

Locke Lord QuickStudy: OFAC Issues Global Magnitsky ?Sanctions Relief for Ly Young Phat Group and FAQs ?

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On September 12, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued General License ("GL") 8 alongside amendments to various Frequently Asked Questions ("FAQs") in connection with the Global Magnitsky Sanctions Regulations, 31 CFR part 583, and the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587.

GL 8

GL 8 authorizes U.S. persons to conduct transactions with entities owned 50% or more by Ly Yong Phat or L.Y.P. Group Co., provided these entities are not listed on the Specially Designated Nationals and Blocked Persons ("SDN") List. The license does not authorize transactions with any entities that are specifically listed on the SDN List, including O-Smach Resort, Garden City Hotel, Koh Kong Resort, and Phnom Penh Hotel, which were concurrently designated with the issuance of GL 8.

FAQ 1191

In conjunction with GL 8, OFAC issued FAQ 1191, which details the requirements for U.S. persons to engage in transactions with any entity owned 50% or more by Ly Yong Phat or the L.Y.P. Group that is not listed on SDN List, despite OFAC's designation of Ly Yong Phat and L.Y.P. Group as SDNs. Furthermore, OFAC confirms that non-U.S. persons can engage in the transactions authorized by GL 8 without exposure to U.S. sanctions. OFAC stated additional associates of Ly Yong Phat and L.Y.P. Group will be monitored and may be designated. Therefore, U.S. persons should monitor the SDN List for additional blocks.

FAQ 1033

On September 12, 2024, OFAC updated FAQ 1033 to include guidance on the Determination Pursuant to Section 1(a)(ii) of Executive Order 14071 (the "IT and Software Services Determination"). The IT and Software Services Determination expands the Section 1(a)(ii) restriction to include "[t]he exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of IT consultancy and design services or of IT support services or cloud-based services for Covered Software to any person located in the Russian Federation." "Covered Software" includes enterprise management software and design and manufacturing software. The IT and Software Services Determination specifically excludes from the prohibitions

of Section 1(a)(ii) of Executive Order 14071:

1. any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person;
2. any service in connection with the wind down or divestiture of an entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person;
3. any service for software that is: (i) subject to the Export Administration Regulations, 15 CFR part 730 et seq., (EAR) and for which the exportation, reexportation, or transfer (in-country) to the Russian Federation of such software is licensed or otherwise authorized by the Department of Commerce; or (ii) not subject to the EAR and for which the exportation, reexportation, or transfer (in-country) to the Russian Federation of such software would be eligible for a license exception or otherwise authorized by the Department of Commerce if it were subject to the EAR.

FAQ 1192

FAQ 1192 clarifies that the IT and Software Services Determination² includes an exemption for services related to software covered under the Export Administration Regulations (“EAR”):

- Where the export to Russia of such software is authorized or licensed by the U.S. Department of Commerce; or
- Where such software is not subject to the EAR and where the export of such software would be eligible for a license exception or otherwise authorized by the U.S. Department of Commerce if it were subject to the EAR.

This means that U.S. persons can provide IT support and cloud-based services for software that is authorized or licensed by the Department of Commerce, including Software-as-a-Service. The exclusion allows IT support and cloud-based services for the Covered Software that is excluded from license requirements in 15 CFR 746.8(a)(12), including for exports, reexports, or transfers (in-country) to certain civil end users that are wholly owned subsidiaries, branches, sales offices, or joint ventures of companies headquartered in the U.S. or countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR (see 15 CFR 746.8(a)(12)(ii)).

Implications for Businesses

Companies operating in the IT and software sectors must understand the limitations imposed by the IT and Software Services Determination and evaluate how their services may fit within the authorized categories.

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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