

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ??July 26, 2022? ?

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On July 22, 2022, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) (1) issued two new Russia-related General Licenses (“GL”) (GL 45 and GL 46), (2) published two new FAQs (FAQ 1071 and FAQ 1072), and (3) amended two FAQs (FAQ 1053 and FAQ 1054) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the “RuHSR”).

General Licenses

GL 45 extends to October 22, 2022, transactions to wind down financial contracts or other agreements that were entered into on or before June 6, 2022 and involved, or linked to debt or equity issued by an entity in the Russian Federation (“covered contracts”) through October 20, 2022, which are otherwise prohibited by Executive Order (“EO”) 14071. The transactions authorized under GL 45 include: (1) the purchase by U.S. persons of debt or equity issued by an entity in the Russian Federation where that purchase is ordinarily incident and necessary to the wind down of covered contracts; and (2) the facilitating, clearing, and settling of a purchase by U.S. persons of debt or equity issued by an entity in the Russian Federation, where that purchase is ordinarily incident and necessary to the wind down of covered contracts.

GL 46 authorizes all transactions related to the establishment, administration, participation in, and execution of an auction process as announced by the EMEA Credit Derivatives Determination Committee (the “auction”) to settle credit derivative transactions with a reference entity of the Russian Federation, which are otherwise prohibited by EO 14071. The purchase or receipt of debt obligations of the Russian Federation by U.S. persons that is prohibited by EO 14071 is authorized for the period beginning two business days prior to the announced date of the auction and ending eight business days after the conclusion of the auction. Furthermore, all transactions ordinarily incident and necessary to facilitating, clearing, and settling transactions authorized under this GL are permitted.

FAQs

FAQ 1071 – GL 45 authorizes through October 20, 2022, transactions otherwise prohibited by EO 14071 that are ordinarily incident and necessary to the wind down of financial contracts or other agreements that were entered into on or before June 6, 2022, that involve, or are linked to, debt or equity securities issued by an entity in the Russian Federation. The authorized transactions include the purchase, or facilitating the purchase, by U.S. persons of debt or equity securities issued by an entity in the Russian Federation, if that purchase is ordinarily incident and necessary to the wind down of a financial contract or agreement entered into on or before June 6,

2022. For example, U.S. persons may purchase securities issued by an entity in the Russian Federation in order to cover or close out a short position, per a securities lending agreement, if such agreement was entered into on or before June 6, 2022. GL 45 does not authorize any transactions involving blocked persons, unless separately authorized.

FAQ 1072 – GL 46 authorizes transactions otherwise prohibited by EO 14071 related to the establishment, administration, participation in, and execution of an auction process, as announced by the EMEA Credit Derivatives Determination Committee, to settle credit derivative transactions with a reference entity of “the Russian Federation” (“the auction”). Examples of transactions that may be related to the auction include the submission and acceptance of bids and offers and physical settlement requests by auction participants and their customers, or the delivery and acceptance of the Russian Federation debt obligations and corresponding settlement amounts. To promote the proper functioning of such auction, GL 46 authorizes U.S. persons to purchase or receive Russian Federation debt obligations for the period beginning two business days prior to the announced date of the auction and ending eight business days after the conclusion of the auction. GL 46 also authorizes financial institutions, among others, to facilitate, clear, and settle transactions authorized by GL 46, including the transfer to, or purchase or receipt by, U.S. persons of Russian Federation debt obligations. GL 46 does not require the clearance and settlement of such transactions to be completed within eight business days after the conclusion of the auction. For example, a purchase by a U.S. person of Russian Federation debt obligations made on the seventh business day after the conclusion of the auction does not have to be settled or cleared by the eighth business day. Accordingly, U.S. financial institutions may continue settling or clearing such transactions after the eighth business day following the conclusion of the auction. Financial institutions processing transactions pursuant to GL 46 may reasonably rely upon the information available to them in the ordinary course of business for the purposes of assessing whether a transaction is authorized by GL 46, provided that the financial institution does not know or have reason to know that a transaction is not in compliance with GL 46.

FAQ 1053 – Transactions related to the divestment or the facilitation of divestment of a pre-existing investment in a project or operation in the Russian Federation are not prohibited by the new investment prohibitions of EO 14066, EO 14068, and EO 14071. Such transactions may not involve a blocked person or otherwise prohibited transactions unless exempt or authorized by OFAC. EO 14066, EO 14068, and EO 14071 prohibit any approval, financing, facilitation, or guarantee by a United States person, wherever located, of a transaction by a foreign person where the transaction by that foreign person would be prohibited if performed by a United States person or within the United States. Such provisions do not prohibit U.S. persons from facilitating the wind down or divestment of an existing investment in a project or operation in the Russian Federation. For example, a U.S. financial institution is not prohibited from advising a client that seeks to divest from a project or operation in the Russian Federation (i.e., the seller in a transaction). However, a U.S. person is prohibited from providing any approval, financing, facilitation, or guarantee to a non-U.S. person that seeks to invest in a project or operation in the Russian Federation (i.e., the buyer in such a transaction).

FAQ 1054 – EO 14066, EO 14068, and EO 14071 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 EO 14066, EO 14068, and EO 14071 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. Please 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 EO 14066, EO 14068, and EO 14071. Additionally, the purchase of shares in a U.S. fund that contains debt or equity securities issued by entities in the Russian Federation generally would not be considered a prohibited “new investment,” under EO 14066, EO 14068, and EO 14071, so long as these holdings represent less than a predominant share by value of debt or equity securities issued by entities in the Russian Federation. As a result, U.S. persons may continue to invest in the fund, and the fund may continue to operate. Generally, the fund may also divest itself of these prohibited holdings. OFAC has issued GL 45, authorizing transactions related to the wind down of certain financial contracts through October 20, 2022. The purpose of GL 45 is to authorize the close out of financial contracts entered into on or before June 6, 2022 that might not otherwise be considered a divestment of debt or equity securities issued by entities in the Russian Federation (see FAQ 1071). Please note that transactions to divest debt or equity securities issued by an entity in the Russian Federation to a non-U.S. person, or transactions to wind down pre-existing financial contracts pursuant to GL 45, must not involve blocked persons or other prohibited transactions unless exempt or otherwise authorized by OFAC.

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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