

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ???January 24, 2023?

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On January 17, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued three Russia-related General Licenses ("GL") 6C, GL 28B, and GL 54A, and amended four FAQs (FAQ 982, FAQ 1054, FAQ 1055, and FAQ 1059) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the "RuHSR").

GLs

GL 6C (replacing GL 6B) 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 the COVID-19; and (3) clinical trials and other medical research activities.

The primary differences between GL 6C and GL 6B are:

- in paragraph A(1), OFAC added "provision" of agricultural commodities, agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices;
- in paragraph A(3), OFAC deleted "ongoing" trials to allow for the provision of services to new trials; and
- in paragraph C(3), OFAC clarified that "Transactions" prohibited by Executive Order ("EO") 14066, EO 14068, or EO 14071, do not include transactions prohibited solely by the determination of May 8, 2022, made pursuant to section 1(a)(ii) of EO 14071, "Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services."

GL 28B (replacing GL 28A), continues to authorize all transactions involving Public Joint Stock Company Transkapitalbank ("TKB"), or any entity in which TKB, directly or indirectly, holds 50 percent or greater interest (collectively, "TKB entities") that are ultimately destined for or originating from Afghanistan and prohibited by EO 14024 ("Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation"). GL 28B, however, adds a "wind-down" requirement and requires that all payments to a TKB entity be paid into a blocked account. GL 28B adds:

- Note to paragraph (a). The transactions authorized in paragraph (a) of this general license include the wind down and closure of correspondent accounts operated by U.S. financial institutions on behalf of TKB entities, provided any remaining funds or assets in the correspondent account to be paid to any TKB entity are placed in a blocked account.
- GL 28B also permits U.S. persons "to reject, rather than block, all transactions ordinarily incident and necessary to the processing of funds ultimately destined for or originating from Afghanistan involving one or more TKB

entities as an originating, intermediary or beneficiary financial institution and prohibited by EO 14024 through 12:01 a.m. eastern daylight time, March 18, 2023.”

GL 54A replaces GL 54. GL 54 authorizes transactions that are ordinarily incident and necessary (including facilitating, clearing, and settling transactions) to the purchase or receipt of any debt or equity securities of VEON Ltd., issued prior to June 6, 2022. GL 54A amends GL 54 to add debt or equity securities issued by VEON Holdings B.V. to the transactions so authorized.

FAQs

FAQ 982 – Are U.S. funds allowed to buy or sell debt or equity of blocked Russian financial institutions? Are U.S. investors allowed to invest in a fund that holds debt or equity of a blocked Russian financial institution?

No. Unless otherwise authorized, U.S. persons may not buy or sell debt or equity of the Russian financial institutions blocked pursuant to EO 14024. Accordingly, a U.S. fund may not buy, sell, or otherwise engage in transactions related to debt or equity of such blocked Russian financial institutions, and must block such holdings, unless exempt or otherwise authorized by the OFAC. A U.S. fund that holds such blocked securities generally is not itself considered a blocked entity *unless* such blocked holdings represent a 50 percent or more share by value of the fund. If such blocked holdings do not represent a 50 percent or more share by value of the fund, U.S. persons may continue to invest in it, and the fund is not considered blocked. The fund may divest itself of blocked holdings to the extent authorized by OFAC.

FAQ 1054 – Do the new investment prohibitions of EO 14066, EO 14068, or EO 14071 (collectively, “the respective EOs”) prohibit U.S. persons from purchasing debt or equity securities issued by an entity in the Russian Federation?

Yes. The respective EOs prohibit U.S. persons from purchasing both new and existing debt and equity securities issued by an entity in the Russian Federation. However, the new investment prohibitions of the respective EOs do *not* prohibit U.S. persons from selling or divesting debt or equity securities issued by an entity in the Russian Federation to a non-U.S. person (see FAQ 1049), including purchases of such debt or equity securities if ordinarily incident and necessary to the divestment or transfer of the debt or equity securities to a non-U.S. person. U.S. financial institutions may clear and settle, or otherwise serve as market intermediaries in, divestment transactions on the secondary market—including transactions between non-U.S. persons. Note that U.S. persons are *not* required to divest such securities and may continue to hold such previously acquired securities. Moreover, the conversion of depositary receipts to underlying local shares of non-sanctioned Russian issuers would not be considered a prohibited “new investment” in the Russian Federation under the respective EOs. Additionally, the purchase of shares in a U.S. fund would not be considered a prohibited “new investment” under the respective EOs unless the fund’s holdings of debt or equity securities issued by entities in the Russian Federation represent a 50 percent or more share by value of the fund. Generally, the fund may also divest itself of these prohibited holdings.

FAQ 1055 – Do the new investment prohibitions of EO 14066, EO 14068, or EO 14071 (collectively, “the respective EOs”) prohibit U.S. persons from lending funds to, or purchasing a debt or equity interest in, entities located outside of the Russian Federation?

No, provided that (i) such funds are not specifically intended for new projects or operations in the Russian Federation and (ii) the entity located outside the Russian Federation derives less than 50 percent of its revenues from its investments in the Russian Federation.

U.S. persons, including U.S. financial institutions, may reasonably rely upon the information available to them in the ordinary course of business, including publicly available information such as an entity's most recent quarterly or annual report. For the purposes of determining the percentage of revenues derived from investments in the Russian Federation, revenues derived from the commercial sale of goods or services by an entity located outside of the Russian Federation to persons in the Russian Federation should not be included. OFAC does not consider the commercial sale of goods or services to persons in the Russian Federation by an entity located outside the Russian Federation to be new investment in the Russian Federation for purposes of the respective EOs prohibitions.

Unless exempt or otherwise authorized by OFAC, examples of transactions that OFAC *considers to be "new investment"* for the purposes of the respective EO prohibitions include:

- The lending of funds to a special purpose vehicle established outside of the Russian Federation by a Russian entity for the purpose of raising funds intended to support new or expanded physical operations in the Russian Federation.
- The purchase (including on the secondary markets) of a debt or equity interest in an entity located outside of the Russian Federation that derives 50 percent or more of its revenues from its ownership of a subsidiary located in the Russian Federation (e.g., through dividends paid up by the Russian subsidiary to the non-Russian parent company).
- The purchase (including on the secondary markets) of a debt or equity interest in an entity located outside of the Russian Federation that derives 50 percent or more of its revenues from its ownership of real estate, a mine, or other physical property located in the Russian Federation.

The new investment prohibitions of the respective EOs do not prohibit U.S. persons from selling or divesting debt or equity securities issued by such entities to a non-U.S. person. Moreover, U.S. financial institutions may clear and settle, or otherwise serve as market intermediaries in, such divestment transactions on the secondary market — including transactions between non-U.S. persons. For the purposes of assessing whether certain purchases of debt or equity of an entity are permissible, U.S. financial institutions, including securities exchanges and other market intermediaries and participants, may reasonably rely upon the information available to them in the ordinary course of business.

Examples of transactions that OFAC does *not consider to be "new investment"* for the purposes of the respective EOs prohibitions include:

- The purchase (including on the secondary markets) of a debt or equity interest in an entity located outside of the Russian Federation provided that the entity derives less than 50 percent of its revenues from its ownership of a subsidiary or physical operation located in the Russian Federation.
- The purchase (including on the secondary markets) of a debt or equity interest in an entity located outside of the Russian Federation whose revenue is exclusively derived from the commercial sale of goods or services to persons located in the Russian Federation.
- Activities that would be considered "maintenance" pursuant to FAQ 1050.

FAQ 1059 – *Do the determinations made pursuant to EO 14071 on May 8, 2022, "Prohibitions Related to Certain*

Accounting, Trust and Corporate Formation, and Management Consulting Services,” and on September 15, 2022, “Prohibitions Related to Certain Quantum Computing Services” (“the determinations”), 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?

No, the determinations do 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, *provided* that the provision of services is not an indirect export to a person located in the Russian Federation. For the purposes of these determinations, OFAC interprets the “indirect” provision of the prohibited services to include when the benefit of the services is ultimately received by a “person located in the Russian Federation.” In contrast, OFAC would not consider to be prohibited the provision of services to a non-Russian company that has a physical presence and operations outside of the Russian Federation, including such a company owned or controlled by persons located in the Russian Federation, provided that the services will not be further exported or re-exported to persons located in the Russian Federation.

For example, the following scenarios describe services that *would be prohibited* under the determination:

- A U.S. corporate service provider administers a trust established under the laws of a U.S. state, where the trust exists to hold, sell, or purchase assets on behalf of a settlor, trustor, or beneficiary who is an individual ordinarily resident in Russia.
- A U.S. corporate service provider registers a limited liability company in a third country on behalf of an individual ordinarily resident in Russia for the purpose of holding real estate assets, and this company has no other physical presence or operations in the third country.

The following scenarios illustrate services to a non-Russian subsidiary of a Russian person that *would not be prohibited* under the determination:

- A U.S. accounting firm provides tax advisory and preparation services to the U.S. subsidiary of a Russian company. This U.S. subsidiary has an office and employees in the United States and conducts business in the United States, and the services will not be exported or reexported to the Russian parent company.
- A U.S. management consulting firm provides strategic business advice to the subsidiary of a Russian company located in a third country. This subsidiary has an office and employees in the third country and conducts business in this third country, and the services will not be reexported to the Russian parent company.

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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