

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ??March 6, 2023?

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WRITTEN BY

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On February 24, 2023, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") released a new determination targeting the metals and mining sector of the Russian Federation economy under Executive Order ("EO") 14024, published five General Licenses ("GL") (GL 8F, GL 13D, GL 60 and GL 61), and issued five associated FAQs (FAQ 1114, FAQ 1115, FAQ 1116, FAQ 1117 and FAQ 1118) related to the ?Russian Harmful Foreign Activities ?Sanctions Regulations, 31 CFR Part 587 (the ????"RuHSR"). Additionally, OFAC imposed sanctions on 22 individuals and 83 entities, targeting persons operating in the financial services, technology and electronics, and defense sector of the Russian Federation economy, as well as entities and individuals for their roles in Russian sanctions evasion efforts.

Determination

OFAC expanded its use of Russia-related sanctions through the issuance of a new determination, which designates the metals and mining sector of the Russian Federation economy pursuant to section 1(a)(i) of EO 14024 ("Prohibitions Related to Transactions Involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation"). The determination allows U.S. regulators, including OFAC, to sanction any individual or entity determined to operate or have operated in that sector. In conjunction with the issuance of the determination, OFAC designated four metals and mining sector companies, including Mtsenskprokat and TPZ-Rondol OOO. As a result, transactions by U.S. persons with these four designated companies are prohibited and all property and interests in property of these entities that are in the U.S. or in possession or control of U.S. persons must be blocked (*i.e.*, frozen) and reported to OFAC.

GLs

GL 8F, which replaces GL 8E, added Bank Zenit Public Joint Stock Company ("Bank Zenit") and Bank Saint-Petersburg Public Joint Stock Company ("Bank Saint-Petersburg") to the list of blocked financial institutions authorized to process energy-related transactions through May 16, 2023. That list of authorized financial institutions now includes the following: (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) Public Joint Stock Company Rosbank; (8) Bank Zenit; (9) Bank Saint-Petersburg; (10) any entity in which one or ?more of the above persons own, directly or indirectly, individually or in the ?aggregate, a 50% or greater interest; and (11) the Central Bank of the Russian

?Federation.? Transactions involving these financial institutions that are related to energy (e.g., the extraction, transport or purchase of petroleum) are permitted through May 16, 2023.

GL 13D extends the time for U.S. persons “to pay taxes, fees or import duties, and purchase or receive permits, licenses, registration, or certifications” that are otherwise prohibited by Directive 4 under EO 14024 for transactions that are ordinarily incident and necessary to maintain U.S. persons’ day-to-day operations in the Russian Federation. GL 13D’s only change to GL 13C is to extend the cutoff date for transactions to June 6, 2023 from March 7, 2023.

GL 60 authorizes transactions that are ordinarily incident and necessary to the wind down of transactions involving the following entities through May 25, 2023: (1) Bank Saint-Petersburg; (2) Bank Zenit; (3) Joint Stock Commercial Bank Primorye; (4) Public Joint Stock Company Bank Uralsib (“Bank Uralsib”); (5) Joint Stock Company Commercial Bank Lanta Bank (“Lanta Bank”); (6) SDM-Bank Public Joint Stock Company (“SDM-Bank”); (7) Public Joint Stock Company Stock Commercial Bank Metallurgical Investment Bank (“Metallurgical Investment Bank”); (8) Public Joint Stock Company Ural Bank for Reconstruction And Development; (9) Credit Bank of Moscow Public Joint Stock Company; and (10) any entity in which one or ?more of the above persons own, directly or indirectly, individually or in the ?aggregate, a 50% or greater interest (collectively, “GL 60 Entities”). Any payment made to these GL 60 Entities must be made into a blocked account. However, U.S. persons are authorized to reject all transactions that are ordinarily incident and necessary to the processing of funds involving any of the blocked entities, rather than block the transaction.

GL 61 authorizes U.S. persons to transfer, divest or facilitate the divestment or transfer of debt or equity of the following blocked persons (“Covered Debt or Equity”) to a non-U.S. person until May 25, 2023: (1) Bank Saint-Petersburg; (2) Bank Zenit; (3) Bank Uralsib; (4) Lanta Bank; (5) SDM-Bank; (6) Metallurgical Investment Bank; and (7) any entity in which one or ?more of the above persons own, directly or indirectly, individually or in the ?aggregate, a 50% or greater interest (collectively, “Blocked Persons”). Transactions that are ordinarily incident and necessary to facilitating, clearing, and settling trades of Covered Debt or Equity that were placed prior to 4:00 p.m. eastern standard time on February 24, 2023 are permitted through May 25, 2023. Furthermore, transactions that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to 4:00 p.m. eastern standard time on February 24, 2023 that include Blocked Persons as a counterparty or linked to Covered Debt or Equity are authorized through May 25, 2023, provided that any payments to Blocked Persons must be made into a blocked account.

FAQs

FAQ 1114 – The determination of February 24, 2023 made pursuant to EO 14024 authorizes the imposition of economic sanctions on any person determined to operate or have operated in the metals and mining sector of the Russian Federation economy. Persons designated under this determination will be added to the Specially Designated Nationals and Blocked Persons List (“SDN List”), which is a list of individuals and entities with whom U.S. persons are generally prohibited from conducting business or engaging in transactions. U.S. persons are prohibited from engaging in any transactions or dealings with designated persons.

FAQ 1115 – The determination of February 24, 2023 made pursuant to EO 14024 added the metals and mining sector of the Russian economy to a growing list of sectors subject to U.S. sanctions. “Metals and mining sector of

the Russian Federation economy” include any act, process, or industry of extracting, at the surface or underground, ores, coal, precious stones, or any other minerals or geological materials in the Russian Federation, or any act of procuring, processing, manufacturing, or refining such geological materials, or transporting them to, from, or within the Russian Federation.

FAQ 1116 – The determination of February 24, 2023 made pursuant to EO 14024 *but does not mean that all persons that operate or have operated in the metals and mining sector of the Russian economy are automatically sanctioned by OFAC. Instead, the determination exposes persons that operate or have operated the metals and mining sector of the Russian economy to sanctions risk based on, among other things, the person’s assistance or support of the Russian war efforts against Ukraine.* Only persons determined pursuant to EO 14024 by OFAC to operate or have operated in this sector are subject to sanctions and designated on the SDN List.

FAQ 1117 – Non-U.S. persons risk being sanctioned for engaging in transactions with persons that are designated on the SDN List pursuant to EO 14024 (the Russian metals and mining sector), especially where those transactions would require a specific license if engaged in by a U.S. person, if such transaction would require a U.S. person to obtain a license from OFAC. OFAC does not intend to target persons for operating in the metals and mining sector where the provision of goods or services is solely for the safety and care of personnel, protection of human life, prevention of accidents or injuries, maintenance or repair necessary to avoid environmental or other significant damage, or activities related to environmental mitigation or remediation.

FAQ 1118 – Directive 4 under EO 14024 prohibits U.S. persons from engaging in transactions involving the Central Bank of the Russian Federation (“Russian Central Bank”), the Ministry of Finance of the Russian Federation (“Russian Ministry of Finance”), or the National Wealth Fund of the Russian Federation (collectively, “Russia-related Directive 4 Entities”). GL 13D authorizes U.S. persons or entities owned or control by a U.S. person to pay taxes, fees or import duties, and purchase or receive permits, licenses, registrations or certifications involving Russia-related Directive 4 Entities through June 6, 2023, provided such transactions are ordinarily incident and necessary to day-to-day operations in the Russian Federation. The Government of the Russian Federation may require a so-called “exit tax” payment prior to a person’s divestment of assets located in the Russian Federation. The so-called “exit tax” may require the exiting person to engage in transactions involving the Russian Central Bank or Russian Ministry of Finance. OFAC guidance states that GL 13D does not authorize transactions that involve the payment of this “exit tax” since it is not considered ordinarily incident and necessary to day-to-day operations in the Russian Federation. For that reason, U.S. persons may require a specific license from OFAC to pay the “exit tax” without violating U.S. law.

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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