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Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?June 14, 2022?

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On June 9, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") published eleven new FAQs (FAQ 1058, FAQ 1059, FAQ 1060, FAQ 1061, FAQ 1062, FAQ 1063, FAQ 1064, FAQ 1065, FAQ 1066, FAQ 1067, and FAQ 1068) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587.

- **FAQ 1058:** Section 1(a)(ii) of Executive Order ("EO") 14071 prohibits the direct or indirect exportation, reexportation, sale, or supply from the United States, or by a United States person, wherever located, of [accounting, trust and corporate formation, and management consulting services] to "person located in the Russian Federation". OFAC interprets persons located in the Russian Federation to include, individuals ordinarily resident in the Russian Federation, and entities incorporated or organized under the laws of the Russian Federation or any jurisdiction within the Russian Federation.
- **FAQ 1059:** In FAQ 1059, OFAC advises that the determination made pursuant to EO 14071 on May 8, 2022, "Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services", (the "Determination"), does not prohibit U.S. person from providing services to person 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 intended to circumvent EO 14071 as an the "indirect provision of the prohibited services" to a person located in the Russian Federation. 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 prohibit 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 reexported to persons located in the Russian Federation.

OFAC provided the following scenarios 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 predominantly 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.

OFAC provided the following service scenarios 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

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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.

- **FAQ 1060:** The Determination does prohibit U.S. persons from serving on the board of directors of a copy located in the Russian Federation. However, the Determination does prohibit U.S. persons from serving as a nominee officer, director, shareholder, or signatory of a legal person on behalf of a person located in the Russian Federation.
- **FAQ 1061:** Noting that sanctions under EO 14071 are targeted rather than general, U.S. persons are prohibited from providing management consulting, trust and corporate formation, and accounting services to companies located in the Russian Federation ("Russian Companies") in their capacity as employees. The Determination, however, does not prohibit U.S. persons from serving as employees of Russian companies in other capacities that are not specifically covered by this Determination. Additionally, the Determination excludes from the prohibition: (1) service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person; and (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.
- **FAQ 1062:** The Determination makes clear that a U.S. subsidiary of a Russian Federation company cannot provide prohibited services to a Russian Federation parent company located in Russia.
- **FAQ 1063:** OFAC makes clear in the Determination that U.S. persons are prohibited from providing trust and corporate formation services to persons located in the Russian Federation, regardless of whether the services are performed as part of the formation of a new trust or company, or as part of the administration or maintenance of an existing trust or company. Please see FAQ 1034 for more information.
- **FAQ 1064:** OFAC makes clear in the Determination that executive search and vetting services are included in the prohibition on management consulting services imposed by the Determination. OFAC interprets management consulting services to include services related to strategic business advice; organizational and systems planning, evaluation, and selection; development or evaluation of marketing programs or implementation; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management. See FAQ 1034 for more information.
- **FAQ 1065:** The prohibition makes clear that U.S. persons are prohibited from serving as voting trustees on behalf of, or for shares of, persons located in the Russian Federation unless otherwise exempt or authorized by OFAC.
- **FAQ 1066:** The prohibitions imposed by the Determination do not prohibit the provision of education services, such as online university courses, on the subjects of accounting, management consulting, or trust and corporate formation to persons located in the Russian Federation, provided such services do not evade or avid the prohibition on providing the underling services to persons located in the Russian Federation.
- **FAQ 1067:** The Determination does not prohibit U.S. persons from exporting, reexporting, selling, or supplying, directly or indirectly, software to the Russian Federation, nor does the Determination prohibit U.S. persons from providing services associated with the export of such software, such as software design and engineering, provided that such associated services do not fall within the categories of management consulting, accounting, or trust and corporate formation.

For example, the following scenario describes activities that would not be prohibited under the ?Determination:

- A U.S. software company signs a contract with a company located in the Russian ?Federation ??("Russian Company") for design, engineering, licensing, and delivery of ?software that the ?Russian Company uses to perform its internal accounting. As part of ?the contract, the ?U.S. company provides continuing updates and technical support ?services related to the ?software (e.g., setting up new users and troubleshooting errors).?

The following scenarios illustrate activities that would be prohibited under the Determination:?

- A U.S. management consulting company signs a contract with a Russian Company to ?assist the Russian Company in selecting a new enterprise application software. This ?contract includes assessing the needs of the Russian Company, providing a list of ?possible software choices to the company, and providing continuing advisory services ?on the implementation and use of the software to optimize the Russian Company's ?profits. ?

- **FAQ 1068:** For the purposes of the Determination, accounting services include tax preparation and filing services. See FAQ 1059 for more information. The Determination does not prohibit the export, reexport, sale, or supply, indirectly or indirectly, of tax preparation-related to software to the Russian Federation, as distinct from tax preparation and filing services. See FAQ 1067.

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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