

Locke Lord QuickStudy: OFAC Issues FAQs for IT and Software Services and Extends Authorization to Engage in Administrative Transactions in Russia

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On September 24, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued three frequently asked questions ("FAQs") that provide guidance to U.S. companies regarding the Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 ("Prohibitions on Certain Information Technology and Software Services") (the "IT and Software Services Determination"). These FAQs clarify the conditions under which U.S. entities can continue to engage with their subsidiaries or employees in Russia amidst ongoing sanctions and restrictions.

On September 30, 2024, OFAC issued General License ("GL") 13K ("Authorizing Certain Administrative Transactions Prohibited by Directive 4 under Executive Order 14024") related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587, that extends to January 8, 2025, U.S. persons' permissions to continue to conduct administrative transaction in Russia.

As the geopolitical landscape continues to evolve and Russian sanctions continue to increase, keeping current on these updates is critical for compliance and risk management, especially for companies operating in the technology and services sectors.

GL

GL 13K, which replaces GL 13J, extends U.S. persons' permissions to engage in defined administrative transactions in Russia. These permissions include payment of taxes, fees, or import duties, and the acquisition or renewal of permits, license, registrations, certifications, or tax refunds, as long as such transactions are not otherwise prohibited by Directive 4. These activities are authorized through January 8, 2025 provided they are routine and necessary for the ongoing daily operations of U.S. persons in the Russian Federation.

Directive 4 under Executive Order 14024, restricts transactions involving Russia's Central Bank, national Wealth Fund, and Ministry of Finance, including any asset transfers of foreign exchange transactions involving these entities. The previous GL 13J, which was set to expire on October 9, 2024, has now been extended through January 8, 2025, with GL 13K. For more details please refer to our prior QuickStudy discussing this GL. As noted previously, GL13 does not permit the payment of so called Russian exit taxes.

FAQs

FAQ 1193 addresses the scenario where a U.S. company has a subsidiary organized and located in Russia. It confirms that the U.S. parent company can provide services that are otherwise prohibited by the IT and Software Services Determination to employees or contractors of its Russian subsidiary, as long as those services are within the scope of the employees' or contractors' employment. This guidance allows U.S. companies to maintain operational support for their Russian subsidiaries without violating U.S. sanctions, provided that the services directly benefit the U.S. entity's business activities in Russia.

FAQ 1194 clarifies that a U.S. company with a subsidiary located in a third country cannot provide services prohibited by the IT and Software Services Determination to employees or contractors located in Russia who work for that third-country entity. This restriction emphasizes that the exclusion specified in the IT and Software Services Determination applies exclusively to U.S.-owned or controlled entities located in Russia and their employees acting within the scope of their employment. Consequently, U.S. companies must tread carefully when engaging with foreign subsidiaries that have operations or employees in Russia.

FAQ 1195 further reinforces the limitations placed on U.S. companies by stating that a U.S.-based company cannot provide prohibited services to employees or contractors located in Russia who are directly employed by the U.S. company. This FAQ clarifies that the scope of the exclusion is limited to U.S. entities operating within Russia, thereby preventing U.S. companies from extending prohibited services to their own personnel in Russia. U.S. companies must seek specific licenses on a case-by-case basis for any activities that may fall outside these defined parameters.

Impact and Compliance Strategies

The implications of these FAQs are significant for U.S. companies operating in the technology and services sectors, which may have substantial investments in Russian operations or personnel. Industries such as software development, IT services, and telecommunications are particularly at risk of non-compliance, given the prohibitive nature of the IT and Software Services Determination. To mitigate risks, companies should establish robust compliance programs that include comprehensive training on OFAC regulations, regular audits of foreign operations, and a clear process for applying for specific licenses when necessary. Compliance is particularly critical given the executive orders issued in response to geopolitical tensions, including Executive Order 13660 and subsequent orders that impose sanctions on various sectors of the Russian economy. Companies must remain vigilant in monitoring regulatory changes and ensuring adherence to all applicable laws to avoid potential penalties and reputational damage.

Conclusion

This paper is intended as a guide only and is not a substitute for specific legal or tax advice. Please reach out to the authors for any specific questions. We expect to continue to monitor the topics addressed in this paper and provide future client updates when useful.

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