

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ???December 27, 2022? ?

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On December 15, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") (1) designated several individuals and entities to the Specially Designated Nationals and Blocked Persons ("SDN") List, including Public Joint Stock Company Rosbank ("Rosbank") and 17 subsidiaries of VT Bank Public Joint Stock Company, (2) issued three Russia-related General Licenses ("GL") 8E, GL 58 and GL 59, and (3) published two new FAQs (FAQ 1103 and FAQ 1104) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the "RuHSR"). Also on December 15, 2022, the U.S. Department of the Treasury published a press release entitled "Treasury Further Constrains Russia's Financial Services Sector" which provided Treasury's analysis for the additional financial services designations set forth above. Consistent with the U.S.' stated goals. Treasury concluded the press release with "The power and integrity of OFAC sanctions derive not only from OFAC's ability to designate and add persons to the SDN List, but also from its willingness to remove persons from the SDN List consistent with the law. The ultimate goal of sanctions is not to punish, but to bring about a positive change in behavior." By so stating, the U.S. opens the door to sanctioned persons to seek removal from the SDN list by cooperating with the U.S. and stopping the offending activities.

On December 16, 2022, Deputy Secretary of the Treasury, Wally Adeyemo, published "[How Washington Can Stop the Russian War Machine and Strengthen the International Economic Order](#)" in the magazine "*Foreign Affairs*" which outlined the critical role that economic sanctions play in degrading Russia's ability to "continue its illegal war on Ukraine." In the article, Deputy Secretary Adeyemo details the steps that the US and its allies in Europe and Asia have taken to financially hobble Russia; stating "Within three weeks of Russia's renewed invasion, more than 30 countries—including Australia, Singapore, South Korea, Taiwan, and the members of the European Union and the G-7—joined with the United States to counter Russia's aggression." Deputy Secretary Adeyemo added: "Over the course of the last ten months, Washington and its allies and partners have denied Russia's key financial institutions access to the infrastructure that powers the global financial system and cut Russia off from the imports and advanced technologies that are essential to modern economic production. . . . The United States and its allies should modernize the international institutions that form the backbone of this system, such as the multilateral development banks; finalize the international agreement on a global minimum tax that more than 135 countries reached at the Organization for Economic Cooperation and Development last fall; and update the international payments infrastructure to make it faster, cheaper, and more inclusive. These actions will help ensure the international economic system continues to drive global prosperity, that it lives up to the values embedded at its creation, and that it remains robust enough to matter when malign actors are denied access."

On December 21, 2022, OFAC issued FAQ 1109 related to RuHSR and on December 22, 2022 the U.S. Department of State designated six Russian naval entities pursuant to Section 1(a) of Executive Order 14024 for

operating or having operated in both the defense and related material sector and the marine sector of the Russian Federation economy, including Joint Stock Company Battery Company Rigel and Central Research Institute of Structural Materials Prometey, and four entities pursuant to Section 1(a)(i) of Executive Order 14024 for operating or having operated in the marine sector of the Russian Federation economy, including Technopole Company and Joint Stock Company Obukhovskoye.

GLs

GL 8E (“Authorizing Transactions Related to Energy”), which replaces GL 8D, added Rosbank to the list of blocked financial institutions authorized to process energy-related transactions through May 16, 2023. That list of authorized financial institutions now includes the following: (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) Rosbank; (8) 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; and (9) the Central Bank of the Russian Federation.

GL 58 (“Authorizing the Wind Down and Rejection of Transactions Involving Public Joint Stock Company Rosbank”) permits all transactions that are ordinarily incident and necessary to the wind down of transactions involving Rosbank or any entity in which Rosbank owns, directly or indirectly, a 50% or greater interest (“Rosbank entities”), through March 15, 2023, provided that any payment made to a Rosbank entity must be made into a blocked account. U.S. persons are authorized to reject, rather than block, transactions involving Rosbank entities as an originating, intermediary or beneficiary financial institution through March 15, 2023.

GL 59 (“Authorizing Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Public Joint Stock Company Rosbank”) authorizes U.S. persons to transfer, divest or facilitate the divestment or transfer debt or equity of Rosbank entities (“covered debt or equity”) to a non-U.S. person until March 15, 2023. Transactions that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity that were placed prior to 4:00 p.m. eastern standard time on December 15, 2022 are permitted through March 15, 2023. Furthermore, transactions that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time on December 15, 2022 that include Rosbank entities as a counterparty or linked to covered debt or equity are authorized through March 15, 2023, provided that any payments to a blocked person must be made into a blocked account.

FAQs

FAQ 1103 – GL 58 authorizes a wind-down period for transactions involving Rosbank entities until 12:01 a.m. eastern daylight time, March 15, 2023. This includes transactions ordinarily incident and necessary to exit operations, contracts, or other agreements involving Rosbank entities that were in effect prior to December 15, 2022, provided that such transactions do not involve a debit to a blocked account on the books of a U.S. financial institution (see FAQ 990). Wind-down activities covered by GL 58 do not include the continued processing of funds transfers, securities trades, or other transactions that involve a Rosbank entity that were part of ongoing business activities prior to the imposition of sanctions, unless separately authorized (see, e.g., GLs 6B, 8E, or 59). In addition, GL 58 authorizes U.S. persons, including U.S. financial institutions, to reject, rather than block, all

transactions ordinarily incident and necessary to the processing of funds involving one or more Rosbank entities as an originating, intermediary, or beneficiary financial institution, through 12:01 a.m. eastern daylight time, March 15, 2023. For individuals holding accounts at Rosbank entities (see FAQ 1080 for guidance), including GL 50, which authorizes individuals to engage in all transactions ordinarily incident and necessary to close their individual accounts held at a financial institution blocked pursuant to Executive Order 14024. GL 59 authorizes U.S. persons to divest or transfer holdings in securities of Rosbank entities to non-U.S. persons, as well as the wind down of certain derivative contracts, subject to certain conditions.

FAQ 1104 – OFAC has not designated the mining company Norilsk Nickel as a result of OFAC designating Vladimir Potanin as a SDN. As of December 15, OFAC has confirmed that Norilsk Nickel is not owned 50% or more by blocked persons or otherwise considered the blocked property of Vladimir Potanin.

FAQ 1109 – Petroleum products (e.g. refined products rather than crude oil) of Russian Federation Origin that are loaded onto a vessel at the port of loading prior to 12:01 a.m. eastern standard time on February 5, 2023, are not subject to the price cap, provided the petroleum products are unloaded at the port of destination prior to 12:01 a.m. eastern daylight time on April 1, 2023. U.S. service providers can continue to provide services related to the maritime transport of petroleum products of Russian Federation origin purchased at a price above the price cap, provided that the petroleum products are loaded onto a vessel at the port of loading for maritime transport prior to February 5, 2023, and unloaded at the port of destination prior to April 1, 2023.

According to OFAC, the following is an example of a permissible transaction: A U.S. commodities trader signs a contract on January 1, 2023, to purchase petroleum products of Russian Federation origin for shipment to a jurisdiction that has not prohibited the import of such petroleum products. The U.S. commodities trader arranges for the petroleum products to be loaded onto a vessel at the port of loading. The vessel is loaded on February 1, 2023, and a bill of lading is issued. The petroleum products are shipped and discharged at the port of destination on February 15, 2023. U.S. insurance companies provide cover for this shipment/voyage and pay out any related claims, as appropriate.

OFAC anticipates implementing the price cap on petroleum products of Russian Federation origin by publishing a determination pursuant to Executive Order 14071 that (i) permits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of services related to the maritime transport of petroleum products of Russian Federation origin, where the price of such petroleum products of Russian Federation origin do not exceed the price cap and (ii) prohibits such services if the petroleum products of Russian Federation origin are purchased above the relevant price cap. This determination would take effect at 12:01 a.m., Eastern Standard Time, February 5, 2023, with respect to maritime transport of petroleum products of Russian Federation origin loaded on or after 12:01 a.m., Eastern Standard Time, February 5, 2023.

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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