

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?July 6, 2022?

Locke Lord LLP

WRITTEN BY

Nick Dickerson | Ryan Last

On June 28, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued five new General Licenses ("GL") (GL 39, GL 40, GL 41, GL 42, and GL 43), released a new determination prohibiting gold imports, published new two FAQs (FAQ 1070 and FAQ 1029) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the "RuHSR"), and designated new entities and individuals on the Specially Designated Nationals and Blocked Persons ("SDN") list. FinCEN and the Bureau of Industry & Science issued a joint Release to Financial Institutions.

General Licenses

- **GL 39** extends the wind down period to August 11, 2022, for transactions involving State Corporation Rostec ("Rostec"), or any entity in which Rostec owns, directly or indirectly, a 50% or greater interest. Transactions with Rostec are prohibited by **Executive Order ("E.O.") 14024**. We note that any payment to a blocked person must be made into a blocked account in accordance with the RuHSR.
- **GL 40** authorizes all transactions otherwise prohibited by E.O. 14024 related to the provision, exportation, or re-exportation of goods, technology, or services to ensure the safety of civil aviation involving one or more of the blocked entities listed in the Annex of this GL, provided that (i) the aircraft is registered in a jurisdiction solely outside of the Russian Federation and (ii) the goods, technology, or services provided, exported, or re-exported are for use on aircraft operated solely for civil aviation purposes.
- **GL 41** extends the wind down period to December 22, 2022, for transactions that are ordinarily incident and necessary to the manufacture, sale, and maintenance, including the provision and receipt of warranty and maintenance services, of agricultural equipment, components, and spare parts produced by Nefaz Publicly Traded Company ("Nefaz"), Public Joint Stock Company Tutaev Motor Plant ("Tutaev Motor Plant"), or controlled affiliates of either Nefaz or Tutaev Motor Plant. We note that any payment to a blocked person must be made into a blocked account in accordance with the RuHSR.
- **GL 42** provides a limited authorization for transactions with the Federal Security Service (also known as the "FSB" or "Federalnaya Sluzhba Bezopasnosti") which are otherwise prohibited by E.O. 14024. The authorization is limited to those transactions that are ordinarily incident and necessary to:
 - import, distribute, or use of information technology products in the Russian Federation that (a) are licensed pursuant to Export Administration Regulations ("EAR") Parts 730 through 774, or otherwise licensed or authorized by the Department of Commerce, and (b) have fees to the Federal Security Service for licenses, permits, certifications, or notifications that do not exceed \$5,000 in any calendar year. EAR Parts 730 through 774 regulate the export control, the export and re-export of commercial and dual use (commercial and military/security applications) items, including encrypted software, identified on the U.S. Commodity Control List ("CCL").

- Complying with law enforcement or administrative actions or investigations involving the Federal Security Service; and
- Complying with rules and regulations administered by the Federal Security Service.
- [GL 43](#) extends the wind down period to [August 31, 2022](#), to (1) divest or transfer debt or equity of Public Joint Stock Company Severstal (“Severstal”), Nord Gold PLC (“Nord Gold”), and their respective controlled affiliates, that was purchased by a non-U.S. person before June 2, 2022, and (2) wind down derivative contracts with such entities entered into prior to June 2, 2022, that are linked to covered debt or equity. We note that any payment to a blocked person must be made into a blocked account in accordance with the RuHSR.

Determination of E.O. 14068

On June 27, 2022 President Biden and other G7 leaders [vowed](#) to intensify their coordinated sanctions measures in response to Russia’s continued war against Ukraine. The G7 agreed to reduce Russia’s revenues, including from gold. The following day, OFAC issued a [determination](#) (“Prohibitions Related to Imports of Gold of Russian Federation Origin”) prohibiting the importation of gold of Russian Federation origin into the U.S. (the “Determination”). In accordance with OFAC [FAQ 1019](#), “Russian Federation origin” is defined to include goods produced, manufactured, extracted, or processed within the Russian Federation, excluding goods of Russian Federation origin that are incorporated or substantially transformed into a foreign-made product. However, See [FAQ 1070](#), which provides that gold of Russian Federation origin located outside the Russian Federation prior to June 28, 2022, is not prohibited.

FAQs

- [FAQ 1070](#) – The Determination prohibits the importation into the U.S. of gold of Russian Federation origin. Per the Determination, the importation into the U.S. of gold of Russian Federation origin that was located outside the Russian Federation prior to June 28, 2022, is not prohibited.
- [FAQ 1029](#) – Gold-related transactions involving the Russian Federation may be sanctionable under E.O. 14024 or other Russia-related sanctions authority. For example, E.O. 14024 authorizes (i) persons determined to be responsible for or complicit in, or to have directly or indirectly engaged or attempted to engage in, deceptive or structured transactions or dealings to circumvent U.S. sanctions, including through the use of assets such as gold or other precious metals; (ii) persons determined to operate or to have operated in the financial services sector of the Russian Federation economy, which could include those engaging in gold-related transactions involving the Russian Federation; and (iii) persons that have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, persons blocked under E.O. 14024. Such transactions include those in gold or other precious metals that involve such blocked persons. In addition, gold-related transactions involving Russia or the Russian Federation may be prohibited under E.O. 14024 or other Russia-related sanctions authorities. For example: (i) the Determination of June 28, 2022 issued pursuant to E.O. 14068 prohibits the importation into the U.S. of certain gold of Russian Federation origin; (ii) U.S. persons, including gold dealers, distributors, wholesalers, buyers, individual traders, refineries, and financial institutions are generally prohibited from engaging in or facilitating prohibited transactions, including gold-related transactions, in which blocked persons have an interest; (iii) U.S. persons are prohibited from engaging in any transaction — including gold-related transactions — involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, pursuant to [Directive 4 under E.O. 14024](#); (iv) U.S. financial institutions are generally prohibited from processing transactions, including gold-related transactions, involving foreign financial institutions that are determined to be subject to the prohibitions of [Directive 2 under Executive Order 14024](#); and (v) non-U.S. persons are prohibited from causing or conspiring to cause U.S. persons to violate U.S. sanctions, as well as engaging in conduct that evades or avoids a violation of OFAC sanctions.

Designations

OFAC [designated](#) twenty-nine (29) individuals and seventy (70) entities to the SDN List, many, [according](#) to the U.S. Department of the Treasury, of which are critical to the Russian Federation's defense industrial base and support the Russian Federation's military intervention in Ukraine.

In addition, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a [new rule](#), [adding](#) thirty-six (36) entities in nine (9) countries to the Entity List, including six (6) specifically for their continued support of the Russian Federation's military aggression in Ukraine. These six entities are subject to severe restrictions on access to U.S.-origin goods and technologies for allegedly having been contracted to continue to supply Russian military end users.

FinCEN and BIS Alert

The U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") and the BIS [issued](#) a [joint alert](#) to financial institutions ("FIs"), advising FIs to remain vigilant against efforts to evade BIS export controls. Transactions of particular focus include processing payments for exported goods and the issuance or payment of insurance on shipping and delivery of goods to protect the exporter from non-payment by the buyer. The alert urges FIs to identify and report suspicious activity indicative of such efforts. Additionally, the alert provides FIs with a list of BIS export restrictions, sixteen (16) "commodities of concern" (e.g., aircraft parts and equipment, cameras, oil field equipment, sonar systems and integrated circuits), twenty-two (22) "transactional and behavioral red flag" indicators of export control evasion (e.g., transactions involving entities with little to no web presence and transactions involving payments being made from entities located in third-party countries not otherwise involved with the transactions and known to be a potential transship point for exports to Russia and Belarus), and other information firms should use and incorporate into their risk-based screening of financial transactions.

Separately, we note that we are aware of numerous "permissible" payments have been flagged by FIs as suspicious and therefore sequestered. We are working with clients and regulators to get those permissible payments released.

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.

RELATED INDUSTRIES + PRACTICES

- [Corporate](#)
- [International](#)
- [Sanctions + Trade Controls](#)