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Russia/Ukraine Crisis: U.S. Sanctions and Export Controls Escalation Continues

On May 8, 2022, the U.S. Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) issued broad restrictions against the provision of accounting, trust, and corporate formation, as well as management consulting services, to parties located in the Russian Federation. Two days later, the Commerce Department’s Bureau of Industry and Security (“BIS”) released a rule expanding the scope of items subject to licensing requirements for export to Russia. As a practical matter, the new restrictions will prohibit or deter U.S. persons from engaging in many corporate activities involving Russia, as the evolving U.S. regulatory framework increasingly resembles a broader embargo.

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Accounting, Trust and Corporate Formation, and Management Consulting Services Prohibitions

Executive Order 14071, issued on April 8, 2022, prohibits “the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person” of any category of services subsequently identified by the U.S. government as impermissible.

On May 8, OFAC, in consultation with the State Department, determined that the provision of accounting, trust, and corporate formation, as well as management consulting activities, to parties in the Russian Federation should be prohibited, effective June 7 (the “Services Determination”). In connection with the Services Determination, OFAC issued the following explanatory guidance:

- “Accounting services” includes any “services related to the measurement, processing, and transfer of financial data about economic entities.”
- “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.”
- “Management consulting services” includes “services related to strategic advice; organizational and systems planning, evaluation, and selection; marketing objectives and policies; mergers, acquisitions, and organizational structure; staff augmentation and human resources policies and practices; and brand management.”

U.S. persons are prohibited from providing any of the above services to Russian entities, with the following narrow exceptions:

- OFAC excluded from the Services Determination “any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person.” As such, U.S. persons can continue to provide the above-described services to U.S.-owned and controlled affiliates.

- OFAC excluded from the Services Determination “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.”¹ OFAC, in turn, issued two wind-down general licenses:
 - General License No. 34 authorizes U.S. persons to engage in all transactions ordinarily incident and necessary to wind down the provision of accounting, trust and corporate formation, or management consulting services to Russia through 12:01 a.m. EDT on July 7, 2022.
 - General License No. 35 authorizes U.S. persons to engage in all transactions ordinarily incident and necessary to wind down the provision of credit rating or auditing services to Russia through 12:01 a.m. EDT on August 20, 2022.

Also on May 8, OFAC published a separate determination pursuant to Executive Order 14024 (the “Sanctions Determination,” and together with the Services Determination, the “Determinations”), which authorizes the imposition of sanctions against any person operating in the accounting, trust and corporate formation services or management consulting sectors of the Russian Federation economy. Sanctions imposed pursuant to the Sanctions Determination can include designation to OFAC’s list of Specially Designated Nationals and Blocked Persons (“SDNs”).

Subject to additional clarification regarding the scope of the Determinations, these actions may prohibit U.S. persons from providing many professional services to Russia-based entities, and may create challenges for M&A transactions involving Russian entities (including Russian subsidiaries of non-U.S. companies), serving on boards of Russian counterparties, or engaging in additional comparable activities.

The White House stated that Executive Order 14071 was intended to “build[] on the decision made by more than 600 multinational businesses to exit from Russia,” suggesting that the U.S. government is seeking to encourage “[t]he exodus of the private sector” from the Russian economy.

Additional Regulatory Guidance and Authorizations

Consistent with past practice, OFAC has published various general licenses authorizing otherwise prohibited conduct. These licenses are significant, among other reasons, to the extent they resemble licenses issued under comprehensive U.S. sanctions programs, such as those targeting Cuba and Iran.

- Telecommunications General License: On May 8, OFAC issued General License No. 25A, amending General License No. 25, published on April 7, to clarify that General License No. 25—which authorizes all transactions ordinarily incident and necessary to the receipt or transmission of telecommunications involving the Russian Federation generally—does not authorize transactions involving certain newly sanctioned Russian media firms (including Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting Company, or Television Station Russia-1). As observed in our [April 8 alert](#), the fact that OFAC felt compelled to specifically authorize telecommunications transactions suggests that OFAC intends to interpret recently issued Russia-related sanctions broadly.
- Intellectual Property General License: On May 5, OFAC issued General License No. 31, which authorizes a broad range of transactions related to the protection of patents, trademarks, and copyrights (collectively, “IP”) in the Russian Federation, including (1) the filing and prosecution of IP applications; (2) the receipt of IP

¹ In accompanying guidance, OFAC indicated that it “anticipates publishing 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.”

protection; (3) the renewal or maintenance of IP protection; and (4) the filing and prosecution of any opposition or infringement proceeding with respect to IP, and entrance of a defense to any such proceeding.

- **Overflight General License:** Also on May 5, OFAC issued General License No. 7A, amending General License 7 published on February 24, to authorize transactions ordinarily incident and necessary to overflights of the Russian Federation or emergency landings in the Russian Federation.
- **Humanitarian Fact Sheet and General License:** On April 19, OFAC issued a Fact Sheet on Preserving Agricultural Trade, Access to Communication, and Other Support to Those Impacted by Russia's War Against Ukraine (the "Fact Sheet"), which underscores authorizations issued by OFAC—including authorizations related to the provision of agricultural commodities, medicine, and medical devices—intended to assist the people of Ukraine and Russia to access basic humanitarian supplies during this crisis. OFAC simultaneously issued General License No. 27, which authorizes certain categories of activities by nongovernmental organizations, including relating to humanitarian support, democracy building, education, non-commercial development projects, and environmental and natural resource protection. The Fact Sheet resembles prior fact sheets issued by OFAC to encourage U.S. persons to continue to provide lawful support to countries subject to comprehensive or near-comprehensive embargoes, such as the April 16, 2020 fact sheet highlighting authorizations to provide humanitarian assistance to Iran, Venezuela, North Korea, Syria, Cuba, and Crimea to combat COVID-19.

Additional SDN Designations and Wind-Down General Licenses

In recent weeks, OFAC has continued to designate Russian entities and individuals to the SDN List, including over 60 individuals (many of whom are linked to sanctioned Russian financial institutions), over 60 entities (including Russian financial institutions, transportation companies, and telecommunications companies), and almost 70 vessels. In connection with these designations, OFAC has issued various wind-down general licenses:

- General License No. 33 (issued on May 8) authorizes through 12:01 a.m. EDT on June 7, 2022 transactions ordinarily incident and necessary to the wind-down of transactions involving certain Russian news entities, including Joint Stock Company Channel One Russia, Joint Stock Company NTV Broadcasting Company, Television Station Russia-1, and their subsidiaries.
- General License No. 32 (issued on May 5) authorizes through 12:01 a.m. EDT on July 12, 2022 transactions ordinarily incident and necessary to the wind-down of transactions involving Amsterdam Trade Bank NV ("ATB") and its subsidiaries, and represents a *de facto* extension of time to wind down transactions involving ATB (which previously was subject to a more time-limited authorization to wind down transactions involving Joint Stock Company Alfa-Bank and its subsidiaries).
- General License No. 26A (issued on May 5, and superseding General License No. 26, issued on April 12) continues to authorize until 12:01 a.m. EDT on July 12, 2022 transactions ordinarily incident and necessary to the wind-down of transactions involving Joint Stock Company SB Sberbank Kazakhstan and Sberbank Europe AG, but adds Sberbank (Switzerland) AG to the authorization.
- General License No. 30 (issued on May 2) authorizes until 12:01 a.m. EDT on September 30, 2022 transactions involving Gazprom Germania GmbH or its subsidiaries that are otherwise prohibited under Directive 3 issued pursuant to Executive Order 14024.
- General License No. 13R and General License No. 15L (both issued on April 25) extend until May 25, 2022 transactions ordinarily incident and necessary to the wind-down of transactions involving GAZ Group and its subsidiaries, or involving debt, equity, or other holdings of GAZ Group and its subsidiaries.

- General License No. 29 (issued on April 20) authorizes through 12:01 a.m. EDT on May 20, 2022 transactions ordinarily incident and necessary to the wind-down of transactions involving Public Joint Stock Company Transkapitalbank (“TKB”) and its subsidiaries. General License No. 28 (issued the same date) provides a longer authorization period, through 12:01 a.m. EDT on October 20, 2022, transactions involving TKB and its subsidiaries that “are ultimately destined for or originating from Afghanistan.”

Expansion of Export Controls

On May 10, BIS—the agency responsible for administering the Export Administration Regulations (“EAR”), which have gradually been amended to include a greater range of Russia-related export restrictions—imposed licensing restrictions on a broad range of new products.

In particular, the Department of Commerce expanded the license requirement for exports, reexports, or transfers (in-country) to and within Russia of additional items subject to the EAR, as identified by the items’ Harmonized Tariff Schedule (“HTS”) codes and Schedule B codes. The recently announced restrictions are included within a new supplement no. 4 to part 746 of the EAR, which includes 205 HTS codes at the six-digit level and 478 corresponding 10-digit Schedule B numbers, covering a broad range of products (including, *inter alia*, veneer sheets, casks, knives and cutting blades, hydraulic equipment, refrigeration equipment, mechanical appliance parts, bulldozers and related equipment, power looms and spindles, dry-cleaning machines, and machine tools). In its final rule, BIS clarified that the “HTS Description” of the item is controlling, and the HTS and Schedule B codes are intended to help exporters identify items potentially subject to the new restrictions.

Consistent with the stringent licensing policy BIS has imposed on Russia to date, exports of the newly restricted items will be subject to a general policy of denial, though transactions of items “that may be necessary for health and safety reasons or for items that meet humanitarian needs” will be subject to less stringent, case-by-case licensing review policy.

These new restrictions will obligate parties (regardless of nationality) that continue to export items or technology subject to the EAR to Russia to ensure that those transactions comply with escalating restrictions.

Conclusion

U.S. sanctions and export restrictions targeting Russia continue to evolve, and the recently published determinations and rules reflect a substantial escalation of those restrictions. Of particular note, subject to further clarification from OFAC, U.S. persons appear prohibited from providing a broad range of professional services to Russia, and U.S. and non-U.S. persons alike may face sanctions risk if they engage in activities contrary to OFAC’s policy objectives. In addition, the range of general licenses issued by OFAC and new export licensing requirements suggest that the U.S. government is interpreting the existing restrictions on Russia broadly, with the practical effect increasingly akin to a broader embargo.