

# Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?June 7, 2022?

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## WRITTEN BY

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On June 2, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued Russia-related [General License \("GL"\) 25B](#), [GL 36](#), [GL 37](#), and [GL 38](#).

- [GL 25B](#) (replacing GL 25A) continues to authorize until further notice (subject to other blocking laws) transactions related to telecommunications and certain internet-based communications that are otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 ("RuHSR"). However, transactions involving Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting Company, Television Station Russia-1, or Limited Liability Company Algoritm are prohibited absent a specific license.
- [GL 36](#) authorizes through August 31, 2022, all transactions prohibited by [Executive Order \("EO"\) 14024](#) that are ordinarily incident and necessary to the wind down of transactions involving Public Joint Stock Company Severstal ("Severstal") or any entity in which Severstal owns, directly or indirectly, a 50% or greater interest, provided that any payment to Severstal or any other blocked person must be made into a blocked account in accordance with the RuHSR.
- [GL 37](#) authorizes through July 1, 2022, all transactions prohibited by EO 14024 that are ordinarily incident and necessary to the wind down of transactions involving Nord Gold PLC ("Nord Gold") or any entity in which Nord Gold owns, directly or indirectly, a 50% or great interest, provided that any payment to Nord Gold or any other blocked person must be made into a blocked account in accordance with the RuHSR.
- [GL 38](#) authorizes until further notice all transactions ordinarily incident and necessary to the processing of pension payments to U.S. persons, provided the only involved of blocked persons is the processing of funds by financial institutions blocked pursuant to EO 14024.

On the same day, OFAC [designated](#) new individuals, entities, and vessels as Specially Designated Nationals and Blocked Persons ("SDNs"), most notably, Severstal (a steel and mining company), Severgroup Limited Liability Company (an investment company with a portfolio of companies in several sectors, such as technology, metallurgy and minerals, mining, telecommunications media, financial, and engineering), Nord Gold (a gold mining company), Limited Liability Company Algoritm (a marketing, media, technology and advertising company), Graceful (a Russian flagged vessel with ties to Russian President Vladimir Putin), and Imperial Yachts SARL (a Monaco-based ship management company that caters to Russian oligarchs).

On June 6, 2022, OFAC amended two FAQs ([FAQ 1005](#) and [FAQ 1019](#)) and issued seven new FAQs ([FAQ 1049](#), [FAQ 1050](#), [FAQ 1051](#), [FAQ 1052](#), [FAQ 1053](#), [FAQ 1054](#), and [FAQ 1055](#)).

- [FAQ 1005: Directive 4 under EO 14024](#) does not prohibit trading in the secondary markets for debt or equity of the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation ("collectively, "Directive 4 entities"), provided that no Directive 4 entity is

a counterparty to such transactions. However, [Directive 1A](#) under EO 14024, prohibits U.S. financial institutions from participation in the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022 by the Directive 4 entities. Moreover, “new investment” prohibitions of [EO 14066](#), [EO 14068](#), and [EO 14071](#) prohibits U.S. persons from purchasing debt and equity securities issued by an entity in the Russian Federation.

- **FAQ 1019:** For purposes of EO 14066, the term “Russian Federation origin” includes goods produced, manufactured, extracted, or processed in the Russian Federation, excluding any Russian Federation origin good that has been incorporated or substantially transformed into a foreign-made product.
- **FAQ 1049:** Defines “investment” for purposes of EO 14066, EO 14068 or EO 14071 (collectively, “the respective EOs”) as the commitment of capital or other assets for the purpose of generating returns or appreciation. OFAC interprets “new” investment as such a commitment made on or after the effective date of the respective EOs and that are made pursuant to an agreement entered on or after the effective dates of the respective EO prohibitions. New investments also includes such commitments pursuant to the exercise of rights under an agreement entered into before the effective dates of the respective EO prohibitions, where such commitment is made on or after the effective dates of the respective EO prohibitions. New investment does not include the maintenance of an investment made prior to the applicable effective dates of the respective EO prohibitions.
- **FAQ 1050:** For purposes of the respective EOs, “new investment” generally excludes the maintenance of investments in the Russian Federation that were made prior to the effective dates of the respective EO prohibitions. “Maintenance of investments includes: (i) transactions to ensure continuity of pre-existing projects or operations located in the Russian Federation, including payments to employees, suppliers, landlords, lenders, and partners; (ii) the preservation and upkeep of pre-existing tangible property in the Russian Federation; and (iii) activities associated with maintaining pre-existing capital investments or equity investments.
- **FAQ 1051:** The prohibitions on “new investment” pursuant to the respective EOs do not prohibit the export or import of goods, services, or technology, or related sales or purchases, to or from the Russian Federation, provided that such transaction is made pursuant to ordinary commercial sales terms (e.g., a payment of an invoice for goods made within the contracted time period, where such payment does not involve ongoing participation in royalties or ongoing profits).
- **FAQ 1052:** U.S. persons can continue to fund their subsidiaries and affiliates with projects or operations located in the Russian Federation prior to the effective dates of the new investment prohibitions of the respective EOs, provided that the use of the funds by the subsidiary or affiliate is consistent with maintenance. “Maintenance” does not include the expansion of pre-existing projects or operations beyond those in effect prior to the effective dates of the respective EO prohibitions. Therefore, U.S. persons may not fund new or expanded projects or operations undertaken by their subsidiaries and affiliates located in the Russian Federation after the effective dates of the respective EO prohibitions.
- **FAQ 1053:** Transactions related to the divestment or the facilitation of divestment of a pre-existing investment, including a pre-existing investment in an entity, project, or operation in the Russian Federation, are not prohibited by the new investment prohibitions of the respective EOs. Such transactions may not involve a blocked person or otherwise prohibited transactions unless exempt or authorized by OFAC. The respective EOs 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 the Russian Federation, provided that such facilitation is on behalf of the selling party only. For example, a U.S. financial institution is not prohibited from advising a client that seeks to sell an equity interest in an entity located in the Russian Federation (i.e., the seller in a divestment 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 acquire an equity interest in an entity located in the Russian Federation (i.e., the buyer in such a transaction).
- **FAQ 1054:** 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, or facilitating the sale or divestment of, debt or equity securities issued by an entity in the Russian Federation to a non-U.S. person. 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 that contains debt or equity securities issued by entities in the Russian Federation generally would not be considered a prohibited “new investment,” under the respective EOs, 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

- **FAQ 1055:** The new investment prohibitions of the respective EOs do not prohibit U.S. persons from lending funds to, or purchasing an equity interest in, entities located outside the Russian Federation, provided that (i) such funds are not specifically intended for new projects or operations in the Russian Federation and (ii) the revenues of the entity located outside the Russian Federation are not predominantly derived from its investments in the Russian Federation. For the purposes of assessing the foregoing, U.S. persons, including U.S. financial institutions, may reasonably rely upon the information available to them in the ordinary course of business.

## **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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