

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?June 22, 2022?

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On June 14, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued Russia-related General License ("GL") 8C (replacing GL 8B), which extends the temporary wind down period to December 5, 2022 for energy related transactions involving the following specially designated nationals ("SDNs"): (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) any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or (8) the Central Bank of the Russian Federation.

On the same day, OFAC updated eight FAQs (FAQ 967, FAQ 976, FAQ 977, FAQ 978, FAQ 1010, FAQ 1011, FAQ 1012, and FAQ 1017) related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587.

- FAQ 967: Directive 2 under Executive Order ("EO") 14024 ("Prohibitions Related to Correspondent or Payable-Through Accounts and Processing of Transactions Involving Certain Foreign Financial Institutions" or the "CAPTA Directive") prohibits U.S. financial institutions from: (i) the opening or maintaining of a correspondent account or payable-through account for or on behalf of blocked institutions; or (ii) processing transactions involving the blocked institutions. Institutions designated on the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (the "CAPTA List") can be accessed via OFAC's website. Directive 2 under EO 14024 does not impose blocking sanctions and, thus, does not require U.S. financial institutions (or other U.S. persons) to block the assets of foreign financial institutions determined to be subject to the CAPTA prohibitions. However, U.S. persons should be aware that foreign financial institutions subject to the prohibitions of this directive may also be subject to additional prohibitions under other sanctions authorities, such as additional directives under EO 14024 or EO 13662.
- FAQ 976: This FAQ clarifies that GL 8C **authorizes certain transactions "related to energy"** involving the following "Covered Entities" (i) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank (VEB); (ii) Public Joint Stock Company Bank Financial Corporation Otkritie; (iii) Sovcombank Open Joint Stock Company; (iv) Public Joint Stock Company Sberbank of Russia; (v) VTB Bank Public Joint Stock Company; (vi) any entity owned 50 percent or more, directly or indirectly, individually or in the aggregate, by one of the above entities; and (vii) The Central Bank of the Russian Federation. FAQ 976 also clarifies that GL 8C **does not authorize** (i) transactions otherwise prohibited by Directive 1A under EO 14024 ("Prohibitions Related to Certain Sovereign Debt of the Russian Federation"), (ii) any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation, or (iii) a U.S. financial institution to maintain (or open) a correspondent account or payable-through account for or on behalf of foreign financial institutions on the CAPTA List. Consequently, in order for a U.S. financial institution to engage in transactions authorized by GL 8C, all funds transfers related to energy involving one or more Covered Entities must be processed indirectly through a non-sanctioned, non-U.S. financial institution. GL 8C provides

authorization solely under EO 14024. Therefore, U.S. financial institutions that rely on the authorization provided in GL 8C to process transactions related to energy must also comply with the prohibitions of EO 14066, EO 14068, and EO 14071.

- FAQ 977: For the purposes of GL 8C, the term “related to energy” means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.
- FAQ 978: This FAQ provides examples of permissible funds transfer mechanisms to send funds sanctioned foreign financial institutions under GL 6A, GL 7A, and GL 8C (for permissible energy transactions). FAQ 978 clarifies that those general licenses do not override the CAPTA Directive. Consequently, in order for a U.S. financial institution to engage in transactions authorized under these general licenses (e.g., a funds transfer related to energy), all such funds transfers must be processed indirectly through a non-sanctioned, non-U.S. financial institution.
- FAQ 1010: This FAQ is intended to clarify permissible and impermissible activities related to the transport of Russian-origin oil under EO 14024. EO 14024 prohibits the import of Russian oil into the United States. For this purpose, Russian oil includes crude oil; petroleum; petroleum fuels, oils, and products of their distillation; liquefied natural gas; coal; and coal products. EO 14066 does not prohibit unwinding of contracts or other business-related activities by U.S. persons to comply with the Russian Federation oil import ban. Also, EO 14066 imposes expansive sanctions on persons that operate or have operated in the financial services sector of the Russian Federation economy. This FAQ clarifies that GL 8C authorizes U.S. persons to process energy-related transactions involving the sanctioned Russian financial institutions. These energy-related transactions include payments connected with a variety of upstream and downstream activities, including the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of energy for import from the Russian Federation to countries other than the United States or for export to the Russian Federation, as well as financing, loading, or unloading related to such processes. However, GL 8C does not override the prohibitions related to new investment in the energy sector in the Russian Federation.
- FAQ 1011: OFAC encourages persons to communicate with their financial institution regarding sending payments involving the Russian Federation and permissible activities to avoid misunderstanding and potential erroneous sequestration of funds. In addition, persons with questions about engaging in or processing transactions related to GL 8C can contact OFAC’s Sanctions Compliance and Evaluation Division most efficiently via email at OFAC_Feedback@treasury.gov or via telephone at (800) 540-6322 or (202) 622-2490.
- FAQ 1012: GL 8C extends the authorization of energy-related transactions through 12:01 a.m. eastern standard time, December 5, 2022, unless further renewed. In the event that GL 8C is not renewed, OFAC intends to issue a general license authorizing the orderly wind down of activities covered by GL 8C.
- FAQ 1017: GL 8C remains valid following the issuance of EO 14066. However, GL 8C does not authorize any transactions specifically prohibited by EO 14066, which prohibits (i) the importation of Russian Federation origin oil products into the United States, (ii) new investment in the Russian Federation energy sector by a U.S. person, wherever located, and (iii) any approval, financing, facilitation, or guarantee by a U.S. person, wherever located, of any transaction conducted by a non-U.S. person that would be prohibited by EO 14066 if performed by a U.S. person or within the United States.

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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