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# Locke Lord QuickStudy: ?OFAC Limits Exports of Technology to Russia ???and Expands Secondary Sanctions on FFIs That Support ?Russian War ?Efforts ?

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On June 12, 2024, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued a new Determination Pursuant to Section 1 (a)(ii) of Executive Order 14071 (the "Determination")? that prohibits U.S. persons from providing certain information technology and software services to Russia. As a refresher, a President under executive powers can issue an executive order ("EO") to address geo-political issues that affect national security. The EO empowers a Federal regulator, in this case OFAC, to draft specific determinations to implement the President's directive.

OFAC also expanded secondary sanctions on foreign financial institutions ("FFIs") that conduct or facilitate significant transactions or provide any service involving Russia's military-industrial base.

On the same date, OFAC published three new General Licenses ("GL") (GLs 98, 99 and 100), amended three existing GLs (GLs 6D, 8J, and 25D), issued FAQs 1181-1188 and amended FAQs 976, 1040, 1068, 1122, 1128, 1146, 1147, 1148, 1151, and 1152, all of which are described below.

**Determination**

The Determination prohibits the exportation, reexportation, sale, or supply, directly or indirectly from the United States, or by a U.S. person, wherever located of (1) information technology ("IT") consultancy and designated services, and (2) IT support services and cloud-based services for enterprise management and design and manufacturing software, in each case to any person located in the Russian Federation. In connection with the Determination, OFAC published a Compliance Advisory to provide additional guidance for FFIs. FFIs that conduct or facilitate significant transactions or provide any service involving Russia's military-industrial base run the risk of being sanctioned by OFAC. OFAC is revising the definition of "Russia's military-industrial base" to include all persons blocked under EO 14024, as amended. Accordingly, FFIs that conduct or facilitate any significant transaction or provide any service involving any person blocked pursuant to EO 14024 now risk being subject to secondary sanctions unless they can demonstrate that they are solely facilitating permissible transactions such as those related to food, agriculture, medicine, energy, and telecommunications. OFAC provides in the Compliance Advisory examples of activities that could expose FFIs to sanctions risk under EO 14024, as well as guidance on risk identifying and mitigation.

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The Determination does not prohibit any of the following services:

1. any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a U.S. 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 subject to the Export Administration Regulations ("EAR") and for which the exportation, reexportation, or transfer (in-country) to Russia is licensed or otherwise authorized by the U.S. Department of Commerce; or
4. any service for software that is not subject to the EAR and for which the exportation, reexportation, or transfer (in-country) to the Russia 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.

These prohibitions take effect beginning on September 12, 2024.

**New GLs**

GL 98 expired on July 27, 2024.

GL 99 authorizes through August 13, 2024, transactions that are ordinarily incident and necessary to the wind down of transactions involving the following sanctioned entities: (1) Moscow Exchange ("MOEX"); (2) National Clearing Center ("NCC"); (3) Non-Bank Credit Institution Joint Stock Company National Settlement Depository ("NSD"); and (4) any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest (collectively, "GL 99 Entities"). This GL also authorizes transactions that are ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity issued or guaranteed to GL 99 Entities ("Covered Debt or Equity"), the facilitation, clearing, settling, or trades, as well as the wind down of derivative accounts of Covered Debt or Equity placed prior to June 12, 2024.

GL 100 authorizes through August 13, 2024, transactions that are ordinarily incident and necessary to the wind down of transactions for the divestment of debt or equity to a non-U.S. person, who is not a person whose property or interests in property are blocked, or the conversion of currencies, involving MOEX, NCC, NSD, or any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50% or greater interest.

**Amended GLs**

GL 6D (replacing GL 6C) continues to permit until further notice transactions related to: (1) the production, manufacturing, sale, transport, or provision of agricultural commodities, agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices; (2) the prevention, diagnosis, or treatment of COVID-19; and (3) clinical trials and other medical research activities.

The primary difference between GL 6C and GL 6D is:

- in paragraph C(3), OFAC further added that "Transactions" prohibited by EO 14066, EO 14068, or EO 14071, do not include transactions prohibited solely by the determination of June 12, 2024, made pursuant to section

1(a)(ii) of EO 14071, “Prohibition on Certain Information Technology and Software Services.”

GL 8J (which replaces GL 8I), authorizes through November 1, 2024, U.S. persons’ authority to conduct transactions with the listed financial institutions for energy-related transactions (*e.g.*, the extraction, transport or purchase of petroleum).

For purposes of GL 8J, “related to energy” means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

The financial institutions include (1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank; (2) Public Joint Stock Company Bank Financial Corporation Otkritie; (3) Sovcombank Open Joint Stock Company; (4) Public Joint Stock Company Sberbank of Russia; (5) VTB Bank Public Joint Stock Company; (6) Joint Stock Company Alfa-Bank; (7) Public Joint Stock Company Rosbank; (8) Bank Zenit Public Joint Stock Company; (9) Bank Saint-Petersburg Public Joint Stock Company; (10) National Clearing Center (“NCC”); and (11) any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50% or greater interest; or (12) the Central Bank of the Russian Federation. GL 8J adds the NCC to the list of entities.

GL 25D (which replaces GL 25C) continues to authorize (i) certain transactions related to the receipt or transmission of telecommunications involving Russia, and (ii) the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, wherever located, to the Russian Federation of services incident to the exchange of communications over the Internet, such as instant messaging, chat and email, social networking, sharing of photos and movies, web browsing, blogging, social media platforms, collaboration platforms, video conferencing, e-gaming, e-learning platforms, automated translation, web maps, user authentication services, web hosting, and domain name registration services, which are in either case otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations.

The primary differences between GL 25C and GL 25D are:

- in paragraph (b), OFAC removes permission for software, hardware, or technology from its authorization for communications over the Internet and authorization for communications over the Internet involving “videoconferencing” and “documents.”
- Paragraph (c) adds limited authorization for the exportation or reexportation, sale, or supply, directly or indirectly, from the United States or by U.S. persons, to the Russian Federation of software, hardware, or technology incident to the exchange of communications over the Internet, provided that:

i. if the software, hardware, or technology is subject to the EAR 15 CFR parts 730 through 774, the exportation, reexportation, sale, or supply to the Russian Federation of such software, hardware, or technology is licensed or otherwise authorized by the U.S. Department of Commerce pursuant to the EAR; and

ii. if the software, hardware, or technology is not subject to the EAR, the exportation, reexportation, sale, or supply

to the Russian Federation of such software, hardware, or technology would be eligible for a license exception or otherwise authorized by the U.S. Department of Commerce if it were subject to the EAR.

**FAQs**

**FAQ 1181**: FFIs risk being sanctioned for conducting or facilitating any significant transaction or transactions or for providing any service involving any person blocked pursuant to EO 14024.

**FAQ 1182**: FFIs engaged in activities that are authorized by OFAC's existing GLs, such as providing agricultural commodities or medical devices do not risk the imposition of sanctions. Additionally, the importation or exportation of information or informational materials and transactions ordinarily incident to travel to or from any country are exempt under the International Emergency Economic Powers Act.

**FAQ 1184**: OFAC clarifies that the Determination does not prohibit Internet access or the delivery of Internet-based communications services.

**FAQ 1186**: The activities that are considered prohibited "IT support services" and "cloud-based services" for enterprise management software and design and manufacturing software (collectively, "Covered Software") under the Determination include the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of both IT support services and cloud-based services for the Covered Software to a person located in Russia.

**FAQ 1188**: OFAC explains that the Determination does not prohibit U.S. persons from providing services to persons located outside of the Russian Federation that are owned or controlled by persons located in the Russian Federation. In contrast, OFAC would not consider to be prohibited the provision of services to a third country company that is located outside of Russia, including such a company owned or controlled by persons located in the Russian Federation, provided that the services will not be further exported or reexported to persons located in the Russian Federation.

For additional information, visit Locke Lord's Economic ??Sanctions & Export Controls ??Resource Center.?

**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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