

Locke Lord QuickStudy: U.S. Issues Warning to Foreign Financial Institutions That Assist Russia's War Machine

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On December 22, 2023, President Biden issued new Executive Order (“EO”) 14114, amending EO 14024 and EO 14068. The new EO grants the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) authority to target foreign financial institutions (“FFI”) operating outside of Russia that facilitate transactions involving Russia’s military-industrial base. In tandem with the issuance of EO 14114, OFAC issued a [determination](#) prohibiting the importation into the U.S. of certain goods originating from Russia, regardless of whether the goods were substantially transformed in a third country. Furthermore, OFAC also released two new General Licenses (“GLs”) (GL 84 and GL 85), published 12 new FAQs and amended three existing FAQs related to the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR Part 587 (“RuHSR”). Furthermore, OFAC published a Compliance Advisory to provide guidance to FFIs on the amendments to EO 14024, including practical guidance on how to identify sanctions risks and implement corresponding controls. We believe these sanctions will be the U.S.’s first use of secondary sanctions involving Russia.

Executive Order and OFAC Determination

On December 22, 2023, President Biden issued EO 14114 (“Executive Order on Taking Additional Steps With Respect to the Russian Federation’s Harmful Activities”) that permits OFAC to impose sanctions on FFIs under two key conditions: (i) if the FFI conducted or facilitated any significant transaction or transactions for persons designated under EO 14024 (Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation) who operate or have operated in the technology, defense and related materiel, construction, aerospace, or manufacturing sectors of the Russian Federation economy, or other such sectors as may be determined to support Russia’s military-industrial base; or (ii) conducted or facilitated any significant transaction or provided any service involving Russia’s military-industrial base, including the direct or indirect sale, supply or transfer to Russia of certain items, as determined by the U.S. Secretary of the Treasury in consultation with the U.S. Secretary of State (“Significant Items”). With this enhanced authority, OFAC can now impose full blocking sanctions against these FFIs and restrict correspondent banking accounts with the U.S. for FFIs found to be in violation of these provisions.

OFAC issued a Determination Pursuant to Section 11(a)(ii) of EO 14024 (the “Determination”), which implements the secondary sanctions provision of EO 14114 against FFIs and provides an Annex with a list of items that constitute Significant Items. The items specified in the Annex include oscilloscopes, silicon wafers, smokeless powder, turbine oil, thermal sights, fiber-optic gyroscopes and semiconductor manufacturing equipment. EO 14114

and the Determination do not seem to mandate that Significant Items must originate from the U.S. or possess any other nexus to the U.S., which aligns with other secondary sanctions.

General Licenses

GL 84 permits U.S. financial institutions with correspondent accounts or payable-through accounts (“CAPTA”) for any FFIs subject to CAPTA prohibitions under EO 14024, as amended, to engage, for a 10-day period following the imposition of prohibitions, the undertaking of the following transactions: (i) exclusive processing of transaction through the account or allowing the FFIs to solely conduct transactions through the account, specifically for the purpose of closing the said account; and (ii) transferring the remaining funds in the CAPTA to an account held by the FFIs outside the U.S. and the closure of the CAPTA.

GL 85 authorizes until March 21, 2024, all transactions that are ordinarily incident and necessary to the wind-down of any transactions involving Expobank Joint Stock Company (“Expobank”) or any entity controlled by Expobank, provided that payments to blocked persons are made to a blocked account. Furthermore, this GL extends authorization until March 21, 2024, for transactions that are ordinarily incident and necessary to (i) the closure of an account belonging to a person, irrespective of location, who is not a blocked person (the “Account Holder”) at Expobank or any financial institution where Expobank controls, and (ii) the unblocking and lump-sum transfer of all remaining funds and assets in the account to the Account Holder, including transfers to an account held by the Account Holder at a non-blocked financial institution.

FAQs

FAQ 1146, FAQ 1147, FAQ 1148, FAQ 1149, and FAQ 1150 – All of the foregoing FAQs provide guidance regarding OFAC’s implementation of the EO 14114, which modifies both EO 14024 and EO 14068 to address Russia’s ongoing use of FFIs to support its military-industrial base and counteract Russia’s persistent efforts to destabilize countries and regions important to the U.S.

FAQ 1151 – OFAC expects to publish regulations that further define the below terms:

- **Foreign Financial Institution:** As defined in subsection 11(f) of EO 14024, FFI means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, futures or options, or procuring purchasers and sellers thereof, as principal or agent. It includes depository institutions, banks, savings banks, money services businesses, operators of credit card systems, trust companies, insurance companies, securities brokers and dealers, futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, dealers in precious metals, stones, or jewels, and holding companies, affiliates, or subsidiaries of any of the foregoing. The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by OFAC.
- **Russia’s military-industrial base** includes the technology, defense and related materiel, construction, aerospace, and manufacturing sectors of the Russian Federation economy (and other sectors as may be determined pursuant to EO 14024). Russia’s military-industrial base may also include individuals and entities that support the sale, supply, or transfer of critical items identified in determinations pursuant to subsection 11(a)(ii) of EO 14024.
- **Significant transaction or transactions:** OFAC may consider the totality of the facts and circumstances when determining whether a transaction or transactions are “significant.” As a general matter, some or all of the

following factors may be considered: (a) the size, number, and frequency of the transaction(s); (b) the nature of the transaction(s); (c) the level of awareness of management and whether the transactions are part of a pattern of conduct; (d) the nexus of the transaction(s) to persons sanctioned pursuant to EO 14024, or to persons operating in Russia's military-industrial base; (e) whether the transaction(s) involve deceptive practices; (f) the impact of the transaction(s) on U.S. national security objectives; and (g) such other relevant factors that OFAC deems relevant.

FAQ 1152 – FFIs that engage in transactions in non-USD currencies could be sanctioned under section 11 of EO 14024, as amended by EO 14114. For example, an FFI that processes any significant transaction(s) denominated in a non-USD local currency on behalf of a customer that exports critical items to Russia's military-industrial base risks being sanctioned by OFAC.

FAQ 1153 – OFAC's and the Department of State's published press releases may also be a useful source of information in this regard. In addition, OFAC anticipates updating the SDN List to add additional information to reflect the sector in which an SDN was designated for operating.

Compliance Advisory

OFAC issued a Compliance Advisory to provide guidance to FFIs to avoid sanctions under EO 14024, as amended:

- Maintaining accounts, transferring funds, or providing other financial services (i.e., payment processing, trade finance, insurance) for any persons designated for operating in the specified sectors.
- Maintaining accounts, transferring funds, or providing other financial services (i.e., payment processing, trade finance, insurance) for any persons, either inside or outside Russia, that support Russia's military-industrial base, including those that operate in the specified sectors of the Russian economy.
- Facilitating the sale, supply, or transfer, directly or indirectly, of the specified items to Russian importers or companies shipping the items to Russia.
- Helping companies or individuals evade U.S. sanctions on Russia's military-industrial base. This includes:
 - offering to set up alternative or non-transparent payment mechanisms,
 - changing or removing customer names or other relevant information from payment fields,
 - obfuscating the true purpose of or parties involved in payments, or
 - otherwise taking steps to hide the ultimate purpose of transactions to evade sanctions.

To mitigate sanctions risk, FFIs should take steps to identify and minimize their exposure to activity involving Russia's military-industrial base and those that support it. These steps are in addition to baseline customer due diligence procedures and other anti-money laundering controls. Examples of such controls may include:

- Communicating compliance expectations to customers, including informing them that they may not use their accounts to do business with designated persons operating in the specified sectors or conduct any activity involving Russia's military-industrial base. This may also include sharing the list of the specified items with customers, especially customers engaged in import-export activity, manufacturing, or any other relevant business lines.
- Sending questionnaires to customers known to deal in or export specified items to better understand their counterparties.
- Taking appropriate mitigation measures for any customers or counterparties engaged in high-risk activity or who

fail to respond to requests for information regarding activity of concern.

- These measures include restricting accounts, limiting the type of permissible activity, exiting relationships, and placing customers or counterparties on internal “do not onboard” or “do not process” watchlists.
- Incorporating risks related to Russia’s military-industrial base into sanctions risk assessments and customer risk rating criteria. This includes updating jurisdictional risk assessments as appropriate.

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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