

Locke Lord QuickStudy: OFAC Russia ?Related Sanctions Update: September 26, 2022?

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WRITTEN BY

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A lot has happened since our last update. Apologies to our readers for the delay to publish this Update. Each time we were ready to go to press, OFAC published a new action. Following the recent United Nations General Assembly meeting, we expect a flurry of new actions and reactions around the globe. We will do our best to keep you current on sanctions activity relating to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (the “RuHSR”).

General Licenses

General License (“GL”) 13B. On September 8, 2022, OFAC issued GL 13B related to the RuHSR, which amends and replaces GL 13A. Subject to certain conditions, GL 13B extends the time for U.S. persons “to pay taxes, fees or import duties, and purchases or receive permits, licenses, registrations, 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”), provided such transactions are ordinarily incident and necessary to the day-to-day operations in the Russian Federation of such U.S. persons. GL 13B’s only change to GL 13A is to extend the cutoff date for transaction to December 7, 2022, from September 30, 2022.

Directive 4 otherwise prohibits any transfer of assets to, or any foreign exchange transaction for or on behalf 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.

General License 51 and General License 52. On September 15, 2022, OFAC issued two general licenses (GL 51 and GL 52) related to the RuHSR.

- GL 51 authorizes through October 15, 2022 the wind down of transactions involving Limited Liability Company group of Companies Akvarius (“Akvarius”), or any entity in which Akvarius owns, directly or indirectly, a 50% or greater interest. Please note that any payment to a blocked person must be made into a blocked account in accordance with the RuHSR.
- GL 52 authorizes news reporting organizations, journalists, and broadcast or technical personnel that are U.S. persons to engage in the following transactions that are ordinarily incident and necessary to U.S. persons’ journalistic activities or the establishment or operation of a news bureau, provided that the only involvement of blocked persons is the processing of funds by financial institutions blocked pursuant to EO 14024: (i) compensating support staff (e.g., translators, camera operators, technical experts, freelance producers, or drivers), persons to handle logistics, or other office personnel; (ii) leasing or renting office space; (iii) purchasing, leasing, or renting goods and services (e.g., mobile phones and related airtime; or (iv) paying for all other

expenses ordinarily incident and necessary to journalistic activities, including sales and employment taxes. Note that GL 52 does not authorize any transactions involving Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting Company, Television Station Russia-1, Limited Liability Company Algoritm, New Eastern Outlook, or Oriental Review, unless separately authorized.

Determinations

On September 15, 2022, OFAC published a Determination Pursuant to Section 1(a)(i) of Executive Order 14024 and a Determination Pursuant to Section 1(a)(ii) of Executive order 14071. According to the U.S. Treasury, the U.S. Department of State has imposed further sanctions on Russian companies supporting its quantum computing capabilities, which help support Russia's war machine. According to the statement, "this action complements additional actions taken today by the U.S. Department of Commerce, which imposed additional export controls to Russia and Belarus on quantum computing hardware, software, and technology, among other things. Together these actions by the U.S. government will further degrade Russia's ability to reconstitute its military with the advanced technology support it has previously relied on from the United States". These determinations allow OFAC to impose sanctions on any individual or entity determined to operate or have operated in this sector of the Russian Federation economy. OFAC issued four related Frequently Asked Questions ("FAQs") (1083-1086), and five amended FAQs (1033, 1034, 1059, 1061, and 1062) in connection with these Determinations.

- Determination Pursuant to Section 1(a)(i) of Executive Order 14024, takes effect October 15, 2022. The Determination prohibits the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of quantum computing services to any person located in the Russian Federation. This determination excludes any service to any entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a U.S. person, as well as 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.
- Determination Pursuant to Section 1(a)(ii) of Executive order 14071 ("Prohibitions Related to Certain Quantum Computing Services") authorizes the Secretary of the U.S. Department of the Treasury to impose economic sanctions on any person operating in the quantum computing sector of the Russian Federation economy.

FAQs

On September 15, 2022, OFAC published seven new Russia-related "FAQs" (FAQ 1080, FAQ 1081, FAQ 1082, FAQ 1083, FAQ 1084, FAQ 1085, and FAQ 1086) and amended five Russia-related "FAQs" (FAQ 1033, FAQ 1034, FAQ 1059, FAQ 1061, and FAQ 1062).

- FAQ 1080 – "I am a U.S. person with an account at a Russian financial institution blocked pursuant to Executive Order (EO) 14024. What am I required or allowed to do under OFAC sanctions with respect to such accounts?"

Generally, assets in accounts held by U.S. persons at any blocked Russian financial institutions are considered blocked property, unless exempt. Accounts include, for example, checking and savings accounts, credit cards, CDs, loans and mortgages. U.S. persons must stop utilizing such accounts and treat them as blocked, even if the designated Russian financial institution does not. Additionally, within 10 business days of the blocking of the account or other property, U.S. persons are required to file a blocking report with OFAC describing any property or interests in property (e.g., accounts). We note that GL 50 (i) authorizes individuals, wherever located, to engage in all transactions ordinarily incident and necessary to close their individual accounts held at a financial institution blocked pursuant to EO 14024, (ii) does not have a set expiry date, and (iii) also authorizes the

unblocking and lump sum transfer to the account holder of all remaining funds and other assets in the account at the blocked financial institution, including to an account held at a non-blocked financial institution. Individuals may avail themselves of GL 50 to terminate their accounts with Russian financial institutions blocked pursuant to EO 14024 and repatriate the proceeds of any account closures. Individuals who have filed a blocking report with OFAC and are availing themselves of GL 50 must file an unblocking report with OFAC within 10 business days of the unblocking.

- [FAQ 1081– “Am I required to show official documentation that I’ve closed my account at a Russian financial institution blocked pursuant to Executive Order \(EO\) 14024 in order to take advantage of Russia-related General License \(GL\) 50?”](#)

GL 50 authorizes individuals with accounts at Russian financial institutions blocked pursuant to EO 14024 to unblock and lump sum transfer funds to an account at a non-designated financial institution. Individuals do not need to provide official documentation proving they have closed their account at the blocked Russian financial institution when utilizing the general license. However, if the accountholder has filed a blocking report with OFAC and are availing themselves of GL 50, the accountholder must file an unblocking report with OFAC within 10 business days of the unblocking. Please note that the annual filing requirement for 2022 applies only to persons holding blocked property as of June 30 of this year.

- [FAQ 1082 – “National Payment Card System Joint Stock Company \(NSPK\) is not a blocked entity under the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 \(RuHSR\). Do non-U.S. financial institutions risk exposure to sanctions for contracting or otherwise dealing with NSPK?”](#)

National Payment Card System Joint Stock Company (“NSPK”) is the operator of Russia’s MIR National Payment System, which clears and settles payments between consumers, merchants, and banks for debit and credit card payments, primarily in the Russian Federation. NSPK and the MIR National Payment System process transactions for designated Russian banks and may be used to process transactions involving other sanctioned persons or activity under the RuHSR. Accordingly, those non-U.S. financial institutions that enter into new or expanded agreements with NSPK risk supporting Russia’s efforts to evade U.S. sanctions through the expanded use of the MIR National Payment System outside the territory of the Russian Federation. The RuHSR authorizes OFAC to impose blocking sanctions on persons determined to have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of (i) any activity sanctionable under the RuHSR, including deceptive or structured transactions or dealings to circumvent any United States sanctions or (ii) any person whose property and interests in property are blocked pursuant to the RuHSR. OFAC is prepared to use these targeting authorities in response to supporters of Russia’s sanctions evasion, including Russia’s efforts to expand the use of NSPK or the MIR National Payment System outside of the territory of the Russian Federation.

- [FAQ 1083 – “What actions were taken on September 15, 2022 related to certain quantum computing services?”](#)

The Director of OFAC, in consultation with the Department of State, issued a determination pursuant to EO 14071 (“Prohibitions Related to Certain Quantum Computing Services”) prohibiting the exportation,

reexportation, sale, or supply, directly or indirectly, from the United States, or by a U.S. person, wherever located, of certain quantum computing services to any person located in the Russian Federation. This determination takes effect on October 15, 2022. This determination excludes from the scope of the prohibited services: (1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States 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. The Director of OFAC, in consultation with the Department of State, also issued a sectoral determination pursuant to EO 14024 that authorizes the imposition of economic sanctions on individuals and entities that are determined to operate or have operated in the quantum computing sector of the Russian Federation economy. The determination regarding this sector pursuant to EO 14024 takes effect immediately.

- FAQ 1084 – “For the purposes of the determination of September 15, 2022 made pursuant to Executive Order (EO) 14071, “Prohibitions Related to Certain Quantum Computing Services” (“the determination”), what is meant by the term “quantum computing services”?”

For purposes of the determination made pursuant to EO 14071 (“Prohibitions Related to Certain Quantum Computing Services”), OFAC anticipates publishing regulations defining this term to include any of the following services when related to quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing: infrastructure, web hosting, or data processing services; custom computer programming services; computer systems integration design services; computer systems and data processing facilities management services; computing infrastructure, data processing services, web hosting services, and related services; repairing computer, computer peripherals, or communication equipment; other computer-related services; as well as services related to the exportation, reexportation, sale, or supply, directly or indirectly, of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing to any person located in the Russian Federation. OFAC also anticipates publishing regulations defining the term “person located in the Russian Federation” as set forth in FAQ 1058, as well as regulations defining the term “Russian person” to mean an individual who is a citizen or national of the Russian Federation, or an entity organized under the laws of the Russian Federation.

- FAQ 1085 – “Does the determination of September 15, 2022 made pursuant to Executive Order (EO) 14024 with regard to the quantum computing sector of the Russian Federation economy mean that all persons that operate or have operated in these sectors of the Russian Federation economy are sanctioned by OFAC?”

No. The Director of OFAC, in consultation with the State Department, has issued a determination pursuant to EO 14024 that authorizes the imposition of economic sanctions against persons that operate or have operated in the quantum computing sector of the Russian Federation economy.” A sector determination pursuant to EO 14024 exposes persons that operate or have operated in an identified sector to sanctions risk; however, a sector determination does not automatically impose sanctions on all persons who operate or have operated in the sector. Only persons determined, pursuant to EO 14024, by the Secretary of the Treasury in consultation with the Secretary of State, or by the Secretary of State in consultation with the Secretary of the Treasury, or their delegates, to operate or have operated in the above-identified sectors are subject to sanctions. Persons sanctioned pursuant to EO 14024 for operating or having operated in an identified sector are added to one or more OFAC sanctions lists based on the type of sanction, including the Specially Designated Nationals and

Blocked Persons List (“SDN List”), the List of Foreign Financial Institutions Subject to Correspondent Account or Payable-Through Account Sanctions (“CAPTA List”), and the Non-SDN Menu-Based Sanctions List (“NS-MBS List”).

- FAQ 1086 – “For the purposes of the determination of September 15, 2022 made pursuant to Executive Order (EO) 14024, what is meant by the term “quantum computing sector of the Russian Federation economy”?”

For purposes of the determination of September 15, 2022 made pursuant to EO 14024, OFAC interprets the term “quantum computing sector of the Russian Federation economy” to include activities related to products and services in or involving the Russian Federation in research, development, manufacturing, assembling, maintenance, repair, sale, or supply of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing. OFAC also interprets the term “quantum computing sector of the Russian Federation economy” to include any of the following services when related to quantum computing: infrastructure, web hosting or data processing services; custom computer programming services; computer systems integration design services; computer systems and data processing facilities management services; computing infrastructure, data processing services, web hosting services, and related services; repairing computer, computer peripherals, and communication equipment; other computer-related services; as well as the exportation, reexportation, sale, or supply, directly or indirectly, of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing to or from the Russian Federation.

- FAQ 1033 – “What actions were taken on May 8, 2022 related to certain accounting, trust and corporate formation, and management consulting services?”

On May 8, 2022, the Director of OFAC, in consultation with the Department of State, issued a determination pursuant to EO 14071 (“Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services”), as well as a sectoral determination pursuant to EO 14024 that authorizes the imposition of economic sanctions on individuals and entities that operate or have operated in the accounting, trust and corporate formation services, or management consulting sectors of the Russian Federation economy. On September 15, 2022, FAQ 1033 was amended to include quantum computing.

- FAQ 1034 – “For the purposes of the determination of May 8, 2022 made pursuant to Executive Order (EO) 14071, “Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services,” what is meant by the terms “accounting,” “trust and corporate formation,” and “management consulting” services?”

OFAC anticipates publishing regulations defining the terms “accounting services”, “trust and corporate formation services”, “trust and corporate formation services”, “management consulting services”, and “Russian person” as follows: (i) “Accounting services” – includes services related to the measurement, processing, and evaluation of financial data about economic entities. Please note that OFAC has issued General License 35 to authorize certain transactions ordinarily incident and necessary to the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person,

wherever located, of credit rating or auditing services to any person located in the Russian Federation through 12:01 a.m. eastern daylight time, August 20, 2022. See FAQ 1035. (ii) “Trust and corporate formation services” – includes services related to assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for other persons to act as directors, secretaries, administrative trustees, trust fiduciaries, registered agents, or nominee shareholders of legal persons; providing a registered office, business address, correspondence address, or administrative address for legal persons; and providing administrative services for trusts. Please note that all of these activities are common activities of trust and corporate service providers (“TCSPs”), although they may be provided by other persons. (iii) “Management consulting services” – includes services related to strategic business advice; organizational and systems planning, evaluation, and selection; development or evaluation of marketing programs or implementation; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management. This determination excludes from the scope of the aforementioned services: (1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States 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. OFAC also anticipates publishing regulations defining the term “person located in the Russian Federation” as set forth in FAQ 1058, to mean an individual who is a citizen or national of the Russian Federation, or an entity organized under the laws of the Russian Federation. On September 15, 2022, FAQ 1034 was amended to include quantum computing.

- FAQ 1059 – “Do the determinations made pursuant to Executive Order (EO) 14071 on May 8, 2022, “Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services,” and on September 15, 2022, “Prohibitions Related to Certain Quantum Computing Services” (“the determinations”), prohibit U.S. persons from providing services to persons located outside of the Russian Federation that are owned or controlled by persons located in the Russian Federation?”

No, provided that the provision of services is not an indirect export to a person located in the Russian Federation. For the purposes of these determinations, 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.” The determinations made pursuant to EO 14071 on May 8, 2022 (“Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services”) and on September 15, 2022 (“Prohibitions Related to Certain Quantum Computing Services”) (collectively, the “Determinations”) do not prohibit U.S. persons from providing services to persons located outside of the Russian Federation that are owned or controlled by persons located in the Russian Federation, provided that the provision of services is not an indirect export to a person located in the Russian Federation. For the purposes of the Determinations, 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.” In contrast, OFAC would not consider to be prohibited the provision of services to a non-Russian company that has a physical presence and operations outside of the Russian Federation, including such a company owned or controlled by persons located in the Russian Federation, provided that the services will not be further exported or re-exported to persons located in the Russian Federation. On September 15, 2022, FAQ 1059 was amended to include quantum computing.

- FAQ 1061 – “Do the determinations made pursuant to Executive Order (EO) 14071 on May 8, 2022, “Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services,” and on September 15, 2022, “Prohibitions Related to Certain Quantum Computing Services” (“the determinations”), prohibit U.S. persons from working as employees of entities located in the Russian

Federation?”

Under the determinations, U.S. persons are prohibited from exporting, reexporting, selling, or supplying, directly or indirectly: management consulting; trust and corporate formation services; accounting services; or quantum computing services to persons located in the Russian Federation. Thus, U.S. persons are prohibited from providing these services to companies located in the Russian Federation (“Russian companies”) in their capacity as employees. However, the determinations do not prohibit U.S. persons from providing other services not covered by these determinations as part of their employment by Russian companies. In addition, please note that the determinations exclude from the scope of the aforementioned services: (1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States 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. On September 15, 2022, FAQ 1061 was amended to include quantum computing.

- FAQ 1062 – “Do the prohibitions imposed by the determinations made pursuant to Executive Order (EO) 14071 on May 8, 2022, “Prohibitions Related to Certain Accounting, Trust and Corporate Formation, and Management Consulting Services,” and on and on September 15, 2022, “Prohibitions Related to Certain Quantum Computing Services,” apply to services provided to a parent company located in the Russian Federation by a U.S. subsidiary?”

The prohibitions imposed by the Determinations apply to services provided to a company located in the Russian Federation (the “Russian company”) by any U.S. person, including the Russian company’s U.S. subsidiary. On September 15, 2022, FAQ 1062 was amended to include quantum computing.

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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