

# Locke Lord QuickStudy: OFAC Russia Related Sanctions Update: November 29, 2022 Relating to the Extension of GL 13 and the Russian Oil Price Cap

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**GL 13.** On November 21, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") reissued [General License \("GL"\) 13C](#) related to the [Russian Harmful Foreign Activities Sanctions Regulations](#), 31 CFR Part 587 (the "RuHSR"), which supersedes GL 13B. GL 13C 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 [Executive Order \("EO"\) 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") for transactions that are ordinarily incident and necessary to maintain U.S. persons' day-to-day operations in the Russian Federation. GL 13C's only change to GL 13B is to extend the cutoff date for transactions to March 7, 2023 from December 7, 2022.

**Russian Oil Price Cap.** The G7, which includes the U.S. and the European Union, and Australia ("Price Cap Coalition"), have agreed commencing on December 5, 2022, to prohibit the import and transport of crude oil and petroleum products of Russian Federation origin at prices that exceed the price cap established by the Price Cap Coalition. The effort is intended to limit Russia's funding for its war in Ukraine without increasing the price of oil. In response, on November 22, 2022, OFAC issued a [determination](#) ("Prohibitions on Certain Services as They Related to the Maritime Transport of Crude Oil of Russian Federation Origin") pursuant to [EO 14071](#) ("Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression") to implement the price cap policy for crude oil of Russian Federation origin (the "Determination"), [guidance](#) on the implementation of the price cap policy for crude oil of Russian Federation origin ("Russian oil") and [GL 55](#), [GL 56](#) and [GL 57](#) related to the RuHSR.

### OFAC Determination

OFAC published its [Determination](#) to authorize U.S. persons to provide certain services as they related to the maritime transport of Russian oil ("Covered Services"), as long as the price of the Russian oil is at or below the relevant price cap. Covered Services include trading/commodities brokering, financing, shipping, insurance (including reinsurance and protection and indemnity), flagging and customs brokering. The Determination is set to take effect beginning December 5, 2022, except does not apply to any crude oil loaded onto a vessel at the port of loading prior to December 5, 2022 and unloaded at the port of destination prior to January 19, 2023. The Determination does not authorize the import of Russian oil into the United States, which is prohibited pursuant to [EO 14066](#) ("Prohibiting Certain Imports and New Investments with Respect to Continued Russian Federation

Efforts to Undermine the Sovereignty and Territorial Integrity of Ukraine”).

### OFAC Guidance on Price Cap Policy

OFAC provided [guidance](#) on the implementation of the price cap policy for Russian oil. OFAC anticipates publishing preliminary guidance on implementation of the price cap policy for petroleum products of Russian Federation origin in the near future. The guidance summarizes the Determination as an authorization for U.S. persons to provide Covered Services if the Russian oil is purchased at or below the price cap.

The price cap for Russian oil will be set by the Price Cap Coalition. Each time a new price cap for Russian oil is set, OFAC will issue a new determination pursuant to [EO 14071](#) to replace the previous determination. Shipping, freight, customs and insurance costs are not included in the price cap and must be invoiced separately and at commercial reasonable rates. While shipping and insurance are Covered Services, these costs are distinct from the price cap on Russian oil. OFAC will view the billing of commercially unreasonable shipping, freight, customs or insurance costs as a sign of potential evasion of the price cap.

The price cap applies from the embarkment of maritime transport of Russian oil (e.g., when the crude oil is sold by a Russian entity for maritime transport) through the first landed sale in a jurisdiction other than the Russian Federation (through customs clearance). Thus, once the Russian oil has cleared customs in a jurisdiction other than the Russian Federation, the price cap does not apply to any further onshore sale. If, however, after clearing customs, the Russian oil is taken back out on the water (i.e., using maritime transport) without being substantially transformed (e.g., it is refined or undergoes other substantial transformation such that the product loses its identity and is transformed into a new product having a new name, character and use) outside of the Russian Federation, the price cap still applies. Once crude oil is substantially transformed in a jurisdiction other than the Russian Federation, it is no longer considered to be of Russian Federation origin, and thus the price cap no longer applies (even if the refined oil is further exported using maritime transport). OFAC does not consider blending of crude oil alone to be substantial transformation for purposes of the Determination.

OFAC will *not* consider crude oil to be of Russian Federation origin solely because it contains a de minimis amount of crude oil left over from a container or taker. For purposes of assessing whether crude oil is of Russian Federation origin, U.S. persons may reasonably rely upon a certificate of origin but should exercise caution if they have reason to believe such certificate has been falsified or is otherwise erroneous. Further, OFAC guidance states that “financing” under Covered Services for purposes of the Determination does *not* include foreign exchange transactions, the clearing of commodities futures contracts, and the processing or clearing of payments by intermediary banks that do not have any direct relationship with the person providing services related to the maritime transport of the Russian oil (i.e., the person is a non-account party) as it relates to the transaction.

U.S. persons providing Covered Services must ensure that refiners or other purchasers in third countries that have *not* prohibited the import of Russian oil provide documentation showing that the Russian oil was purchased at or below the relevant price cap. OFAC’s guidance establishes a safe harbor from strict liability for U.S. service providers that comply in good faith with a recordkeeping and attestation process where such Service Providers inadvertently deal in the purchase of Russian oil sold above the relevant price cap owing to falsified or erroneous records provided by those who act in bad faith or make material representations.

OFAC divides parties providing Covered Services into three “tiers” of actors and to qualify for the safe harbor, actors must comply with the following:

Actor Tier Scope		Safe Harbor Compliance Requirements	Risk-Based Due Diligence Recommendations
Tier 1 Actors	Actors who regularly have <i>direct</i> access to price information in the ordinary course of business, such as commodities brokers and oil traders.	Retain documents showing that Russian oil was purchased at or below the relevant price cap. Such documentation may include invoices contracts, or receipts/proof of payment.	Updating terms and conditions of contracts, updating invoice structure to include itemized price for oil purchase (excluding shipping, freight, customs and insurance costs), providing guidance to staff.
Tier 2 Actors	Actors who are <i>sometimes</i> able to request and receive price information from their customers in the ordinary course of business, such as financial institutions, ship/vessel agents, and customs brokers.	To the extent practicable, request and retain documents that show that Russian oil was purchased at or below the relevant price cap. When not practicable to request and receive such information, obtain and retain customer attestations, in which the customer commits that for the service being provided, the Russian oil was purchased or will be purchased at or below the relevant price cap.	Providing guidance (e.g., risk-based compliance policies and procedures) to trade finance department/relationship managers/compliance staff, updating requests for information (e.g., trade or transaction information showing the origin of articles, date and unit price) or sanctions questionnaire templates.
Tier 3 Actors	Actors who do not regularly have <i>direct</i> access to price information in the ordinary course of business, such as insurers, P&I clubs, ship owners and flagging registries.	Obtain and retain customer attestations, in which the customer commits that for the service being provided, the Russian oil was purchased or will be purchased at or below the relevant price cap (e.g., as part of their annual insurance policy renewal process or updates to their insurance policies). This can be done through a sanctions exclusion clause written into or already included into policies or contracts.	Updating policies and terms and conditions, updating sanctions questionnaire templates, providing guidance to staff.

To be afforded this safe harbor, U.S. persons providing Covered Services must retain relevant records for five years, reject participating in evasive transactions or transactions that violate the Determination, and report such

transactions to OFAC.

While OFAC has confirmed its broad authority to take action against actors that evade the price cap, it has stated that it will not pursue penalties against U.S. service providers that comply with the safe harbor requirements outlined in the guidance. For that reason, it is important for persons providing Covered Services to take immediate measures to prepare and comply with price cap requirements of Russian oil, which include conducting a risk assessment review of customers, contracts and transactions, updating insurance policies and sanctions-related compliance programs, providing sanctions-related trainings, amending sanctions-related questionnaires and attestations, and modifying contractual terms and conditions.

### GLs

- [GL 55](#) – Authorizes transactions prohibited by the Determination related to the maritime transport of crude oil originating from the Sakhalin-2 project (“Sakhalin-2 byproduct”) through September 30, 2023, provided that the Sakhalin-2 byproduct is solely for importation into Japan.
- [GL 56](#) – Authorizes transactions prohibited by the Determination related to the importation of crude oil into the Republic of Bulgaria, the Republic of Croatia, or landlocked European Union Member States as described in [Council Regulation \(EU\) 2022/879 of June 3, 2022](#). Specifically, Council Regulation (EU) 2022/879 contains the following three derogations, which are covered by GL 56: (i) as of December 5, 2022 until December 31, 2024 Bulgaria, to execute contracts concluded before June 4, 2022, or of ancillary contracts necessary for the execution of such contracts, for the purchase, import or transfer of seaborne crude oil (CN 2709 00) and of petroleum products (CN 2710) originating in Russia or exported from Russia; (ii) as of February 5, 2023 until December 31, 2023 for Croatia, to purchase, import or transfer of vacuum gas oil falling under CN 2710 19 71 originating in Russia or exported from Russia, if no alternative supply of vacuum gas oil is available and Croatia has notified the European Commission, which has not objected; (iii) as of December 5, 2022 for a landlocked EU Member State, if the supply of crude oil by pipeline from Russia is interrupted for reasons outside the control of that EU Member State, for seaborne crude oil from Russia falling under CN 2709 00 to be imported into that EU Member State, until the supply is resumed or until the Council of the EU decides to terminate this exemption with regard to that EU Member State, whichever is the earliest. GL 56 only authorizes against authorities administered by OFAC and activity otherwise prohibited by section 1(a)(ii) of EO 14071.
- [GL 57](#) – Authorizes transactions prohibited by the Determination that are ordinarily incident and necessary to vessel emergencies related to the health or safety of the crew or environmental protection, including safe docking or anchoring, emergency repairs, or salvage operations. Transactions authorized under GL 57 does not include the sale of crude oil of Russian Federation origin.

### UK & EQ Russian Oil Price Cap

On November 28, 2022, the UK’s HM Treasury’s Office of Financial Sanctions Implementation issued its own guidance regarding the ban on the provision of maritime transportation of, and associated services, for certain Russian oil and oil products. Such guidance, which is similar to that recently issued by OFAC, also provides details on the oil price cap exception and due diligence (e.g., attestations) and reporting obligations for actors in the oil supply chain. With the December 5 deadline looming, the EU has yet to release similar guidance on the Russian oil price cap.

### 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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