

# Alert

## US Expands Sanctions Against Belarus, Barring New Sovereign Debt Transactions

December 10, 2021

On Dec. 2, 2021, the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") expanded sanctions against the Lukashenka regime in Belarus.<sup>1</sup> The new sanctions are a response to the Lukashenka regime's anti-democratic practices and human rights violations. U.S. persons are now barred from transactions involving new sovereign debt issued by Belarus. In addition, OFAC has added 20 individuals, 12 entities and three aircraft in Belarus to its Specially Designated Nationals List ("SDN List").<sup>2</sup> This continues a trend under the Biden Administration of increasing pressure on the Lukashenka regime by widening the scope of persons and entities it targets with economic sanctions.<sup>3</sup>

### Background

The new restriction on Belarusian sovereign debt transactions and the latest additions to OFAC's SDN List come on the heels of Executive Order No. ("E.O.") 14038, signed by President Joseph R. Biden on Aug. 9, 2021. OFAC's sanctions program against Belarus was originally established under Executive Order No. 13405, signed by President George W. Bush in 2006.<sup>4</sup> With E.O. 14038, the Biden Administration added to the categories of persons who can be designated on the SDN List.<sup>5</sup> OFAC now has broader authority to impose sanctions against political subdivisions of the Government of Belarus, current and former government officials irrespective of involvement in corruption, entities operating in certain sensitive industries, or any person or entity threatening the peace, security, human rights or democratic integrity of Belarus.<sup>6</sup>

### Sovereign Debt Restrictions

Under the authority of E.O. 14038, OFAC issued Directive 1, which prohibits "all transactions in, provision of financing for, and other dealings in new debt with a maturity of greater than 90 days issued after December 2, 2021" by the Ministry of Finance of the Republic of Belarus ("MFRB") or the

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<sup>1</sup> Press Release, U.S. Dep't of Treasury, "Treasury Expands Sanctions Against Belarusian Regime with Partners and Allies" (Dec. 2, 2021), available [here](#).

<sup>2</sup> *Id.*; see also U.S. Dep't of Treasury, "Belarus Designations; Publication of Belarus Directive 1 and Related Frequently Asked Questions; Issuance of Belarus General License 5" (Dec. 2, 2021), available [here](#).

<sup>3</sup> See E.O. 14038, "Blocking Property of Additional Persons Contributing to the Situation in Belarus" (Aug. 9, 2021), available [here](#).

<sup>4</sup> E.O. 13405, "Blocking Property of Certain Persons Undermining Democratic Processes or Institutions in Belarus" (June 16, 2006), available [here](#).

<sup>5</sup> E.O. 14038, *supra* note 3.

<sup>6</sup> *Id.*

Development Bank of the Republic of Belarus (“DBRB”).<sup>7</sup> The prohibitions apply to transactions by U.S. persons or within the United States, in both the primary and secondary markets.<sup>8</sup> The term “debt” is defined to encompass any “bonds, loans, extensions of credit, loan guarantees, letters of credit, drafts, bankers’ acceptances, discount notes or bills, or commercial paper.”<sup>9</sup> OFAC has also expressly prohibited U.S. persons from entering into derivatives contracts “whose value is linked to an underlying asset that constitutes prohibited debt.”<sup>10</sup>

Directive 1 does not prohibit other transactions with MFRB and DBRB,<sup>11</sup> and OFAC’s “50 Percent Rule”<sup>12</sup> does not apply (i.e., transactions with entities owned or controlled by MFRB or DBRB are still permitted).<sup>13</sup> Additionally, transactions in sovereign debt issued before December 2, 2021 are not affected, as long as the terms of such debt (including the repayment period, interest rate and amount) are not modified after that date.<sup>14</sup> This includes revolving credit facilities, long-term loan agreements and related drawdowns and disbursements, as long as all terms were agreed to before Dec. 2, 2021, or the terms of repayment are 90 days or less.<sup>15</sup>

### Sanctioned Persons and Industries

Using its expanded authority to designate Lukashenka-connected persons and entities, OFAC has sought to address specific actions of the Lukashenka regime. For example, OFAC designated a state-owned tourism company and several Belarusian border-security officials for their involvement in orchestrating a migrant crisis in Europe by encouraging and facilitating migration to Belarus, and then forcing the migrants to attempt to enter border countries.<sup>16</sup> Similarly, OFAC has designated businesses in the defense and security sectors that supply weapons and ammunition to foreign conflicts, and other industries like the potash industry that funnel profits to the regime.<sup>17</sup> Pursuant to a General License, investors have been given 120 days to wind down their involvement in the two major Belarusian potash-sector companies that were designated as SDNs.<sup>18</sup> Otherwise, U.S. persons are prohibited from all transactions with SDNs, and any property owned by an SDN that is currently possessed or controlled by a U.S. person cannot be “transferred, paid, exported, withdrawn, or otherwise dealt in.”<sup>19</sup>

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<sup>7</sup> See U.S. Dep’t of Treasury, “Directive 1 Under Executive Order 14038” (Dec. 2, 2021), available [here](#).

<sup>8</sup> Press Release, Treasury, *supra* note 1.

<sup>9</sup> OFAC FAQ 944 (Dec. 2, 2021), available [here](#).

<sup>10</sup> OFAC FAQ 948 (Dec. 2, 2021), available [here](#).

<sup>11</sup> OFAC FAQ 945 (Dec. 2, 2021), available [here](#).

<sup>12</sup> U.S. Dep’t of Treasury, “Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property are Blocked” (Aug. 13, 2014), available [here](#).

<sup>13</sup> OFAC FAQ 943 (Dec. 2, 2021), available [here](#).

<sup>14</sup> OFAC FAQ 942 (Dec. 2, 2021), available [here](#).

<sup>15</sup> OFAC FAQ 947 (Dec. 2, 2021), available [here](#).

<sup>16</sup> Press Release, Treasury, *supra* note 1.

<sup>17</sup> *Id.*

<sup>18</sup> U.S. Dep’t of Treasury, General License No. 5, “Authorizing the Wind Down of Transactions Involving Open Joint Stock Company Belarusian Potash Company or Agrorozkvit LLC” (Dec. 2, 2021), available [here](#).

<sup>19</sup> E.O. 14038, *supra* note 3. Note that while the 50 Percent Rule does not apply to the Directive 1 sanctions, it does apply to the SDN List. U.S. Dep’t of Treasury, Revised Guidance, *supra* note 12.

## Implications for U.S. Investors

U.S. persons who transact in Belarusian sovereign debt should be mindful of the prohibitions imposed by Directive 1, and their broad reach to a variety of instruments as well as derivatives. Additionally, U.S. persons involved in transactions or investments in the Belarus area should ensure that any existing transaction or investment counterparties (and their 50% or greater owners<sup>20</sup>) are checked against the updated SDN List. It also bears emphasis that E.O. 14038 prohibits attempts to circumvent OFAC sanctions with any “deceptive or structured transactions” that directly or indirectly benefit an SDN or the Government of Belarus.<sup>21</sup>

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

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<sup>20</sup> U.S. Dep’t of Treasury, Revised Guidance, *supra* note 12.

<sup>21</sup> E.O. 14038, *supra* 3.