and Lebanon sanctions regimes. As such, the exemption now applies to 14 UN sanctions regimes.

The EU also renewed most of its existing sanctions regimes and made several designations under the Global Human Rights regime.

Ukraine

As a member of the United Nations, Ukraine implements sanctions adopted by the United Nations. Until 2014, UN sanctions were implemented through government decisions that would normally define ad hoc the scope of the restrictive measures adopted by Ukraine, the competent authorities tasked with implementing the adopted measures, as well as the mechanisms for their enforcement. Most of these measures have remained in force. With the enactment of the Sanctions Law, although of general scope but targeting primarily Russia, it also became the new legal basis for the implementation of UN sanctions.

Following the UN Resolutions, Ukraine imposed sanctions against the following countries: Democratic Republic of the Congo, Eritrea, Iran Democratic People's Republic of Korea, Libya, Somalia, Sudan.

United Kingdom

- Meaning of "control" in UK financial sanctions:
    - Two recent UK court decisions, *Mints* and *Litasco*, have illustrated the difficulties in applying the "*control*" part of the "*ownership and control*" test, which is part of all of the UK's financial sanctions regimes. The issue was whether the National Bank Trust (owned by the Central Bank of Russia) was "controlled" by either the head of the Central Bank or the Russian President, both of whom are UK-designated:
        - The High Court in *Mints* applied a narrow interpretation of the control test, noting that determining control through public office was likely not the intention of the regulations;
        - the Court of Appeal in *Mints* offered a non-binding, but notable interpretation of the control test, noting that the meaning of Regulation 7(4) was clear and should be applied, and finding that as a consequence

of Putin's designation, *"Mr Putin could be deemed to control everything in Russia"* (at [233]);

- the High Court in *Litasco* found that *"the better interpretation of Regulation 7(4) is that it is concerned with an existing influence of a designated person over a relevant affair of the company, not a state of affairs which a designated person is in a position to bring "bout"*; and that to believe otherwise would (wrongly) put Putin in control of companies of whose existence he was wholly ignorant, and whose affairs were conducted on a routine basis without any thought of him.

- Following the *Litasco* decision, OFSI and the FCDO issued guidance setting out a position which clarified that the UK Government does not consider President Putin to exercise indirect or de facto control over all entities in the Russian economy merely by virtue of his occupation of the Russian Presidency.

  - There remains considerable uncertainty about how to apply the concept of control in the UK in view of these developments. Further developments (and possibly legislative change) may be expected in 2024.

- **China:** In July 2023, the UK Parliament's Intelligence and Security Committee published a report on China.[1] The report considers:
  - the overall intelligence threat from China to the UK, and the UK Government's response to that threat; and
  - case studies on the threat, focusing on Academia, Industry and technology, and civil nuclear energy.

1 https://isc.independent.gov.uk/wp-content/uploads/2023/07/ISC-China.pdf

In response, the UK Government indicated that it will prioritise action to protect the United Kingdom against threats to national security and economic control.

United States

Several key trends emerged throughout 2023 for the US as it continued to utilize its sanctions regime as a tool of foreign policy and national security across multiple regions.

The US continued to employ secondary sanctions in 2023, presenting a heightened risk for parties beyond US jurisdiction but who nonetheless engage in certain activities that may violate US sanctions. For example, the US designated multiple individuals and entities located in Iran, the People's Republic of China, Russia, and Türkiye for their involvement in Iran's unmanned aerial vehicle and military aircraft production. These designations also highlight US authorities' focus on Iran's ballistic missile procurement activities, as many of the designations targeted illicit transactions involving dual-use items. The US Departments of Commerce, State, Treasury, and Justice jointly issued the Iran Ballistic Missile Procurement Advisory, providing guidance to industry actors on due diligence policies and procedures related to potential export control evasion issues.

In 2023, the US also continued to utilize its sanctions regime to bolster national security in response to China's advanced technology development efforts. Under the authority of Executive Order 14105, issued August 9, 2023, the US Department of the Treasury began the rulemaking process to develop and issue regulations that will prohibit certain outbound investments by US persons involving Chinese or Chinese-owned companies engaged in three types of technologies: (i) semiconductors and microelectronics; (ii) quantum information technologies; and (iii) artificial intelligence. The regulations, which are not yet finalized, will also impose a notification requirement for certain investments.

While the US sustained and expanded measures related to Iran and China, it relaxed certain sanctions on Venezuela, including those relating to Venezuela's oil, gas, and gold sectors, issuing several new General Licenses. This development was made in response to commitments by President Maduro to support democratic developments in relation to upcoming elections.

In another key regional development, US regulators took several actions following Hamas' attack against Israel on October 7, 2023. OFAC issued two rounds of sanctions on October 18 and October 27, targeting key Hamas members, a Hamas commander, managers of Hamas' investment portfolio, a financial facilitator affiliated with the Iranian regime based in Qatar, and a virtual currency exchange operating in Gaza. On October 20, 2023, the Financial Crimes Enforcement Network ("FinCEN") issued an alert to financial institutions and entities, urging the importance of conducting due diligence to combat Hamas's funding and highlighting key red flags for entities. Additionally, the US collaborated with the UK in targeting Hamas leaders and financiers, issuing joint actions on November 14 and December 13, 2023. These actions follow OFAC's May 2022 designation of key individuals involved in Hamas financing networks.

Lastly, the US participated in several multilateral sanction actions throughout 2023, partnering with Türkiye to impose sanctions against ISIS and other terrorist groups' financing networks, and joining the UK, and Canada, to target the Burmese military regime. In January and May 2023, the US and Türkiye issued sanctions jointly, first against financial facilitators affiliated with ISIS and then in May against financial facilitators of two terrorist groups based in Syria. In another collaborative action, the US, UK, and Canada designated entities and individuals affiliated with the Burmese military regime and prohibited the provision of certain financial services to or for the benefit of Myanmar Oil and Gas Enterprise.

IV. Enforcement

Canada

We observed no enforcement actions in Canada for breaches of Canadian sanctions law in 2023. However, as of September 28, 2023 (the most recently available information), the Royal Canadian Mounted Police reports that since February 24, 2022, approximately CA$135,844,726 worth of assets in Canada have been effectively frozen and approximately CA$305,684,144 in financial transactions have been blocked as a result of the prohibitions in the *Special Economic Measures (Russia) Regulations*.

In our 2022 report, we noted that Canada had issued the first Order-in-Council under the new seizure and forfeiture provisions of *SEMA*, targeting certain assets allegedly tied to Roman Abramovich. There have been no public developments on this matter, and it is unclear whether Canada is seeking forfeiture of the CA$27,000,000 at issue. In June 2023, Canada issued its second Order-in-Council under the seizure and forfeiture regime, ordering seizure of an aircraft situated at Toronto's Lester B. Pearson International Airport that is allegedly owned, held, or controlled by Volga-Dnepr Airlines or Volga-Dnepr Group, both being entities listed in Canada's sanctions against Russia.

European Union

Enforcement of EU sanctions is left to the competent Member States' authorities. As such, in October 2023, several persons having supplied construction equipment for use in relation to the Kerch straights bridge settled with Dutch authorities.

In the same month, the Rotterdam District Court has sentenced a Russian businessman to 18 months in prison for evading EU sanctions on Russia as regards exports of several dual-use goods. The same alleged conduct lead to the detainment of a German businessman. Also in Germany, the Munich Public Prosecutor's office announced that it has charged four ex-managing directors at Munich-based technology company FinFisher for allegedly selling restricted software to a Turkish government agency without an export licence. In February 2023, the Cologne public prosecutor's office is reported to have searched the premises of 3 unnamed companies and 3 private homes in the Rhein-Erft-Kreis district as part of an investigation into possible violations of EU sanctions on Russia

In France, the police reportedly arrested Alexey Kuzmichev, in an investigation into money laundering, tax fraud, and violations of sanctions. Mr Kuzmichev, a shareholder in Alfa Group, was designated by the EU in March 2022. French authorities have also seized a €23 million villa in Saint-Jean-Cap-Ferrat, France, that is suspected of being owned by EU-sanctioned Viktor Rashnikov, according to a report by Le Monde. Earlier this year, the Italian Ministry of Finance was reported to have approved a decree freezing the assets of Artem Uss, a Russian national who escaped from house arrest in Milan ahead of his extradition to the US to face charges of sanctions evasion and money laundering.

In the same vein, Lithuanian authorities have submitted to prosecutors evidence against 9 Lithuanian companies following an investigation by OCCRP suggesting: that the firms may have breached EU import controls by falsely presenting imports of Russian and Belarusian timber products as originating from Kyrgyzstan, Kazakhstan, and Turkey.

The Bank of Lithuania, on 1 June 2023 also determined that the electronic money institution Transactive Systems UAB seriously and systematically infringed anti-money laundering and counter terrorist financing (AML/CTF) requirements such as failure of proper identification, allowing for anonymous accounts and failure to ensure proper implementation of sanctions. The Bank of Lithuania imposed a fine of €280,000 on the company and revoked its licence to provide financial services.

In early December 2023 finally, Belgian authorities arrested a Belgian business man for alleged involvement of exports to electronics and other technology to Russia. The person concerned, who remains under arrest in Belgian prison, had been placed on a US sanctions list earlier on the same day of his arrest, showing the increased extent of cross-Atlantic law enforcement cooperation.

Ukraine

The Sanctions Law does not include provisions on penalties for violation of the sanction regime.

Neither the Criminal Code of Ukraine, nor the Code on Administrative Liability of Ukraine contain specific provisions on sanctions violation or misconduct in relation to sanctions enforcement.

Various draft legislations aim at imposing clear enforcement tools and penalties, but none of them has been enacted by now. Certain types of sanctionable conduct may already be caught by other provisions of Ukrainian law targeting fraud, corruption or threats to national security.

The Ukrainian government, National Agency on Corruption Prevention (NACP) has launched a database, which tracks the circulation of art products that are bought or sold by designated Russian individuals. Currently, the section contains information on more than 300 art objects of an estimated value of $2 billion and allows users to report relevant information relating to such assets to the agency.

United Kingdom

OFSI are reportedly now taking a more pro-active approach to sanctions enforcement.

- **Guidance:** In March 2023, OFSI published an updated version of its Enforcement and Monetary Penalties for Breaches of Financial Sanctions Guidance. The update included a new section on "Ownership and Control" which sets out relevant factors that OFSI will consider following a breach based on an incorrect assessment of ownership and control.
    - For example, OFSI stresses the need for and importance of an entity carrying out appropriate due diligence on ownership and control, and that where there has been a breach of sanctions legislation, a failure to carry out appropriate due diligence will be an aggravating factor when determining the appropriate enforcement response.
- **Enforcement Action:** The imposition of penalties for breach of UK sanctions remains rare: in 2023:
    - OFSI has not issued any monetary penalties and has made only one use of its new "disclosure" power to name and shame entities for breaches which do not warrant a financial penalty.
    - HMRC has issued 4 "settlement offers" (i.e., settlements of investigations, involving a payment of a penalty) to UK companies for breaches of trade sanctions in relation to Russia and/or export control laws. The largest single penalty was for £1m.

  A person close to OFSI said the unit was "*not trying to unduly penalise honest mistakes*" and takes into account relevant efforts and checks made as potential mitigating factors when assessing a breach.
- **FCA Enforcement:** The UK Financial Conduct Authority is taking a notably more active role in sanctions compliance and enforcement in relation to regulated entities. It recently conducted a thematic review into a sample of firms using an FCA-designed data tool to test the effectiveness of firms' sanctions screening. It made a number of findings and recommendations, with key themes including the implementation of effective governance and oversight around sanctions; the adequate resourcing of teams; and the importance of effective customer due diligence to ensure that all sanctioned individuals in a business relationship are identified.
  We anticipate enforcement action by FCA in 2024 for regulated entities that do not have effective systems and controls in place to monitor and comply with UK sanctions.

- **Establishment of Office of Trade Sanctions Implementation ("OTSI"):** On 11 December 2023, UK Government announced the establishment of OTSI, to "*crack down on firms dodging Russian sanctions*". OTSI will have responsibility for the civil enforcement of trade sanctions, including (but not limited to) Russia sanctions. Further details are to follow but it appears that it will have a power to issue civil penalties similar to OFSI, and to refer matters for criminal enforcement. Unlike OFSI however it appears that OTSI will not be responsible for licensing and that this role will remain with the Export Control Joint Unit.

United States

OFAC undertook 17 enforcement actions throughout 2023, resulting in over $1.5 billion in fines and penalties. These actions targeted a wide range of violations, including among others:

- **Sanctions evasion**: This was the most common category of implicated violations, encompassing entities and individuals engaging in prohibited transactions with sanctioned countries or individuals.
- **Failure to implement adequate compliance controls**: As usual, several companies were penalized for deficiencies in their sanctions compliance programs, leaving them vulnerable to unintentional violations.
- **Digital currency violations**: With the growing use of cryptocurrencies, OFAC saw an increase in cases involving virtual currency platforms facilitating transactions with sanctioned entities.

Highlights of Notable Cases

- ***Binance* *($968 million)***: This was the largest settlement in OFAC history to date. The conduct underlying the violation was Binance's failure to prevent US person users and users in sanctioned jurisdictions or blocked persons from trading virtual currency on its online exchange platform, Binance.com, in violation of multiple US sanctions programs. Binance knew or had reason to know the location of its user base and the sanctions risks involved, but deliberately chose to retain and service both US and sanctioned jurisdiction users, and to undermine its own compliance function, in order to boost its revenue and trading volume. Binance also misled third parties and the public about its sanctions compliance controls and encouraged users to circumvent its ostensible geofencing and screening measures, such as by using VPNs. Binance's conduct resulted in 1,667,153 apparent violations of US sanctions, totaling approximately $706 million in transaction value over a period of more than five years. Binance also agreed to a $3.4 billion settlement with FinCEN for violations of US anti-money laundering ("AML") laws in the largest penalty in US Treasury and FinCEN history.
- ***Nasdaq* *($4 million)***: The settlement involved apparent violations of the Iranian Transactions and Sanctions Regulations ("ITSR") by the former Armenian subsidiary of Nasdaq, Inc. ("Nasdaq"), Nasdaq OMX Armenia OJSC ("Nasdaq OMX Armenia"). Nasdaq OMX Armenia, which operated the Armenian Stock Exchange ("ASE"), processed trades and settled payments involving the OFAC-designated Armenian subsidiary of Iran's state-owned Bank Mellat, Mellat Bank SB CJSC ("Mellat Armenia"). In doing so, Nasdaq OMX Armenia knowingly exported services to Iran and the Government of Iran, thereby allegedly committing 151 apparent violations of the ITSR between December 28, 2012, and September 3, 2014, with a total value of $227,915,023. Nasdaq, as the owner and controller of Nasdaq OMX Armenia, was liable for the apparent violations under 31 C.F.R. § 560.701(a)(4), which subjects US persons to civil penalties if foreign entities they own or control engage in conduct that 31 C.F.R. § 560.215 proscribes.
- ***Wells Fargo Bank* *($30 million)***: The settlement agreement involved Wells Fargo Bank, N.A. ("Wells Fargo") and its predecessor, Wachovia Bank ("Wachovia"), allegedly providing a foreign bank located in Europe with software that the

foreign bank used to process trade transactions with various US-sanctioned jurisdictions and persons. OFAC alleged that the conduct persisted for seven years despite concerns raised internally within Wells Fargo on multiple occasions. The settlement notice underscored, among other points, the importance of implementing comprehensive oversight across all business units throughout an organization, as employees may pursue new opportunities or maintain existing relationships without adequately considering potential sanctions risks.

- ***British American Tobacco*** ***($508 million)***: This settlement agreement involved potential violations of the North Korea Sanctions Regulations and the Weapons of Mass Destruction Proliferators Sanctions Regulations by British American Tobacco p.l.c. ("BAT"). BAT's apparent violations stemmed from its alleged involvement in a conspiracy to export tobacco and related products to North Korea and receive payment for those exports through the US financial system. Additionally, BAT's subsidiary allegedly utilized US financial institutions to receive or otherwise process US dollar-denominated payments for the sale of cigarettes to the North Korean Embassy in Singapore. In announcing the settlement, OFAC highlighted that "[f]oreign firms that form and participate in conspiracies that cause US persons to engage in prohibited transactions, including dealing in property in which blocked persons have an interest, expose themselves to strict penalties" and that "creating the illusion of distance between a firm and apparently violative conduct does not shield that firm from liability."
- ***3M Company*** ***($9.6 million)***: 3M Company agreed to pay $9,618,477 for the alleged actions of its Swiss subsidiary, 3M East, involving the pursuit of prohibited dealings in Iran. OFAC highlighted in its settlement announcement that "parent companies are expected to oversee compliance with applicable US sanctions laws within their subsidiaries, and to empower employees to alert headquarters trade compliance when business dealings need further review."

Key Trends

- **Increased focus on virtual currency**: With the rise of cryptocurrencies, OFAC is paying closer attention to potential sanctions violations involving these platforms.
- **Corporate compliance failures**: Several high-profile cases highlight the importance of robust sanctions compliance programs for companies operating in a globalized world. Enforcement activity in 2023 also illustrates OFAC's willingness to impose penalties on parent entities for the activities of subsidiaries in cases where such penalties are authorized by the underlying sanctions program.
- **Large financial penalties**: 2023 saw the largest financial penalty ever imposed by OFAC and large penalties overall. The substantial fines imposed in some cases demonstrate OFAC's commitment to deterring future violations and the significant cost associated with sanctions compliance failures.

Overall, OFAC's enforcement actions in 2023 showcase the agency's continued efforts to uphold US sanctions policies and ensure compliance by individuals and entities.

V. Forecast for 2024

Canada

Given the significant increase in sanctions implemented by Canada in the proceeding years and legislative changes, we expect 2024 will shift to an increased focus on the use of the new provisions and challenges to them. As we noted in the Enforcement section, Canada has commenced the process to seize, and potentially forfeit assets allegedly controlled by persons sanctioned under Canada's Russia sanctions. The seizure and forfeiture regime will be judicially tested in 2024 and, assuming it withstands scrutiny, we expect that Canada will expand its use in order to obtain funds for transfer to Ukraine.

The listing challenges commenced in 2022 by persons subject to sanctions may also see resolution in 2024. Success by the persons bringing these challenges would encourage other sanctioned persons to challenge their own listing in Canadian sanctions.

The ongoing war in Sudan may lead Canada to expand on the existing sanctions imposed on Sudan under the *United Nations Act* to target the Rapid Support Force and its supporters. We also expect that Canada will continue its use of export controls, sanctions and foreign investment controls directed at China's use and development of critical technologies.

Bar and trade groups continue to press Canada for guidance on numerous interpretation and application issues that have emerged in connection, primarily, with sanctions against Russia. 2024 may finally see the publication of such long-awaited guidance. As Global Affairs Canada continues to dedicate resources to address the significant backlog in processing sanctions permit applications, it is also hoped that we will see an improvement in permit processing times.

European Union

2024 will see a continued escalation of sanctions against Russia, with a focus on enforcement actions and a targeted effort towards repositioning Russian assets and potentially reach an agreement on their use in the interests of Ukraine.

Ukraine

Ukraine's sanctions regime over Russia is expected to continue to evolve in 2024, with a focus on the following trends:

- **Broadening the scope of sanctions:** Ukraine is likely to expand its sanctions list to include more individuals, companies, and sectors of the Russian economy as well as Russian allies. This could include additional financial institutions, energy companies, and defense contractors.
- **Tightening enforcement:** Ukraine is also likely to step up enforcement of its sanctions regime, both domestically and in cooperation with its international partners. This could involve working with other countries to track down and seize Russian assets, as well as developing new tools and technologies to detect and prevent sanctions evasion.
- **Targeting specific industries:** Ukraine is likely to focus sanctions on specific industries that are critical to the Russian economy, such as energy, defense, and finance. This could involve banning imports or exports of certain goods and services or restricting access to international financial markets.
- **Coordinating with allies:** Ukraine will continue to coordinate with its allies on sanctions policy, in order to maximize the impact of its measures. This could involve working to ensure that other countries adopt similar sanctions or cooperating to enforce sanctions extraterritorially.

In addition to these general trends, Ukraine is also likely to tailor its sanctions regime to specific developments in the conflict with Russia. For example, if Russia continues to attack civilian targets, Ukraine may impose additional sanctions on Russian military and government officials.

United Kingdom

Whilst companies and individuals supporting the Russian state and its invasion of Ukraine are likely to remain the main target of sanctions, we expect to see a major shift towards enforcement action and combatting those circumventing sanctions.

- **Increase in Enforcement:** While there have been few enforcement decisions in 2023, UK Government is moving its priority towards sanctions enforcement and combatting circumvention:
  - in March 2023, the UK Government published its Economic Crime Plan, placing curbing "sanctions evasion" within the top three economic crime enforcement actions for the next 5 years.
  - The UK is dedicating more resources into sanctions enforcement with the Prime Minister announcing a £50m Economic Deterrence Initiative to tackle "sanctions evasion" across the UK's trade, transport, and financial sanctions regime.
  - the one use by OFSI of its enforcement powers in 2023 demonstrates that it will take enforcement action even against low value breaches. We expect to see an increase in OFSI enforcement in 2024.
  - there is evidence of heightened co-operation between UK regulators.
  - At the G7 Summit in Hiroshima, Japan on 19 May 2023, the G7 (including UK) announced further co-ordinated steps to prevent the evasion and circumvention of sanctions against Russia.
- **Further Sanctions:** While the focus in 2024 will likely see a focus on enforcement and reducing circumvention, we expect further sanctions measures in 2024, including the following:
  - Further designations: Further designations are expected in order to continue to exert pressure on those close to the Russian leadership (and to add clarity as to the status of entities following the ambiguity as to the control concept);
  - Diamonds: a tightening of the prohibitions on the import and use of diamonds mined, processed or produced in Russia as trailed at the G7 summit;
  - Oil Price Cap: We anticipate changes would be implemented to make additional costs disclosable, to ensure that the oil price cap is not being circumvented.
- **China:** Following the Intelligence and Security Committee's report on China, published in July 2023, we expect to see the UK Government focus and further develop its strategic policy on China, alongside the G7. This likely will not take the form of sanctions, but themes we would anticipate seeing include:
  - greater use of the National Security & Investment Act powers to safeguard persons, businesses, and industries.
  - greater economic control policies or an enhanced de-risking strategy for the most vulnerable industries such as quantum computing and artificial intelligence.
  - monitoring of business and academic cooperations with China or Chinese entities involving sensitive/controlled goods and technologies.
  - closer international alignment with international allies and partners.

United States

The US will likely continue to impose sanctions against regimes and persons contributing to the ongoing conflict in Ukraine and escalation of conflicts in Israel, Sudan, Burma, and other regions. We anticipate that the US will continue to take such actions in collaboration with Western allies through 2024.

In support of those efforts, we expect the US to continue to focus on sanctions evaders and facilitators – in Russia and beyond – for providing material support to designated persons or operating in sanctioned sectors of the Russian economy (e.g., financial services, electronics, defense, energy, etc.). "Price cap" sanctions will likely remain, targeting Russia's oil revenue. In accompaniment to these actions, we expect to see concerted effort by US and international agencies to provide public guidance with respect to evasion risks, red flags, and recommendations.

While the US has emphasized that its decision to ease restrictions on Venezuela is both conditional and temporary, we do not expect the US to reinstate sanctions against Venezuela, provided the Maduro regime upholds its commitments regarding democratic processes.

For companies with global operations, the US will continue to impose high expectations regarding customer screening and diligence, particularly when companies are involved in sales to high-risk jurisdictions (such as China, Türkiye, UAE, and post-Soviet states bordering Russia).

We expect the US to continue to focus its enforcement actions on illicit finance and transactions involving crypto currencies or digital trading. Additionally, implementation of the beneficial ownership reporting requirements imposed under the Corporate Transparency Act will require certain businesses to report their beneficial ownership information to FinCEN. The reporting requirement is intended to provide OFAC a more comprehensive understanding of entities' ownership structures, thereby allowing the identification of shell companies and other means used to evade US economic sanctions.

Lastly, we expect further enhanced trade controls directed at China through the prohibition of certain outbound US investments in the semiconductor, quantum computing, and artificial intelligence sectors, as well as other existing trade control tools.

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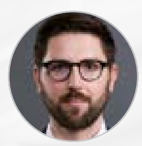

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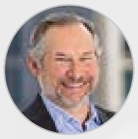

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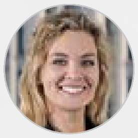

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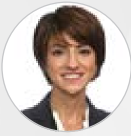

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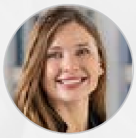

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