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U.S. Expands Russia Export Restrictions and Sanctions Targeting Additional Services to Russia

by Mauricio Escobar , Gunjan R. Talati

The U.S. Expands Sanctions Against Russia to Include the Accounting, Trust and Corporate Formation Services, and Management Consulting Sectors of the Russian Economy and Expands Export Controls to Russian Industrial and Commercial Sectors

On Sunday, May 8, 2022, the Secretary of the Treasury issued two determinations pursuant to the authority granted by the U.S. President in Executive orders 14024 and 14071 that extend the prohibitions in those Executive orders to include the accounting, trust and corporate formation services, and management consulting sectors of the Russian economy. Additionally, on May 9, 2022, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") issued a final rule expanding the scope of export restrictions to sectors of the Russian economy.

Background: Executive Orders 14024 and 14071

Executive Order 14024 ("EO 14024"), issued on April 15, 2021, authorized blocking sanctions on any person who operates or has operated in the technology, defense and any related materiel sector of the Russian Federation economy as well as "*any other sector of the Russian economy as may be determined by the Secretary of the Treasury in consultation with the Secretary of State*." The Secretary of the Treasury issued determinations on February 22 and March 31, 2022, expanding the scope of EO 14024 to include the financial services, aerospace, electronics, and marine sectors of the Russian economy.[1] Guidance issued by the Office of Foreign Assets Control ("OFAC") indicates that identification of a targeted sector under EO 14024 "does not automatically block all persons operating in that sector." [2] Only persons designated pursuant to EO 14024 for operating in the designated sectors are subject to blocking sanctions and would be added to one or more of OFAC's sanctions lists based on the type of sanction, including the Specially Designated Nationals and Blocked Persons List (SDN List).[3]

Executive Order 14071 ("EO 14071"), issued on April 6, 2022, prohibits, among other things, the "exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, *of any category of services as may be determined by the Secretary of the Treasury*, in consultation with the Secretary of State, to any person located in the Russian Federation."

May 8, 2022 Services Determination Pursuant to EO 14024

The May 8, 2022 services determination issued by the Secretary of the Treasury expands the sectors of the Russian economy targeted under EO 14024 and extends the imposition of blocking sanctions to persons determined to be operating or have operated in the accounting, trust and corporate formation services, or management consulting sectors of the Russian economy.[4] OFAC guidance issued in conjunction with the determination indicates that the accounting sector of the Russian economy that is now subject to sanctions includes "the measurement, processing, and transfer of financial data about

economic entities."[5] With respect to the "trust and corporate formation services" sector, OFAC interprets that to include the following services: "assisting persons in forming or structuring legal persons, such as trusts and corporations; acting or arranging for another person 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."[6] The management consulting sector includes the following services: "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.[7] The determination regarding these sectors takes effect immediately.

General Licenses 34

In conjunction with the issuance of the determination, OFAC issued General License 34 authorizing all transactions ordinarily incident and necessary to the wind down of the transactions in the prohibited sectors through 12:01 a.m. eastern daylight time, July 7, 2022.[8]

May 8, 2022 Services Determination pursuant to EO 14071

The May 8, 2022 services determination issued by the Secretary of the Treasury expands the scope of EO 14071 to now prohibit "the exportation, reexportation, sale or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation."[9] These sectors include the same activities and services as those referenced in the Determination under EO 14024. The Secretary has indicated that the determination under EO 14071 excludes the following: "(1) any service to an entity located in the Russian Federation that is owned or controlled directly or indirectly, by a United State person; (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."[10] OFAC will be publishing regulations defining the term "Russian person" as "an individual who is a citizen or national of the Russian Federation, or an entity organized under the laws of the Russian Federation."[11] The prohibitions on the newly designated sectors take effect at 12:01 a.m. eastern daylight time, June 7, 2022.

General License 35

In connection with this Determination, OFAC issued General License 35 authorizing "all 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 Russian through 12:01 a.m. eastern daylight time, August 20, 2022.[12] OFAC indicates that the term "credit rating services" means "services related to assessments of a borrower's ability to meet financial commitments, including analysis of general creditworthiness or with respect to a specific debt or financial obligation."[13] The term "auditing services" means "examination or inspection of business records by an auditor, including checking and verifying accounts, statements, or other representation of the financial position or regulatory compliance of the auditee."[14]

Increased Restrictions on Exports to Russian Industrial and Commercial Sectors

On May 9, 2022, BIS issued a final rule expanding the scope of export restrictions to sectors of the

Russian economy. The final rule imposes a license requirement on exports, reexports, and transfers (in-country) to and within Russia of additional items subject to the Export Administration Regulations ("EAR"), as identified by the items' Harmonized Tariff Schedule codes and Schedule B codes. The items subject to Russian industry sector export controls were added to Supplement No. 4 of Part 746 of the EAR. Products covered by this rule include, among others:

- Veneer sheets for plywood;
- Knives and cutting blades;
- Hydraulic equipment;
- Refrigeration equipment; and
- Air filters for internal combustion engines, excavators, bulldozers; and many other items with industrial and commercial applications.

The exports of the newly restricted items will be subject to a general policy of denial, except that "items that may be necessary for health and safety reasons or for items that meet humanitarian needs will be reviewed under a case-by-case license review policy."[15] The export restrictions became effective May 11, 2022.

Key Takeaways

- The determination under EO 14024 creates a risk for anyone operating in the accounting, trust and corporate formation services, and management consulting sectors of the Russian economy to be designated on any one of OFAC's sanctions lists, including the SDN List. U.S. persons, wherever located, would be prohibited from engaging in any transactions with or for the benefit of such designated individuals and entities.
- The determination under EO 14071 creates a risk of sanctions violations for any U.S. person engaged in the prohibited services with or for a person or entity located in Russia. Attorneys, marketing firms, management firms, audit firms, credit rating providers, among others, that provide such services from the U.S., through subsidiaries, or local offices in Russia will be prohibited under EO 14071 starting June 7, 2022. U.S. persons should wind down transactions in the prohibited sectors by that date (or August 20, 2022, for those providing credit rating or auditing services to any person in Russia), or otherwise obtain a specific license from OFAC.
- Companies, regardless of nationality, that continue to export items subject to the EAR to Russia should ensure that those transactions comply with the evolving restrictions. At a minimum, companies should know the export classification of the technology or items to be export, understand who the recipient is, determine whether a license will be required, obtain a license if necessary prior to conducting an export, and obtain end-user statements if appropriate.