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Federal Department of Economic Affairs,
of Education and Research DEFR

State Secretariat for Economic Affairs SECO
Sanctions

UNOFFICIAL ENGLISH TRANSLATION

Support in interpreting sanctions

Status as of 27 August 2024

Chapter 1 of this document contains important information for interpreting the provisions concerning the freezing of assets. This information applies to all sanctions ordinances containing provisions on the freezing of assets and economic resources.

Chapter 2, meanwhile, provides important information on the interpretation of Articles 12b, 13, 14, 14a, 14c, 14e, 14f 15, 16, 20, 21, 22, 23, 25, 28b, 28d and 28e of the Ordinance on measures relating to the situation in Ukraine (RS 946.231.176.72).[1]

This document is not legally binding. Compliance with the provisions of the Ordinance is the sole responsibility of the persons and entities concerned.

The Swiss authorities strive to ensure that the implementation of sanctions is as close as possible to the implementation practice applied in the EU and are in contact with the competent EU services. The State Secretariat for Economic Affairs (SECO) reserves the right to supplement or adapt this document.

Frequently asked questions are answered below. Questions not answered below can be directed to sanctions@seco.admin.ch.

[1] Unless stated otherwise, the information and interpretations contained in chapter 2 are also valid for the identical provisions of the Ordinance on measures against Belarus (RS 946.231.116.9).

OVERVIEW

1. General remarks on the interpretation of measures relating to the freezing of assets and economic resources under Swiss sanctions

1.1 *What are the normal administrative actions that are not affected by the asset freeze[2] and which can therefore be carried out by financial institutions without authorisation?*

Asset freeze means preventing any action enabling the assets to be managed or used. Consequently, portfolio management, i.e. making new investments or purchasing and exchanging investment products using frozen assets, is prohibited. The freezing of assets does not apply to the normal administrative actions carried out by financial institutions, i.e. charging administration fees (e.g. account management fees) and accruing interest.

1.2 *Can income from securities transactions (corporate actions) of a blocked account be credited to this blocked accounts?*

It is forbidden to provide assets or economic resources, directly or indirectly, to persons subject to a freeze. In practice, it happens that proceeds from securities transactions (OST) are credited to accounts that are blocked due to the freeze. This income comes from transferable securities added to the investment portfolio of the account in question before the sanctions came into force.

In order to consider the operational specificities of transferable securities transactions, income from mandatory OSTs without option of the holder (generally bond dividends or interest, but also exchange offers in connection with depositary receipts) may be credited without SECO's prior authorization and blocked on the account in question. The same applies to income from OSTs at the option of the holder, where the holder makes no active choice and the income is paid to the bank in cash and no new investments are made.

As part of the annual update of the value of frozen assets, financial institutions are required to report on income from OST separately.

The execution of voluntary OSTs or OSTs at the option of the holder when the holder makes an active choice remains subject to SECO's prior authorization.

1.3 *Can income from securities issued by companies or entities subject to financial sanctions[3] be accepted?*

The transactions performed by legal persons, enterprises or entities subject to the financial sanctions for the purpose of distributing income from transferable securities issued by them are subject to the freeze of assets and economic resources. Accordingly, Swiss financial institutions who perform the final account booking for such transactions on the receiving account must block them upon receipt and report them to SECO. It may then authorize the release of the funds and their credit to any account in Switzerland, in accordance with the relevant article of the applicable ordinance.

Due to the high volume of these transactions, a lighter procedure shall apply to credit the accounts of non-sanctioned clients with the proceeds from transferable securities issued by enterprises or entities subject to the financial sanctions when the transaction originates from them. Mandatory recurring transactions in relation to transferable securities issued by enterprises or entities subject to financial sanctions – including securities transactions in the form of dividends, bond rates and

[2] See for instance Article 1 (b) of the Ordinance imposing measures against Syria (RS **946.231.172.7**).

[3] Companies or entities subject to the freeze of assets and economic resources and the ban on making funds available, which are mentioned in the corresponding provisions of the various sanctions ordinances and are listed in the relevant annexes, such as Annex 8 of the Ordinance on Measures Relating to the Situation in Ukraine (RS **946.231.167.72**) or Annex 8 of the Ordinance imposing measures against Syria (RS **946.231.172.7**).

exchange offers in connection with depository receipts for foreign shares of Russian issuers – are not subject to a prior approval requirement.

From 2024 onwards, the financial institutions who perform the final account booking for the above-mentioned transactions on the recipient account shall submit an annual summary of these transactions to SECO by the end of February (value as of 31 December of the previous year). The information must be classified by transferable security (ISIN number) and must specify, in addition to the ISIN number, the type of transferable security, the type of income (e.g. dividends, bond rates), the number of business relationships involved, the number of executed transactions and the credited value (total amount per currency). Voluntary securities transactions remain subject to prior approval by SECO.

1.4 *Can financial institutions in Switzerland accept payments from non-sanctioned customers of banks subject to financial sanctions[4]?*

Payments made by non-sanctioned clients of sanctioned banks are subject to the freeze of assets and economic resources. As a result, Swiss financial institutions that finalize such transactions on the recipient's account must in principle freeze them as soon as they receive them, and report them to SECO.

A simplified procedure is however applied: payments made by non-sanctioned clients from their accounts with sanctioned banks can be accepted and booked without prior authorization from SECO.

The financial institutions that finalize the above-mentioned payments on the recipient account provide SECO with a quarterly summary of the payments accepted. The information must be sorted by the business relationship concerned, specifying the banks involved, the accounts concerned (account number, sender, recipient), the number of payments and the value credited (total amount by currency).

1.5 *Do banks have to declare the blocking of payments made by non-sanctioned clients to sanctioned individuals, enterprises or entities?*

Yes, payments to recipients subject to the assets and economic resources freeze must be blocked and reported to SECO. The amount in question, however, must not be frozen and may be credited back to the account of the non-sanctioned sender.

1.6 *Do declarations concerning the freeze of assets and economic resources need to be updated in the event of a change in wealth?*

There is no need for ongoing communication about assets.

However, financial institutions will provide SECO each year, until 15 February, with the current figures for all frozen assets under all sanctions regimes (reference date: 31 December of the previous year). Declarations to SECO can only be made using the table provided for this purpose, which is available on the SECO website. They must be submitted electronically, preferably via the PrivaSphere Secure Messaging platform, certified by the Federal Department of Justice and Police, or by file transfer.

[4] Ibid.

1.7 *Can individuals and institutions autonomously release assets and economic resources that they have preventively frozen and notified to SECO, i.e. without prior consultation with SECO?*

Prior to release assets and economic resources that have been announced as frozen, individuals and institutions that hold or manage assets or that have knowledge of economic resources that are admitted as being subject to the asset freeze must consult SECO and explain the reasons for releasing these assets and resources. SECO will then decide whether or not to release the assets.

1.8 *How should the term "ownership"[5] of a company or entity be interpreted?*

A person, company, or entity is considered to own a company or entity when they hold directly or indirectly more than 50% of the ownership shares. Ownership shares held by different sanctioned individuals, companies, or entities are generally aggregated and considered as a whole.

1.9 *How should the notion of "control"[6] over a company or entity be interpreted?*

The criteria for determining whether a company or entity is controlled by a person, company, or entity, either alone or based on an agreement with another shareholder or third party, include:

a) The formal or de facto[7] ability to appoint or dismiss the majority of the members of the administrative or management bodies of the company or entity concerned

b) The formal or de facto[8] control of the majority of the voting rights of the company or entity.

c) The right to exercise a dominant influence over the company or entity based on an agreement with the company or entity, or a provision in its articles of association.

d) The power to use the right to exercise a dominant influence referred to in c) without holding that right[9].

e) The right to use all or part of the assets and economic resources of a company or entity, or to control their use.

f) Managing the activities of an enterprise on a consolidated basis, publishing consolidated accounts.

g) Joint and several liability for the financial obligations of a company or entity, or guaranteeing them.

h) Exercising a dominant influence over managerial decisions as a creditor.

If any of these criteria are met, the company or entity is deemed to be controlled by another person, company, or entity unless the contrary can be established in a specific case.

Other factors must also be taken into consideration in the case of transfer of funds to third parties (sale of shares or donation to family members or other natural persons linked to the sanctioned individual, company or entity). If, at the time of assessment, there is a well-founded suspicion that the assets or

[5] Cf. art. 15 of the Ordinance instituting measures in connection with the situation in Ukraine (RS **946.231.176.72**).
[6] Ibid.
[7] Through a front man, for example.
[8] Ibid.
[9] Ibid

economic resources have indeed been formally transferred to third parties, but that the sanctioned individual, company or entity continues to exercise control over these assets or economic resources, they must be frozen. The time at which the assets or economic resources were transferred to a non-sanctioned third party is not decisive. The following non-exhaustive list of criteria may serve as an aid to assessment:

- the connection of proximity (family, business, personal) between the person directly targeted by the asset freeze and economic resources and the third party;
- the economic and/or professional independence of the third party who is now the nominal owner of the assets or economic resources;
- the value, frequency and regularity of the donations concerned, compared with donations made to the same third party before the sanctions came into force;
- the existence and content of formal agreements between the sanctioned person and the third party;
- compliance with the arm's length principle[10] when transferring funds (e.g. conditions for purchasing shares).

1.10 *Is it possible to take operational measures to eliminate effective control resulting from ownership and control relationships exercised over a Swiss company or entity indirectly sanctioned?*

Companies and entities established in Switzerland can implement measures to prevent sanctioned individuals, companies, or entities from exercising their rights related to ownership or effective control.

Such "ring-fencing" (or "firewall") measures aim to lift the control exercised by a sanctioned individual, company, or entity over the assets of a company or entity. This allows a company or entity established in Switzerland to continue its commercial activities. The assets of the sanctioned individual, company, or entity remain frozen, with the objective of ensuring that assets or economic resources cannot be made available directly or indirectly to sanctioned individuals, companies, or entities.

SECO confirms in each case the successful implementation of "ring-fencing" measures for the concerned company or entity. In the context of the ordinance instituting measures in relation to the situation in Ukraine (RS **946.231.176.72**), SECO may, if necessary, authorize exceptions as per Article 15 (10) or Article 28e (3) of the Ordinance to implement "ring-fencing" measures.

SECO applies its criteria for "ring-fencing" measures in conformity with those outlined in the technical note published by the European Commission on this subject (*Guidance Note – Implementation of Firewalls in cases of EU entities owned or controlled by a designated person or entity*). The criteria governing the "ring-fencing" measures applied by companies or entities established in Switzerland are based on the explanations provided in Annex 2 of this note ("*Criteria for firewalls by operators and the use of external audits in this context*").

Before deploying any potential "ring-fencing" measures, the importance of the concerned company is examined, both in terms of its market position and its workforce size. In principle, such measures can only be implemented for companies active in sectors considered essential, namely in the fields of food production, pharmaceuticals, fertilizers, chemicals, water management and wastewater treatment, and nuclear energy.

[10] According to this principle, transactions must respect the same conditions as those which would be agreed between third parties in an environment of free competition and in comparable circumstances.

2. Interpretation of specific provisions of the Ordinance on the measures relating to the situation in Ukraine[11]

2.1 Trade, brokerage and transport of crude oil and petroleum products with or to third countries (Article 12b)

2.1.1 *How are economic operators in the supply chain for Russian crude oil or petroleum products to ensure and document compliance with the provisions of Article 12b (4) (b) and (5)?*

Due to the international dimension of the oil trade and the importance of uniform implementation of the price cap, SECO refers to the European Commission's FAQ on the implementation of EU Council Regulations 269/2014 and 833/2014, more specifically to the commentaries in Chapter E "Energy", point 5 "Oil Price Cap", section 7 "Attestations, recordkeeping and itemised ancillary costs". These comments specify which information and documents can be used as proof.

2.2 Steel products and economically important goods[12] (Articles 14a and 14c)

2.2.1 Is the purchase of goods listed in Annexes 17 and 20 allowed if the goods are intended for a third state outside Switzerland and do not transit through Swiss territory?

No. Articles 14a and 14c of the Ordinance prohibit the purchase of goods listed in Annexes 17 and 20 if they originate in or are exported from Russia. This prohibition applies regardless of the final destination of the goods.

Switzerland is determined to contribute to the fight against the global food and energy crises. The Federal Council has explicitly stated that none of the sanction measures taken against Russia was aimed at trade in agricultural and food products between a third state and Russia[13]. In response to this request, the purchase of certain goods intended for a third state, listed in Annex 20 of the Ordinance, is permitted under Article 14c (4). This applies to the purchase, as well as to related services such as financial assistance, of the following goods listed in Annex 21 of the Ordinance:

- potassium chloride (customs tariff number: 3104 20);
- mineral or chemical fertilizers containing the three fertilizing elements: nitrogen, phosphorus and potassium (3105 20);
- mineral or chemical fertilizers containing the two fertilizing elements: phosphorus and potassium (3105 60);
- other fertilizers containing potassium chloride (ex 3105 90).

2.2.2 Is the transportation of goods listed in Annex 20 authorized by a Swiss enterprise if the goods are intended for a third country outside Switzerland and do not transit through Swiss territory?

Yes, Article 14c of the Ordinance prohibits the transportation of goods listed in Annex 20 in and through Switzerland. However, the transportation by a Swiss enterprise is authorized if the goods are intended for a third state outside Switzerland and do not transit through Swiss territory.

[11] RS **946.231.176.72**, hereinafter the "Ordinance".
[12] As of 16 August 2023, coal and coal-based products, previously included in Annex 22, now repealed, are also included.
[13] Press release by the Federal Council of 3 August 2022: "Ukraine: Switzerland adopts new sanctions"

2.2.3 Is the provision of services – including financial assistance, brokerage or insurance services – for the transportation of goods listed in Annex 20 authorized when the goods are intended for a third state other than Switzerland and are not transported on Swiss territory?

Yes. Article 14c of the Ordinance prohibits the provision of services – including financial assistance, brokerage, or insurance services – for prohibited activities by persons, enterprises, and entities established in Switzerland. Since the transportation of goods listed in Annex 20 is permitted if the goods are intended for a third country outside Switzerland and do not transit through Swiss territory (see above), the provision of services with such transportation is also permitted.

2.2.4 What is considered sufficient proof "of the country of origin of the steel inputs used for the processing of these goods in a third country" under Article 14a (4bis)? When is such proof required?

When importing or transporting goods referred to in Annex 17 of the Ordinance[14], the following documents are considered sufficient proof, provided they indicate the country of origin of the steel inputs:

a) For **semi-finished products**: the *mill test certificate* containing the name of the company where manufacture took place, the name of the country in which the casting took place (casting number) and the product's subheading classification (6-digit tariff heading).

b) For **finished products**: factory test certificate(s) containing the following information:
   i. the name of the country in which the casting took place and that of the establishment where the casting took place (casting number), and the classification of the product at the subheading level (6-digit tariff heading), and
   ii. the name of the country and establishment in which the following transformations were carried out, if applicable:

      1. hot rolling;
      2. cold rolling;
      3. hot-dip metal coating;
      4. electrolytic metal coating;
      5. organic coating;
      6. welding;
      7. perforation/extrusion;
      8. pilgrim-step stretching/rolling;
      9. ERW/SAW/HFI/laser welding

In addition to the above-mentioned documents, invoices, delivery notes, quality certificates, long-term supplier declarations, calculation and production documents, customs documents of the country of export, commercial correspondence, product descriptions, manufacturer's declarations or exclusion clauses in sale contracts, which indicate the non-Russian origin of inputs, are recognized as appropriate proof. The importer is responsible for the accuracy of the data contained in the above-mentioned documents.

No proof is required for imports or transport of steel products from the European Economic Area (EEA) or the UK, or in the case of reimportation of steel products that have already been in free circulation in Switzerland and that are reimported being unaltered.

[14] The tariff heading of the goods used for import into Switzerland is decisive in this respect.

In the case of direct imports or transport from a third country, proof must be available at the time of import of steel products listed in Annex 17 which have been processed in a third country. As of 1 March 2024, this proof must appear in the form of a document (code Y824) in the "Documents" section of the customs declaration. The document must be submitted to the Federal Office for Customs and Border Security (FOCBS) on request, together with the other accompanying documents.

In case of doubt, the enforcement authorities may request additional evidence, such as factory test certificates specific to certain product processing stages. Certificates must be consistent with each other.

Since products under tariff headings 7207.11, 7207.1210 and 7224.90 are semi-finished products, it would be permissible under the current sanctions regime for the Russian Federation to be indicated on the factory test certificate as the country in which the casting took place (casting number) for products manufactured between 30 September 2023 and 1st April 2024 from inputs under tariff heading 7207.11. The same applies, until 1st October 2028, to products manufactured from inputs of tariff headings 7207.1210 or 7224.90. On the other hand, imports, transport and purchases are prohibited if the Russian Federation is indicated as the country in which the other processing stages took place (e.g. hot or cold rolling).

2.2.5 Do the prohibitions in Article 14a (2) also apply to goods produced or processed in a third country before 30 September 2023?

The import bans apply to steel products containing Russian materials imported into Switzerland after 30 September 2023, provided that these products were manufactured or processed after 23 June 2023. Steel products manufactured or processed before 23 June 2023 are not subject to the bans. The date of manufacture or processing must be documented.

If the goods in question are already in Switzerland and have been presented to customs before 30 September 2023, Article 31a applies and the goods may be purchased or transported.

2.3 Import and export of goods from/to designated territories and prohibition of financing, holdings and services in designated territories (Articles 13, 14 and 25)

2.3.1 Articles 13, 14 and 25 concern "territories listed in Annex 6". How do enterprises or entities know which areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts are subject to restrictions?

In addition to Crimea and Sevastopol, Annex 6 lists the areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts that are not controlled by the Ukrainian government. Given the unstable situation, it is necessary to actively check the current situation. In case of doubt, enterprises and entities can contact SECO.

2.3.2 What goods from the Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts can be imported into Switzerland and under what conditions?

Goods originating from areas of the Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts that are not controlled by the Ukrainian government are subject to the prohibition of Article 13 (1) at the time of their import. Therefore, they can only be imported if they have a certificate of origin issued by the Ukrainian authorities. Ukraine does not currently issue certificates of origin in areas not controlled by its government. Goods produced in or exported from the Ukrainian government-controlled areas of Donetsk, Kherson, Luhansk and Zaporizhzhia can be imported freely.

Since in these four Oblasts trade between the areas that are controlled by the Ukrainian government and those that are not is impossible in practice, it is quite unlikely that goods from the areas not controlled by

the Ukrainian government will reach the areas controlled by the Ukrainian government. Therefore, the import of goods from these Oblasts does not have to meet additional requirements or be more documented than the import of goods from other parts of Ukraine.

If there is reason to suspect that the goods to be imported originate from areas of the four Oblasts that are not controlled by the Ukrainian government, the importer may be required to submit additional documentation, such as a copy of the export declaration for the goods in question. The export declaration must have been accepted by an official Ukrainian customs in order to prove that the product is not subject to the import prohibition referred to in Article 13 (1).

2.3.3 What goods can be exported from Switzerland to the Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts and under what conditions?

The prohibition on the sale, delivery, export and transit of goods to persons, enterprises or entities in the non-government-controlled areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts or for use in these areas applies only to goods listed in Annex 7.

There are no export restrictions on trade with the government-controlled areas of the four Oblasts. Since trade between the Ukrainian government-controlled and non-government-controlled areas of the four Oblasts is practically impossible, it is highly unlikely that goods exported to Ukraine would be redirected to areas of these Oblasts not controlled by the Ukrainian government.

If there is reason to doubt the actual destination of the goods, the exporter in Switzerland may be required to submit additional documentation, such as a letter from the local administration in Ukraine showing that the consignee is operating in a territory controlled by the Ukrainian government, information about the buyer or consignee, or invoices, to prove that the product does not fall under the prohibition of Article 14 (1). As with all goods subject to export restrictions, FOCBS may carry out such checks as it deems necessary to ensure that goods intended for export are not subject to the prohibition referred to in Article 14 (1). Exceptions to this prohibition apply in particular to humanitarian activities (Article 14 (3)).

2.3.4 Can banks carry out financial transactions in connection with trade in the Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts, and if so, under what conditions?

In particular, banks in Switzerland are prohibited from providing certain brokerage, investment services, financing or assistance to financing in the areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts not controlled by the Ukrainian government. However, there are no restrictions on financial transactions provided by banks in Switzerland to support trade in the government-controlled areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts. Banks in Switzerland can conduct transactions in these areas as they do with banks located in other Ukrainian Oblasts.

As to whether the area in which the financial transaction is planned is under the control of the Ukrainian government, please refer to the answer to the above question "*How can enterprises or entities know which areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts are subject to restrictions*?". Banks in Switzerland can contact Ukrainian banks in the relevant region if their past experience allows them to consider them reliable. They can also contact the Ukrainian authorities for up-to-date information. Clients can also prove the legitimacy of transactions to Swiss banks by presenting import and export documents and certificates (see above).

2.3.5 Can Swiss enterprises provide services to persons in Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts or in connection with activities in these regions?

There are restrictions on certain services in the areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts not controlled by the Ukrainian government. Firstly, the sale, delivery, export and transit of goods listed in Annex 7 are prohibited if these goods are intended for persons, enterprises or entities in the territories designated in Annex 6 or for use in these areas (Article 14 (1)). It is also prohibited to provide technical assistance, intermediation services, construction and engineering services, and financing or financial assistance in connection with goods listed in Annex 7 to persons, enterprises or entities in the territories listed in Annex 6 (Article 14 (2)).

Secondly, various prohibitions apply in the area of services that do not relate to goods. For example, it is prohibited to provide investment services under Article 25 (3) or services related to tourism activities in the territories listed in Annex 6.

However, there are no restrictions on the provision of services by Swiss enterprises to persons in the government-controlled areas of Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts. Swiss enterprises and banks can provide their services in these areas as well as in all other Ukrainian Oblasts.

Swiss enterprises and banks intending to provide the above-mentioned services in Donetsk, Kherson, Luhansk and Zaporizhzhia Oblasts should make the necessary inquiries regarding the location of the beneficiary of the services or the area where the services are to be provided, depending on the applicable provision. In case of doubt, Swiss enterprises and banks can contact SECO.

2.4 Diamonds and products with diamonds (Article 14e)

2.4.1 What are the different stages in the introduction of bans on the import of diamonds and products with diamonds originating in or coming from the Russian Federation?

Since 1 February 2024, it has been forbidden to import diamonds and products with diamonds listed in Appendix 27a originating in or coming from the Russian Federation (Article 14e (1) and (2)). Bans on diamonds that have been processed in a third country came into force on 1 March 2024 for stones of at least 1 carat (Article 14e (4)). As from 1 September 2024 bans will also apply to natural or synthetic diamonds listed in Annex 27a, Nos. 1 and 2, that have been processed in a third country and weigh 0.5 carat or more, or 0.1 grams per diamond (Article 14e (3)).

2.4.2 Which proof of the country of origin of diamonds must be available upon import into Switzerland and included in the customs declaration (Article 14e (8))?

With regard to the bans referred to in Article 14e(3) et (3): in order to establish, at the time of importation, that diamonds or products with diamonds are not of Russian origin, appropriate proof must be provided. In addition to certificates issued by one of the G7 states, Kimberley Certificates[15] as well as the invoices, the delivery notes, the quality certificates, the calculation and production documents, the customs documents from the country of export, the commercial correspondence or the product descriptions which indicate the non-Russian origin of the goods are recognised as appropriate proofs. The importer is responsible for the accuracy of the data contained in the above-mentioned documents.

The proof must be indicated as a document (document code L147) in the "documents" section of the customs declaration. The document must be presented to the FOCBS on request, at the same time as the other accompanying documents. For Annex 27a (1) diamonds weighing less than 1.0 carat per diamond, no proof is required until 31 August 2024. However, document code L147 must be declared and completed with the words "no proof, less than 1 carat".

[15] For cut diamonds, it is the Kimberley Certificate for the rough diamond used as a basis.

2.4.3 What proof is required when importing if the diamonds and products with diamonds originating or coming from Russia, including diamonds processed in a third country, were already in the EU or a third country other than Russia before the corresponding bans ("grandfathered goods") came into force?

Under Article 14e (6bis) the prohibitions in paragraphs (1), (3) and (4) do not apply where it is proven that the goods were physically located in Switzerland or in the EU before the date of applicability of the corresponding prohibition and were subsequently exported to a third country other than the Russian Federation, or, in the case of processed goods, that the goods were physically located in a third country other than the Russian Federation, or that they were processed or manufactured prior to the date of applicability of the corresponding ban.

Customs documents, invoices or proof of purchase may be used as evidence. This evidence must prove the facts described above, irrespective of the origin of the diamonds or the products with diamonds.

Companies planning to export or re-export diamonds or products with diamonds are well advised to inform themselves about the legal requirements and directives in force in the destination countries. In Switzerland, the exportation (or re-exportation) of these goods to EEA or G7 countries is not subject to any restrictions.

2.4.4 Are Kimberley Certificates sufficient for importing rough diamonds (tariff headings 7102 10 00 and 7102 31 00)?

If the Kimberley Certificate clearly indicates the origin of the diamonds, it can be accepted as proof, but if it contains the statement "origin mixed", additional proof must be provided (see question 2.4.2).

2.4.5 Does the weight specified in paragraphs (3) and (4) refer to cut diamonds or rough diamonds?

The weight refers to the goods present at the time of entry into Switzerland; it may be cut diamonds or rough diamonds.

2.4.6 Does the ban also apply to industrial diamonds and products with industrial diamonds?

The ban applies to tariff headings 7102.10, 7102.31 and 7102.39 in Annex 27a. Industrial diamonds (tariff headings 7102.21 and 7102.29) are therefore not affected.

2.4.7 Do the bans also apply to products to be imported into Switzerland for repair or further processing?

Article 14e (6ter) provides for exemptions from the prohibitions on providing services in accordance with Article 14e (5), for products listed in Annex 27a, No. 3, manufactured before 1 September 2024. Under this provision, the temporary admission of such products into Switzerland, e.g. for the purposes of repair or inward or outward processing, remains permissible if the products were placed under the relevant customs procedure when imported into Switzerland or exported from Switzerland, and were not temporarily imported into or exported from the Russian Federation.

2.5 Contractual obligation to prevent re-exportation (Article 14f)

2.5.1 What is meant by "adequate remedies" within the meaning of Article 14f (2)?

In order to guarantee its effectiveness, a contractual clause aimed at preventing re-exportation to the Russian Federation must provide for adequate remedies that can be applied in the event of non-compliance with the clause. These remedies must be sufficiently effective and dissuasive for companies

established outside Switzerland. They may, for example, involve termination of the agreement or payment of a contractual penalty in the event of breach of the agreement.

2.5.2 Do agreements have to contain specific wordings?

Operators are free to choose the wording of the contractual clause, as long as the requirements of Article 14f are met. In all cases, it is advisable to specify that the clause constitutes an essential element of the agreement

The following model, available in French, English and German, may serve as a guide:

« (1) Il est interdit à [l'importateur/l'acheteur] de vendre, d'exporter ou de réexporter, directement ou indirectement, à destination de la Fédération de Russie ou aux fins d'une utilisation dans ce pays les biens livrés dans le cadre du présent contrat ou en lien avec le présent contrat qui tombent dans le champ d'application de l'art. 14f de l'ordonnance instituant des mesures en lien avec la situation en Ukraine (RS 946.231.176.72).

(2) [L'importateur/L'acheteur] met tout en œuvre pour garantir qu'aucun tiers en aval de la chaîne commerciale, y compris les éventuels revendeurs, ne contrevient au but de l'al. (1).

(3) [L'importateur/L'acheteur] met en place et maintient un mécanisme de surveillance adéquat afin de détecter le comportement de tiers en aval de la chaîne commerciale, y compris d'éventuels revendeurs, qui contreviendrait au but de l'al. (1).

(4) Toute infraction aux al. (1), (2) ou (3) constitue une violation grave d'un élément essentiel du présent contrat, permettant à [l'importateur/le vendeur] d'exiger des réparations adéquates, notamment (i) la résiliation du présent contrat et (ii) le versement d'une peine conventionnelle se montant à [XX] % de la valeur totale du présent contrat ou du prix des biens exportés, le montant le plus élevé étant retenu.

(5) [L'importateur/L'acheteur] informe sans délai [l'exportateur/le vendeur] en cas de problème lié à l'application des al. (1), (2) ou (3), y compris des activités pertinentes de tiers susceptibles de contrevenir au but de l'al. (1). Sur demande, [l'importateur/l'acheteur] met à la disposition [de l'exportateur/du vendeur] dans un délai de deux semaines des informations sur le respect des obligations prévues aux al. (1), (2) et (3). »

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« (1) The [Importer/Buyer] shall not sell, export or re-export, directly or indirectly, to the Russian Federation or for use in the Russian Federation any goods supplied under or in connection with this Agreement that fall under the scope of Article 14f of the Ordinance imposing Measures in Connection with the Situation in Ukraine (SR 946.231.176.72).

(2) The [Importer/Buyer] shall undertake its best efforts to ensure that the purpose of paragraph (1) is not frustrated by any third parties further down the commercial chain, including by possible resellers.

(3) The [Importer/Buyer] shall set up and maintain an adequate monitoring mechanism to detect conduct by any third parties further down the commercial chain, including by possible resellers, that would frustrate the purpose of paragraph (1).

(4) Any violation of paragraphs (1), (2) or (3) shall constitute a material breach of an essential element of this Agreement, and the [Exporter/Seller] shall be entitled to seek appropriate remedies, including, but not limited to : (i) termination of this Agreement ; and (ii) a penalty of [XX]% of the total value of this Agreement or price of the goods exported, whichever is higher.

(5) The [Importer/Buyer] shall immediately inform the [Exporter/Seller] about any problems in applying paragraphs (1), (2) or (3), including any relevant activities by third parties that could frustrate the purpose of paragraph (1). The [Importer/Buyer] shall make available to the [Exporter/Seller] information concerning compliance with the obligations under paragraph (1), (2) and (3) within two weeks of the simple request of such information. »

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«(1) Der [Importeur/Käufer] darf Güter, die im Rahmen oder im Zusammenhang mit dem vorliegenden Vertrag geliefert werden und in den Anwendungsbereich von Artikel 14f der Verordnung über Massnahmen im Zusammenhang mit der Situation in der Ukraine (SR 946.231.176.72) fallen, weder direkt noch indirekt in die Russische Föderation oder zur Verwendung in der Russischen Föderation verkaufen, ausführen oder wiederausführen.

(2) Der [Importeur/Käufer] bemüht sich nach bestem Wissen und Gewissen, sicherzustellen, dass der Zweck von Absatz (1) nicht durch Dritte in der weiteren Handelskette, einschliesslich möglicher Wiederverkäufer, verletzt wird.

(3) Der [Importeur/Käufer] muss einen angemessenen Überwachungsmechanismus einrichten und aufrechterhalten, um Verhaltensweisen Dritter in der weiteren Handelskette, einschliesslich möglicher Wiederverkäufer, die den Zweck von Absatz (1) verletzen würden, zu erkennen.

(4) Jeder Verstoss gegen die Absätze (1), (2) oder (3) stellt einen wesentlichen Verstoss gegen ein wesentliches Element dieses Vertrags dar, und der [Exporteur/Verkäufer] ist berechtigt, angemessene Abhilfemassnahmen zu verlangen, namentlich: (i) Die Beendigung dieses Vertrags und (ii) eine Vertragsstrafe in Höhe von [XX]% des Gesamtwerts dieses Vertrags oder des Preises der ausgeführten Güter, je nachdem, welcher Wert höher ist.

(5) Der [Importeur/Käufer] informiert den [Exporteur/Verkäufer] unverzüglich über etwaige Probleme bei der Anwendung der Absätze (1), (2) oder (3), einschliesslich etwaiger relevanter Aktivitäten Dritter, die den Zweck von Absatz (1) verletzen könnten. Der [Importeur/Käufer] stellt dem [Exporteur/Verkäufer] auf Anfrage innerhalb von zwei Wochen Informationen über die Einhaltung der Verpflichtungen nach den Absätzen (1), (2) und (3) zur Verfügung.»

2.6 Freeze of assets and economic resources and mandatory reporting (Article 15 and 16)

2.6.1 Are *transferable securities held by the National Settlement Depository (NSD; SSID: 17555580) subject to the freeze of assets and economic resources under Article 15(1) of the Ordinance?*

No. Certainly, the financial assets that are owned, held or controlled by the NSD must be blocked. However, financial assets – including transferable securities – that are simply kept by the NSD are not subject to the freeze of assets and economic resources under Article 15 (1).

It should also be noted that the NSD is subject to the prohibition of Article 15 (2) on making funds available. Therefore, all activities that directly or indirectly involve the payment of fees to the NSD or the provision of other funds or economic resources to or for the NSD are prohibited.

2.6.2 Does the sale of Russian securities held by the NSD fall within the scope of the prohibition on making available set out in Article 15 (2) of the Ordinance?

All activities which directly or indirectly involve the payment of fees to the NSD or the provision of other funds or economic resources to or for the benefit of the NSD fall within the scope of the prohibition on provision set out in Article 15 (2) of the Ordinance and are prohibited. The sale of Russian securities held by the NSD, in which fees are paid directly or indirectly to the NSD, is therefore prohibited.

2.6.3 When can SECO grant derogations under Article 15 (5ter) (c) of the Ordinance?

SECO may, in connection with the compulsory transfer by the Russian State of ownership or control of a legal person, institution or entity established in the Russian Federation, which was previously held by a legal person, institution or entity established in Switzerland, an EEA member state or the United Kingdom, authorize the release of certain frozen assets or economic resources or the making available of certain assets or economic resources to a person or entity referred to in Article 15 (1) of the Ordinance. This possibility is applicable only to entities listed in Annex I to Regulation (EU) No. 269/2014, in accordance with Article 3 (1) (j) of said Regulation.

2.6.4 Under Article 15 (8quater) of the Ordinance, SECO may grant an exemption for the provision of assets to the NSD in connection with the sale of Russian securities, if the conditions set out in Article 15 (8quater) (a) to (e) of the Ordinance are met. Can a bank in Switzerland disclose the identity of end-investors to a Russian custodian in order to obtain credit for dividends from Russian shares or certificates of deposit to an omnibus or individual account in Russia? Can a bank in Switzerland assist its clients in opening such an omnibus or individual account in Russia?

The disclosure of client data is not covered by the Ordinance, subject to compliance with other requirements (in particular banking secrecy). A Swiss bank may assist its clients in opening accounts with Russian banks, provided that the Russian bank in question is not subject to Article 15 (freeze of assets and economic resources) or Article 24a of the Ordinance (prohibition linked to transactions with state-owned enterprises).

2.6.5 Can a bank in Switzerland receive payments from these omnibus or individual accounts?

Yes, incoming dividend payments from issuers subject to Article 15 (freeze of assets and economic resources) or Article 24a of the Ordinance (prohibition related to transactions with state-owned companies) should be blocked or rejected only if the payment is made directly by the sanctioned issuer (see answer above). Payments from omnibus or individual accounts with non-sanctioned banks in Russia may be accepted.

2.6.6 Does the mandatory declaration referred to in Article 16 (1bis) apply to all existing entries in Annex 8?

In accordance with Article 16 (1bis) of the Ordinance, persons and institutions holding or managing assets or having knowledge of economic resources belonging to or controlled by natural persons, enterprises and entities listed in Annex 8 must report to SECO without delay all transactions carried out in the two weeks preceding the entry of these persons, enterprises and entities in Annex 8. This mandatory reporting applies both to existing entries in Annex 8 of the Ordinance and to all future entries in Annex 8.

The reporting obligation covers information relating to any movement, transfer, modification, use, access or manipulation of assets of natural persons, enterprises or entities listed in Annex 8 of the Ordinance during the two weeks preceding their listing. It is assumed that this information is already available, usually in existing files and documents. There is no obligation to carry out additional investigations, with the exception of checking existing files and documents.

The relevant declarations to SECO are made exclusively using the transaction table provided for this purpose, which can be obtained on request from SECO by e-mail (sanctions@seco.admin.ch) and electronically, preferably via the PrivaSphere Secure Messaging platform, certified by the Federal Department of Justice and Police, or by file transfer.

For entries in Annex 8 up to 1st December 2023, the deadline for compulsory declaration is 29 March 2024.

2.7 Prohibition on accepting deposits and cryptoassets and mandatory declaration (Articles 20 and 21)

What persons or entities are affected by Articles 20 and 21?

2.7.1 Do these articles apply to all banks within the meaning of the Banking Act?

Switzerland has joined the EU sanctions against Russia. Council Regulation (EU) 2022/328 of 25 February 2022 provides that all credit institutions are subject to the corresponding measure. Accordingly, the provisions of Articles 20 and 21 of the Ordinance also apply to persons and institutions that accept deposits or grant credits on a professional basis, such as banks under the Banking Act.

2.7.2 Are insurance companies subject to Articles 20 and 21 of the Ordinance?

Insurance policies are not subject to Articles 20 and 21 of the Ordinance, with the exception of deposits placed with a bank as part of a life insurance policy and deposits in a Pillar 3a pension fund account. If the beneficial owner of these deposits is covered by Article 20 (1) of the Ordinance, the deposits in question are subject to the provisions of Articles 20 and 21 of the Ordinance.

How should reports under Article 21 be made?

2.7.3 Does the exception provided for in Article 20 (3) of the Ordinance for Swiss nationals, nationals of an EEA member state and natural persons holding a temporary or permanent residence permit issued by Switzerland or an EEA member state also apply to the reporting duty under Article 21?

Yes, the reporting duty under Article 21 of the Ordinance applies only to business relationships falling under Article 20 (1) and (2) of the Ordinance. If the exception in Article 20 (3) of the Ordinance applies to a business relationship then that relationship does not have to be reported.

2.7.4 What information must the persons and institutions subject to the reporting duty provide to SECO to fulfil the reporting duty under Article 21 of the Ordinance? Is the information required the same as for the reports under Article 16 of the Ordinance?

The reporting under Article 21 of the Ordinance must be distinguished from the reporting concerning frozen assets under Article 16 of the Ordinance. Existing deposits in excess of CHF 100'000 must be reported to SECO in an aggregated form. This means the number of business relationships involved as well as the sum of the current balances involved.

2.7.5 In what format should the reporting be made? Is there a standard form?

The reporting is made exclusively electronically, via PrivaSphere Secure Messaging or by file transfer to sanctions@seco.admin.ch, using the standard form (Excel) available on the SECO website.

How is the CHF 100'000 limit calculated?

2.7.6 Does the acceptance of securities transactions (dividends, coupons, etc.) fall under Article 20 of the Ordinance?

No. Securities transactions (dividends, coupons, etc.) in connection with securities deposited within the framework of the corresponding business relationship may be accepted even if they exceed the limit of CHF 100'000 per person or institution.

2.7.7 Does the crediting of interest on existing deposits fall under Article 20 of the Ordinance?

No. Interest on existing deposits that were in the bank before the Ordinance came into force are not considered as new deposits within the meaning of Article 20 (1) of the Ordinance and can therefore be credited, even if they exceed the limit of CHF 100'000 per person or institution.

2.7.8 Do the securities and their safekeeping fall under Article 20 of the Ordinance? May the proceeds from the sale of securities registered in the corresponding client relationship be accepted, even if the limit of CHF 100'000 is thereby exceeded?

The deposit and safekeeping of securities do not fall under the definition of "deposits" within the meaning of Article 20 of the Ordinance. Proceeds from the sale of securities deposited in the context of the corresponding business relationship may be accepted, even if they exceed the limit of CHF 100'000 per person or institution.

2.7.9 Do reimbursements or payments from government agencies (taxes, contributions of compensation funds, etc.) or pension funds fall under Article 20 of the Ordinance? Can these payments be accepted even if the limit of CHF 100'000 is exceeded?

The receipt of reimbursements or payments from government agencies such as tax authorities or compensation funds or pension funds, does not fall under the definition of "deposits" within the meaning of Article 20 of the Ordinance. In such cases, these reimbursements or payments can be accepted even if the limit of CHF 100'000 per person or institution is exceeded.

Nor does the prohibition apply to the receipt of pension fund assets (vested benefits) which are booked to a vested benefits account.

2.7.10 May payments used to repay loans be accepted, even if they exceed the limit of CHF 100'000?

Yes. Payments that are immediately debited to repay outstanding loans do not fall within the definition of "deposits" under Article 20 of the Ordinance. Therefore, such payments may be accepted even if they exceed the limit of CHF 100'000 per person or institution.

2.7.11 Does the CHF 100'000 limit only apply to new deposits? Or does it apply to the total of all deposits?

The limit of CHF 100'000 per person or institution refers to the total deposits per client with the bank or institution in question. If a client has, for example, CHF 80'000 in existing deposits, a maximum of CHF

20'000 in deposits can still be accepted. If a client has, for example, CHF 110'000 in existing deposits, no further deposits can be accepted.

2.7.12 How does the CHF 100'000 limit apply to natural persons who are the beneficial owners of one or more legal persons with which a bank has a business relationship and who may have a private account?

The limit of CHF 100'000 applies per legal person. If a beneficial owner of a legal person has a personal account in his or her own name with the same bank, the limit is also calculated separately. If the person has two or more accounts in his or her own name, the sum of the deposits in the accounts in his or her name is calculated. The same applies to different accounts belonging to one legal person. The total amount must not exceed the limit of CHF 100'000.

2.7.13 Shall negative account balances be declared?

No.

Which natural persons are affected by Article 20 of the Ordinance?

2.7.14 Are Swiss and Russian dual nationals affected by the exception provided for in Article 20 (3) of the Ordinance? What about dual Russian and EEA nationals? What about dual nationals from Russia and third countries?

Are persons holding a residence permit in Switzerland or in the EEA affected by the exception provided for in Article 20 (3) of the Ordinance?

In accordance with Article 20 (3) of the Ordinance, the prohibitions provided for in Article 20 (1) and (2) do not apply to Swiss nationals, nationals of a member state of the EEA and natural persons holding a temporary or permanent residence permit issued by Switzerland or a member state of the EEA.

Therefore, Swiss and Russian dual nationals, as well as persons with both Russian citizenship and citizenship of an EEA member state, are not subject to the prohibitions set forth in Article 20 of the Ordinance. On the other hand, persons holding both Russian citizenship and citizenship of another non-EEA state are subject to the prohibitions provided for in Article 20.

2.7.15 Are persons of Monegasque, Andorran or British nationality or holders of a residence permit in Monaco, Andorra, in the United Kingdom, in Gibraltar, in the Isle of Man or in the Channel Islands concerned by the exception provided for in Article 20 (3) of the Ordinance?

Monegasque, Andorran and British nationals and natural persons holding a temporary or permanent residence permit issued by Monaco, Andorra, the United Kingdom, Gibraltar, the Isle of Man or the Channel Islands are not subject to the prohibitions provided for in Article 20.

2.7.16 Does the exception provided for in Article 20 (3) cease to apply to Russian nationals awaiting renewal or extension of their residence permit?

If a Russian national can provide proof that he or she has taken the necessary steps in good time to renew or extend his or her residence permit with the relevant migration authorities in Switzerland, a member state of the EEA, the United Kingdom, Monaco, Andorra, Gibraltar, the Isle of Man or the Channel Islands, and can provide proof that the procedures are ongoing with the relevant authorities, he or she may continue to invoke the exception provided for in Article 20 (3).

2.7.17 It is the responsibility of the bank to check regularly whether its customers meet the applicable requirements and to ensure compliance with the Ordinance. *Are accounts held jointly with a Russian person affected by article 20 of the Ordinance?*

If a Russian person holds an account jointly with a person from a third country, the account falls under the scope of Article 20 of the Ordinance. However, if the account is jointly held with a person who falls within the scope of the exemptions provided for in Article 20 (3) (see question above), it does not fall under the measure.

2.7.18 Do consular and diplomatic representations of Russia in Switzerland fall under Article 20 of the Ordinance?

No. Consular and diplomatic representations of the Russian Federation in Switzerland are not subject to this prohibition, as they are not "entities established in the Russian Federation" or "entities established outside Switzerland" as defined in Article 20 (1) of the Ordinance. Accordingly, deposits may be accepted notwithstanding the prohibition under Article 20 (1).

Which legal persons are covered by Article 20 of the Ordinance?

2.7.19 Do trusts in which a Russian person acts as a settlor or beneficiary fall under Article 20 of the Ordinance?

No. Trusts in which a Russian person acts as a settlor or beneficiary are not covered by Article 20 of the Ordinance.

2.7.20 Does a company established outside Switzerland or the EEA in which a Russian person or a person residing in the Russian Federation is a majority shareholder fall under Article 20 of the Ordinance?

Yes, according to Article 20 (1) (d) of the Ordinance, the accounts of companies established outside Switzerland and the EEA, in which a Russian national or a natural person residing in Russia owns directly or indirectly more than 50% of the ownership rights, fall within the scope of Article 20 of the Ordinance.

On the other hand, the prohibitions provided for in Article 20 (1) of the Ordinance do not apply to banks, enterprises or entities established outside Switzerland and the EEA and in which more than 50% of the ownership rights are held directly or indirectly by Russian nationals or natural persons residing in the Russian Federation, who have Swiss or EEA citizenship or a Swiss or EEA residence permit.

2.7.21 Do funds domiciled outside Switzerland or the EEA that are similar to an entity and in which a Russian national or a natural person residing in the Russian Federation holds more than 50% of the ownership rights (or an equivalent stake as an investor) fall under Article 20 of the Ordinance?

Yes, they are covered by Article 20 (1) (d) of the Ordinance. In addition, according to Article 23 of the Ordinance, it is prohibited to transfer units of collective investment schemes with an exposure to transferable securities denominated in Swiss francs or in Euro to Russian nationals or natural persons residing in the Russian Federation or to banks, enterprises or entities established in the Russian Federation.

Other questions

2.7.22 May Russian persons withdraw deposits?

Article 20 of the Ordinance prohibits the acceptance of new deposits if the total value of the deposits exceeds CHF 100'000. Existing deposits – regardless of the current amount of these deposits – can be used freely and also withdrawn.

2.7.23 Is it possible to make transfers within a bank, even if the credit account exceeds the limit of CHF 100'000?

Internal transfers within a bank between different accounts of the same Russian person can be made.

2.7.24 Do accounts that do not belong to a Russian person but for which a Russian person has the right of disposal [PoA] fall under Article 20 of the Ordinance?

No. As long as the Russian person does not own the account, but merely manages it, Article 20 of the Ordinance does not apply.

2.7.25 Do deposits that are necessary for the non-prohibited cross-border exchange of goods and services between Switzerland and the Russian Federation, between Switzerland and the EEA or between the EEA and the Russian Federation fall under the prohibitions of Article 20 (1) and (2)?

Yes, as of 31 August 2022, these deposits are no longer exempt from the prohibition. However, according to Article 20 (4) (f) of the Ordinance, these deposits may be subject to an exemption granted by SECO, in consultation with the competent services of the FDFA and the FDF.

2.7.26 How must providers that supply cryptoasset wallet or cryptoasset account services to Russian nationals or natural persons resident in Russia or legal persons or entities established in Russia proceed?

Article 20(2) of the Ordinance prohibits the provision of cryptoasset wallet, cryptoasset account and cryptoasset custody services. The provision of such services is therefore prohibited, and the relevant wallets and accounts must be deleted. Blocking cryptoactives is not enough. The remaining balance must either be returned to Russian customers, or converted into fiat currency or assets that are not subject to sanctions. The deposit restrictions set out in Article 20(1) of the Ordinance must be complied with.

2.8 Central depositories prohibited from providing certain services (Article 22)

2.8.1 Do new securities issued as part of a stock split or reverse stock split on the basis of existing securities fall within the prohibition of Article 22 (1)?

No. The prohibition in Article 22 (1), does not apply to new securities issued as part of a stock split or reverse stock split on the basis of existing securities. This interpretation of Article 22 (1), applies by analogy to Article 23 (1).

2.9 Prohibition on the sale of securities (Article 23)

2.9.1 Do existing exchange-traded transferable securities of a company (issued before 12 April) fall under the prohibitions pursuant to Article 23 if the enterprise has also issued new transferable securities after 12 April? Or do only securities that were newly issued after 12 April (e.g., a new tranche of a bond with its own ISIN) fall under the prohibitions?

Existing ("old") transferable securities are also covered by Article 23 because they cannot usually be distinguished from those issued after 12 April. However, the case is different when new ISINs are created, because then a distinction can be made. Moreover, transferable securities that are already in the custody account do not have to be sold. In principle, no sales of new transferable securities i.e., those issued after 12 April, may be made.

This interpretation of Article 23 applies by analogy to sectoral sanctions, such as Article 18 of the Ordinance.

2.9.2 Are derivatives on such securities (e.g. total return swap), which give a client a synthetic exposure to a security without physical delivery of the security, also covered by the prohibition?

The Ordinance explicitly refers to units of collective investment schemes, which means that such a transaction with an affected person would be considered a circumvention transaction and would therefore also be covered by the prohibition.

2.9.3 Do existing units of collective investment schemes in a custody account now fall under the prohibition of Article 23 if newly issued transferable securities are added in the collective investment schemes at the level of underlying?

As long as no sale takes place, these fund shares may continue to be held. The "continued holding" of existing units of collective investment schemes does not fall under the prohibition of Article 23.

2.9.4 Are persons with Monegasque, Andorran or British nationality or a residence permit in Monaco, Andorra, the United Kingdom Gibraltar, the Isle of Man or the Channel Islands covered by the exemption under Article 23 (2) of the Ordinance?

Nationals of Monaco, Andorra and the United Kingdom and natural persons holding a temporary or permanent residence permit of Monaco, Andorra or the United Kingdom are not covered by the prohibition under Article 23 [exempted].

2.9.5 Is it still possible after 12 April 2022 to respond to calls for funds for private equity investments for which the capital commitment was made before 12 April 2022?

Yes, the investment was made at the time of the commitment and cannot be revoked. Subsequent calls for funds are therefore not a new investment.

2.10 Prohibition on transactions with the Central Bank of the Russian Federation (Article 24)

2.10.1 How are the declarations relating to reserves and assets required under Article 24 (3) to be made?

Declarations are made using the form provided, which can be obtained from SECO (sanctions@seco.admin.ch).

2.11 Prohibitions on energy and mining companies in the Russian Federation (Article 28b)

2.11.1 Can ADRs (American Depository Receipts) of Russian companies be exchanged for corresponding shares?

Yes, the exchange of ADRs for shares concerns already existing participations or equity. In that sense, the exchange does not fall under the prohibitions of Article 28b of the Ordinance.

The exchange of ADRs for shares does not directly or indirectly make economic resources available to the Russian enterprises in question. The exchange of ADRs within an enterprise sanctioned under Article 15 of the Ordinance should therefore also not be considered as a prohibited provision within the meaning of Article 15 (2) of the Ordinance.

2.11.2 Is the acquisition of existing shares subject to the prohibitions of Article 28b of the Ordinance?

Yes, Article 28b prohibits the acquisition or the extension of equity interests in legal persons, enterprises or entities established or incorporated under the law of a state outside Switzerland and the EEA and operating in the energy and mining sectors in the Russian Federation. Consequently, it is no longer permitted to purchase shares in the companies concerned, regardless of when they were issued.

2.11.3 Is the acquisition of existing bonds subject to the prohibitions set out in Article 28b of the Ordinance?

No. Article 28b prohibits the granting of new loans or credits , as well as the participation in these operations, or the provision in any other way of financing, including equity participation, to legal persons, companies or entities established or incorporated under the law of a State outside Switzerland or the EEA and operating in the energy sector or the mining sector in the Russian Federation or to finance such legal persons, enterprises or entities. Thus, the ban concerns holdings in new financing that involves a cash inflow (foreign or equity financing).

2.11.4 Is it permitted to invest in a fund that includes transferable securities of enterprises active in the Russian energy or mining sector?

Yes, the purpose of Article 28b is to avoid new investments in projects in the Russian energy or mining sector. Portfolio investments (participation up to 10%) within the framework of a fund do not fall under this prohibition.

2.12 Prohibitions on trusts (Article 28d)

Which legal forms are affected by Article 28d?

2.12.1 How should the term "similar legal institution" in Article 28d (1) of the Ordinance be interpreted?

Legal institutions are considered similar if they have a structure or function similar to a trust. This includes, for example, the creation of a fiduciary relationship between the trustee and the beneficiaries or the separation or decoupling of legal and beneficial ownership of assets.

2.12.2 Do foundations fall under the concept of "similar legal institution"?

Foundations within the meaning of Article 80 ff. Swiss Civil Code (CC) – or equivalent foreign provisions – are considered as "similar legal institution" within the meaning of Article 28d of the Ordinance. Foundations with their seat in Switzerland or in an EEA member state, which pursue charitable

objectives and are subject to supervision, as well as religious foundations with their seat in Switzerland or in an EEA member state are excluded.

2.12.3 Does Article 28d of the Ordinance also apply to existing trust structures or only to new trust structures?

Article 28d applies to all structures referred to as trusts or similar legal institution. It does not matter whether they were established before or after the entry into force of Article 28d of the Ordinance.

2.12.4 What applies in the case of specific forms of trusts, e.g., with discretionary trusts?

The provisions are the same, i.e., if the settlor or beneficiary of the trust is subject to the prohibition, the prohibition applies regardless of the form of the trust.

In the case of a discretionary trust, where the beneficiary covered by the order is replaced by a person not included therein, the previously prohibited trust would be permitted again unless the settlor is also covered by the prohibition.

2.12.5 Article 28d (2)[16] of the Ordinance refers to "trustee, nominal shareholder, director, secretary or in a similar capacity". What is covered by these different descriptions?

Article 28d (2) lists positions that can be assimilated to trustee. If a person acts as a trustee, i.e., takes instructions from a settlor to manage affairs for a beneficiary, he or she is assimilated to a trustee, regardless of his or her position.

2.12.6 Which services are affected by the prohibition? Does the provision of bank accounts, securities and payment transactions or similar services to a trust fall under this definition?

Prohibited are administrative services for a trust or similar legal institution. For example, accounting services fall under this prohibition due to the direct provision of administrative services to the trust.

Not prohibited, however, are standard banking and payment services, such as the provision of a bank account, the execution of payments or currency exchange. These are not "administrative services" within the meaning of Article 28d (1) of the Ordinance.

What is understood by control?

2.12.7 Article 28d (1)(d) of the Ordinance uses the term "control". What is meant by control?

As in the case of Articles 15 and 20 of the Ordinance, the concept of control must be assessed on a case-by-case basis. The decisive factor is whether a legal person, company or entity is under the effective control of a person, enterprise or entity listed in Article 28d (1) letters (a) to (c) (see the question "How is the notion of control exercised over a company or entity to be interpreted?" in Chapter 1 of this document).

What is the territorial scope of application?

[16] Article 28d (2) (out of force until 31 July 2022): "It is prohibited to act as a trustee, nominee shareholder, director, secretary or in a similar capacity for a trust or similar legal institution referred to in paragraph (1), or to cause another person to act as trustee, nominee shareholder, director, secretary or in a similar capacity."

2.12.8 What is the required link with Switzerland for Article 28d of the Ordinance to apply? Are criteria such as the law governing the trust, the domicile or residence of the trustee, protector, beneficiary and the location of the assets relevant?

All natural and legal persons domiciled in Switzerland are obliged to comply with the Ordinance, regardless of where the trust and the parties involved have their registered office. Further criteria are therefore irrelevant.

2.12.9 Does "provision of a registered office" in Article 28d (1) mean, among other things, the constellation in which the actual management (abroad) and the statutory registered office (in Switzerland) of the trustee diverge? What is understood under "provision of a registered office"?

Yes. The "provision of a registered office" means providing the trust with an address in Switzerland. The "provision of a business or administrative address" means providing an address in Switzerland that leads directly to or can be associated with the trust.

2.12.10 Does Article 28d of the Ordinance apply to enterprises domiciled in Switzerland which are in the assets of a trust with a Russian settlor or beneficiary? Can a Swiss corporation carry out the accounting for a foreign company which is indirectly (i.e. via further holding companies in the trust structure) wholly owned by a trust pursuant to Article 28d (1) of the Ordinance?

Article 28d of the Ordinance applies to trusts or similar legal institution. On the other hand, legal persons held in the assets of a trust or similar legal institution pursuant to Article 28d of the Ordinance are not covered by Article 28d. However, enterprises that are in the assets of a trust or similar legal institution may not provide administrative services to the trust.

2.12.11 Is the structure Russia-related if it was established in the past by Russian persons pursuant to Article 28d (1), but they no longer have any influence (possibly already deceased) and no Russian persons are beneficiaries?

No. Russia-relatedness is only given if a Russian person currently serves as the settlor or beneficiary of the trust or similar legal institution.

2.12.12 If there are multiple beneficiaries of the trust and one of them is subject to Article 28d of the Ordinance, is the trust subject to the Ordinance?

Yes, it is sufficient that only one person is affected by Article 28d (1) of the Ordinance for the provisions of Article 28d to apply.

Example: If a trust has five non-Russian citizens and one Russian citizen as beneficiary, it falls under the provisions of Article 28d of the Ordinance.

How does the exemption of Article 28d (3) apply?

2.12.13 Do all "beneficiaries" or "settlors" have to meet the requirements of Article 28d (3) in order for this exemption to apply, or is it sufficient if an individual or the majority of beneficiaries meet these requirements?

By analogy with Article 28d (1), the trust or similar legal institution falls within the exemption of Article 28d (3), if only one of the beneficiaries falls under the exemption.

Example: If a trust has five beneficiaries, four of whom have Russian citizenship only and one of whom has dual Russian-EEA citizenship, then the exemption applies.

2.12.14 Does Article 28d (3) of the Ordinance apply if the settlor with Russian nationality holds a temporary or permanent residence permit of an EEA member state or Switzerland, but his actual residence is outside the EEA?

Yes. The nationality or residence title is relevant, not the location of the settlor. In this case, the trust or similar legal institution would fall under the exception because the settlor has a temporary or permanent residence permit of Switzerland or an EEA member state.

2.12.15 Do persons with Monegasque, Andorran or British nationality or a residence permit in Monaco, Andorra or the United Kingdom fall under the exemption pursuant to Article 28d (3) of the Ordinance?

Nationals of Monaco, Andorra or the United Kingdom and natural persons holding a temporary or permanent residence permit in Monaco, Andorra or the United Kingdom, Gibraltar, the Isle of Man or the Channel Islands are not subject to the prohibition under Article 28d.

Is there a transition period and how is it regulated?

All Swiss natural and legal persons who offered the provision of a registered office, business or administrative address or administrative services to a relevant trust had a transitional period until 31 July 2022 to comply with the requirements of the Ordinance, pursuant to Article 35 (18).

2.12.16 What is envisaged in the event that a contract concerning the provision of a service prohibited under Article 28d of the Ordinance cannot be terminated within the transitional period?

The prohibition against acting or causing any other person to act as a trustee, nominal shareholder, director, secretary, or in any similar capacity for a trust or similar legal institution is reinstated on 1 August 2022 (the provisions corresponding to paragraph (2) of the Article 28d were previously repealed). Pursuant to Article 28d (5) (a) (effective as of 1 August 2022), SECO may grant exemptions to the prohibition under Article 28d (2) to allow the continuation of such services necessary to complete transactions to terminate contracts inconsistent with Article 28d of the Ordinance and entered into before 28 April 2022, provided that such transactions were initiated before 30 May 2022, and are completed by 1 October 2022.

2.13 Prohibition on provision of certain services (Article 28e)

2.13.1 Does the exception provided for in Article 28e (2) (a), also apply to legal persons, enterprises or entities established in Russia which are indirectly owned or controlled exclusively or jointly by legal persons, enterprises or entities organized under the law of Switzerland, the law of an EEA member state or the law of a partner state?

The exception provided for in Article 28e (2) (a), applies when the services are intended for the exclusive use of legal persons, enterprises or entities established in Russia that are ultimately owned or controlled by legal persons, enterprises or entities of the EEA, Switzerland or the partner states referred to in Article 1 (f).

Therefore, this exception applies if, for example, a Russian entity using the services in question belongs to an entity that is not established in Russia, an EEA member state, Switzerland or another partner state

referred to in Article 1 (f), but which is ultimately owned or controlled by a legal person, enterprise or entity of an EEA member state, Switzerland or a partner state referred to in Article 1 (f).

This exception does not apply, however, if, for example, a Russian entity using the services in question belongs to an enterprise of the EEA, Switzerland or a partner referred to in Article 1 (f), which is ultimately owned or controlled by a Russian enterprise or by an enterprise governed by another jurisdiction (outside the EEA, Switzerland or Switzerland's partners within the meaning of Article 1 (f)).

2.13.2 After consulting the relevant departments of the FDFA and the FDF, may SECO authorize derogations from the prohibitions laid down in Article 28e (1quinquies) pursuant to Article 28e (3)?

Yes, SECO may authorize derogations from the prohibitions set out in Article 28e (1quinquies), if the services or software concerned are necessary for the purposes set out in Article 28e (3).

2.13.3 Does the exemption provided for in Article 28e (2) (a) also apply to the provision of services of any kind referred to in Article 28e (1quinquies)?

Yes, the exemption also applies to the provision of services in connection with services or software referred to in (1) to (1quater) or with the sale, exportation, transit, transportation or making available of such services or software to or for use in the Russian Federation, provided that the requirements set out in Article 28e (2) (a) or (b) are met.

2.13.4 In what format must the declaration pursuant to Article 28e (6) in conjunction with Article 28e (7)? Is there a form for this purpose?

The declaration is made exclusively electronically, via PrivaSphere Secure Messaging or by file transfer to sanctions@seco.admin.ch, using the standard form (Excel) available on the SECO website.