

Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: ?May 30, 2023?

Locke Lord LLP

WRITTEN BY

Ryan Last

In conjunction with the G7 Summit in Japan, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") introduced additional economic sanctions on May 19, 2023, with the aim of further limiting the Russian Federation's ability to finance its invasion of Ukraine. As such, OFAC **(1)** published Determination Pursuant to Section 1(a)(ii) of EO 14024 and Determination Pursuant to Section 1(a)(ii) of EO 14071 related to the ?Russian Harmful Foreign Activities ?Sanctions Regulations, 31 CFR Part 587 (the "RuHSR"), **(2)** released an amended version of Directive 4 under Executive Order ("EO") 14024, **(3)** issued General License ("GL") 13E, GL 66, GL 67, and GL 68, **(4)** updated FAQs 998-1002, 1004-1005, 1118, 1059, 1061, and 1062, and **(5)** issued new FAQs 1126, 1127, 1128, and 1129.

Determinations

OFAC expanded its use of Russia-related sanctions authority through the issuance of two determinations, Determination Pursuant to Section 1(a)(ii) of EO 14024 and Determination Pursuant to Section 1(a)(ii) of EO 14071 (collectively, "Determinations"), both of which target the architecture, engineering, construction, manufacturing, and transportation sectors of the Russian Federation economy.

- Determination Pursuant to Section 1(a)(ii) of EO 14024, effective May 19, 2023, exposes persons who operate or have operated in the architecture, engineering, construction, manufacturing, and transportation sectors of the Russian economy. The determination does not automatically impose sanctions on all persons who operate or have operated in these sectors of the Russian economy; it does however, authorize the U.S. Secretary of the Treasury in consultation with the U.S. Secretary of State, to identify and subject to U.S. sanctions specific persons who operate or have operated in these sectors. See FAQ 1127 below.
- Determination Pursuant to Section 1(a)(ii) of EO 14071 ("Prohibitions Related to Architecture and Engineering Services"), effective June 18, 2023, prohibits the exportation, reexportation, sale or supply, directly or indirectly from the United States, or by a U.S. person, wherever located, of architecture services or engineering services to any person located in the Russian Federation. The prohibitions in this determination exclude any service: (1) to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a U.S. person; and (2) 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.

Directive

OFAC amended Directive 4 under 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.") to include a new reporting obligation for U.S. persons. Under the revised Directive 4, U.S.

persons are now required to submit a report to OFAC on or before June 18, 2023, and annually thereafter by June 30, regarding property in their possession or under their control in which 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”) have any form of interest, whether directly or indirectly.

GLs

GL 13E, which replaces 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” to August 17, 2023, from June 6, 2023, for transactions that are ordinarily incident and necessary to maintain U.S. persons’ day-to-day operations in the Russian Federation and otherwise prohibited by Directive 4 under EO 14024.

GL 66 authorizes transactions through August 17, 2023 to wind down transactions involving Public Joint Stock Company Polyus (“Polyus”), or any entity in which Polyus owns, directly or indirectly, a 50 percent or greater interest (collectively, “GL 66 Entities”). Any payment made to GL 66 Entities must be made into a blocked account.

GL 67 authorizes U.S. persons, until August 17, 2023, to transfer, divest or facilitate the divestment or transfer of debt or equity (“Covered Debt or Equity”) to a non-U.S. person of Polyus or any entity in which Polyus owns, directly or indirectly, a 50 percent or greater interest (“GL 67 Entities”); provided the Covered Debt or Equity was purchased prior to May 19, 2023 and any payments to GL 67 Entities are made into a blocked account.

GL 68 authorizes transactions through July 18, 2023, to wind down transactions involving one or more of the following entities: (1) Federal State Budgetary Educational Institution of Higher Education Grozny State Oil Technical University Named After Academician M.D. Millionshchikov; (2) Federal State Budget Educational Institution of Higher Education Saint Petersburg Mining University; (3) Federal State Budgetary Educational Institution of Higher Education Sergo Ordzhonikidze Russian State University for Geological Prospecting; (4) Federal State Budgetary Educational Institution of Higher Vocational Education Gubkin Russian State University of Oil and Gas; (5) State Budgetary Educational Institution of Higher Education Almeteyevsk State Oil Institute; or (6) 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 68 Entities”). Any payment made to GL 68 Entities must be made into a blocked account.

FAQs

FAQ 998 – Amended Directive 4 adds a reporting section, which is separate from the requirement under 31 CFR 501.604 for U.S. financial institutions to reject transactions involving Directive 4 Entities. OFAC amended Directive 4 to require U.S. persons to submit a report to OFAC on or before June 18, 2023, and annually thereafter by June 30, to report any property in their possession or control in which any Directive 4 Entity has an interest of any nature whatsoever, direct or indirect. This reporting requirement is intended to identify assets of Directive 4 Entities held by U.S. persons as of May 31, 2023, and annually thereafter.

FAQ 999 – GL 13E authorizes U.S. persons to pay taxes, fees, or import duties and purchases or receive permits, licenses, registrations, or certifications, to the extent such transactions are prohibited by Directive 4, provided such

transactions are ordinarily incident and necessary to such persons' day-to-day operations in the Russian Federation. We note that the so called "exit tax" assessed by the Russian Federation is not deemed "ordinarily incident or necessary to a persons' day-to-day operations", and therefore not covered by GL 13E. See FAQ 1118 below.

FAQ 1000 – The Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, and Ministry of Finance of the Russian Federation (collectively, "FAQ 1000 Entities") are subject to the following restrictions under the following directives: (1) Directive 4, which prohibits U.S. persons from engaging in any transaction for or on behalf of any FAQ 1000 Entities; (2) Directive 1A under EO 14024 ("Prohibitions Related to Certain Sovereign Debt of the Russian Federation"), which prohibits U.S. financial institutions from participating in the primary market for ruble or non-ruble denominated bonds by FAQ 1000 Entities, after June 14, 2021, lending ruble or non-ruble denominated funds to FAQ 1000 Entities, and the secondary market for ruble or non-ruble denominated bonds issued after March 1, 2022, by FAQ 1000 Entities; and (3) the Russia-Related Directive under EO of August 1, 2019 ("CBW Act Directive"), which prohibits U.S. banks from participating in the primary market for non-ruble denominated bonds issued by the any ministry, agency, or sovereign fund of the Russian Federation, including FAQ 1000 Entities ("Russian sovereign") and lending non-ruble denominated funds to the Russian sovereign. Each directive operates independently of the others and transactions involving these entities must comply with all three of these directives.

FAQ 1001 – The 50 Percent Rule does not apply to the amended Directive 4. This means U.S. persons are not prohibited from transacting with subsidiaries of Directive 4 Entities that are owned at least 50% or more unless such subsidiaries are directly sanctioned or the activities are otherwise prohibited by OFAC.

FAQ 1002 – The amended Directive 4 prohibits U.S. persons from engaging in either direct or indirect transactions involving Directive 4 Entities unless exempt or authorized by OFAC. OFAC warns U.S. persons to remain alert for non-routine foreign exchange transactions that may indirectly involve Directive 4 Entities.

FAQ 1004 – U.S. persons are not required to block transactions involving Directive 4 Entities, but must reject transactions involving Directive 4 Entities unless exempt or authorized by OFAC.

FAQ 1005 – The newly amended Directive 4 continues to permit U.S. persons trading in the secondary markets for debt or equity of Directive 4 Entities as long as Directive 4 Entities are not counterparties to such transactions. However, U.S. financial institutions are prohibited under Directive 1A under EO 14024 from participating in the secondary markets for ruble or non-ruble denominated bonds issued after March 1, 2022 by Directive 4 Entities. Additionally, as part of the "new investment" prohibitions set forth in EO 14066, EO 14068 and EO 14071, U.S. persons are prohibited from purchasing debt and equity securities issued by an entity in the Russian Federation, regardless whether the issuer of the securities is a Directive 4 Entity.

FAQ 1118 – U.S. persons are not permitted to pay the Russian "exit tax" under GL 13E unless a specific license is granted by OFAC. See our April 3, 2023 QuickStudy.

FAQ 1126 – This FAQ defines architecture, engineering, construction, manufacturing, and transportation sectors identified in the May 19, 2023 Determination Pursuant to Section 1(a)(ii) of EO 14024.

FAQ 1127 – A sector determination under EO 14024 exposes persons operating in an identified sector to sanctions risk, but it does not automatically impose sanctions on all sector participants. Only those persons determined by the U.S. Secretary of the Treasury in consultation with the U.S. Secretary of State, to be operating in these sectors are subject to sanctions. Persons sanctioned pursuant to EO 14024 for operating in an identified sector are added to one or more OFAC sanctions lists including the List of Specially Designated Nationals and Blocked Persons (“SDN List”) and the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (“CAPTA List”).

FAQ 1128 – This FAQ defines architecture services and engineering services identified in the May 19, 2023 Determination Pursuant to Section 1(a)(ii) of EO 14071.

FAQ 1129 – Polimetall AO (“Polimetall”) and any entities in which Polimetall owns, directly or indirectly, a 50 percent or greater interest (“Polimetall Entities”) have been designated as Specially Designated Nationals (“SDNs”). As SDNs, U.S. persons are prohibited from transacting with Polimetall Entities. However, OFAC confirmed that Polimetall’s ultimate parent company, Polymetal International PLC (“Polymetal”), is not subject to these blocking sanctions. As a result, U.S. persons are not restricted from dealing with Polymetal, its non-blocked subsidiaries, or non-blocked affiliates, provided the proposed dealings do not involve any blocked person, any interest in property of a blocked person, or any other activities prohibited by OFAC.

FAQ 1059 – The prohibitions imposed by the Determination Pursuant to Section 1(a)(ii) of EO 14071 on May 19, 2023 do not prohibit U.S. persons from providing architecture and engineering services to persons located outside of the Russian Federation that are owned or controlled by persons located in the Russian Federation, provided the architecture and engineering services are not an indirect export 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.” Conversely, OFAC does not impose restrictions on providing architecture and engineering services to a non-Russian company that operates outside of the Russian Federation, including those owned or controlled by persons in the Russian Federation. This is allowed as long as architecture and engineering services are not intended for further exportation or re-exportation to persons within the Russian Federation.

FAQ 1061 – U.S. persons are prohibited from providing management consulting, trust and corporate formation, accounting, architecture, and engineering services to companies located in the Russian Federation (“Russian Companies”) in their capacity as employees. The determinations made pursuant to EO 14071 on May 8, 2022, September 15, 2022 and May 19, 2023 (“EO 14071 Determinations”), however, do not prohibit U.S. persons from serving as employees of Russian Companies in other capacities that are not specifically covered by the EO 14071 Determinations. Additionally, the EO 14071 Determinations exclude from the prohibition: (1) service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a U.S. 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 prohibitions imposed by the Determination Pursuant to Section 1(a)(ii) of EO 14071 on May 19, 2023 apply to architecture and engineering services provided to a parent company located in the Russian Federation by a U.S. person, including the Russian company’s U.S. subsidiary.

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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