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Client Alert
News Flash

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Sanctions Update: US Imposes New Sanctions and Export Controls Targeting Russia

New measures expand existing sanctions and export controls, including by restricting medical item exports and targeting Russia's architecture and engineering sectors.

This Client Alert is published in the context of ongoing developments and should be read in conjunction with Latham's previous sanctions updates. Given the frequency with which different jurisdictions are imposing new sanctions on Russia, businesses exposed to sanctions-related developments in Russia should obtain up-to-date legal advice before taking any steps that may have legal effects.

Sanctions

On May 19, 2023, the Treasury Department's Office of Foreign Assets Control (OFAC) announced new sanctions designed to "further degrade the Russian Federation's capacity to wage war against Ukraine." The State Department announced a slate of corresponding sanctions designations.

New SDN Designations

OFAC added 22 individuals and 104 entities to its Specially Designated Nationals and Blocked Persons (SDN) list. According to OFAC, these sanctions target, among other persons, "those attempting to circumvent or evade sanctions and other economic measures against Russia, the channels Russia uses to acquire critical technology, its future energy extraction capabilities, and Russia's financial services sector." The SDN designations include:

- 12 entities comprising the **Ostec Group**, an importer and distributor of quantum and semiconductor technologies to Russian defense entities;
- the **Foreign Intelligence Service of the Russian Federation**, a Russian intelligence agency;
- five Russian energy educational institutions;
- seven Russian energy-related research institutes, including **Gazprom VNIIGAZ, OOO**, the main research center for Public Joint Stock Company Gazprom;
- seven Russian drilling and mining companies; and

- private equity and asset management entities located in the UAE, Cyprus, Hong Kong, and Switzerland, alleged to be involved in financing Russia's war against Ukraine.

The State Department also announced that it was designating and blocking approximately 200 individuals, entities, vessels, and aircraft. These designations include:

- Public Joint Stock Company Polyus (**Polyus**), Russia's largest gold producer and a global top-10 gold miner by ounces produced, as well as a number of entities and individuals associated with Polyus;
- **Joint Stock Company Polimetall AO**, the Russian holding company for a top-10 global gold producer and top-five silver producer;
- 18 entities involved in expanding Russia's future energy production and export capacity across a range of industries in which Russia has "strategic dependencies," such as shipbuilding, ship repair, dredging, and geophysical exploration;
- an international network of entities and individuals involved in Russia's military-related procurement and sanctions evasion activities;
- numerous Russian defense industry entities, advanced technology companies, and related individuals;
- certain Russian government officials, elites, and associates, including Kremlin-installed "puppet authorities" in Russia-occupied parts of Ukraine; and
- certain Russian individuals allegedly involved in unlawful deportations/transfers of Ukraine's children.

In connection with these designations and updates, OFAC issued four new or amended general licenses (GLs):

- **GL-13E** extends until August 17, 2023, GL-13, which authorizes US persons "to pay taxes, fees, or import duties, and purchase or receive permits, licenses, registrations, or certifications" to the extent such transactions are prohibited by Directive 4 under Executive Order 14024. Directive 4 prohibits "any transaction involving the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation".
- **GL-66** authorizes, until August 17, 2023, certain transactions "ordinarily incident and necessary to the wind down of any transaction involving Public Joint Stock Company Polyus, or any entity in which Public Joint Stock Company Polyus owns, directly or indirectly, a 50 percent or greater interest."
- **GL-67** authorizes, until August 17, 2023, certain transactions "ordinarily incident and necessary to the divestment or transfer, or the facilitation of the divestment or transfer, of debt or equity of Public Stock Company Polyus, or any entity in which Public Joint Stock Company Polyus owns, directly or indirectly, a 50 percent or greater interest."
- **GL-68** authorizes, until July 18, 2023, certain transactions "ordinarily incident and necessary to the wind down of any transaction" involving six universities or institutes designated as SDNs on May 19, 2023.

Restrictions Relating to Architecture, Engineering, and Other Services

On May 19, 2023, OFAC issued two "determinations" that authorize or impose restrictions targeting new sectors of the Russian economy:

- OFAC issued a determination pursuant to Executive Order 14071 that will prohibit, effective June 18, 2023, the export, reexport, sale, or supply, directly or indirectly, from the United States or by a US person, wherever located, of "architecture and engineering" services to any person located in the Russian Federation. This determination does not apply to: (1) the provision of a service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a US person; or (2) the provision of a 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 issued a determination pursuant to Executive Order 14024 authorizing the blocking of property, or interests in property, of persons determined to operate or to have operated in the "architecture, engineering, construction, manufacturing, and transportation sectors" of the Russian economy. No designations have been made under this determination to date.

These actions complement previous determinations issued pursuant to Executive Orders 14024 and 14071 relating to certain Russian sectors. OFAC has made previous determinations pursuant to Executive Order 14024 targeting persons that operate or have operated in the metals and mining, quantum computing, accounting, trust and corporate formation, management consulting, aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors of the Russian economy. Similarly, under Executive Order 14071, OFAC has issued determinations prohibiting the export, reexport, sale, or supply of accounting, trust and corporate formation, or management consulting services, quantum computing services, and certain services relating to the maritime transport of crude oil of Russian origin.

In relation to these determinations, OFAC issued FAQ 1126, which provides definitions for the "architecture," "engineering," "construction," "manufacturing," and "transportation" sectors of the Russian economy. It also issued FAQ 1128, which provides a summary of OFAC's Russia-related service determinations and defines "architecture services" and "engineering services." In addition, OFAC confirmed in FAQ 1127 that a sector determination pursuant to Executive Order 14024 exposes persons that operate or have operated in an identified sector to sanctions risk, but does not automatically impose sanctions on all persons who operate or have operated in the sector.

Amendment to and Re-issuance of Directive 4 Under Executive Order 14024

In addition, OFAC amended and re-issued Directive 4 under Executive Order 14024, which the agency originally published on February 28, 2022. Directive 4 prohibits US persons from engaging in "any transaction involving" the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation (Directive 4 entities).

The amended version of Directive 4 includes a new requirement for US persons to submit a report to OFACreport@treasury.gov on or before June 18, 2023, and annually thereafter by June 30, regarding property in their possession or control in which any Directive 4 entity has an interest of any nature whatsoever, direct or indirect. As OFAC notes in amended FAQ 998, this reporting requirement is "intended to identify assets of Directive 4 entities held by U.S. persons as of May 31, 2023," and is separate from existing requirements under 31 C.F.R. § 501.604 to file reports on rejected transactions involving any Directive 4 entity.

Export Controls

Two New BIS Rules

The Commerce Department's Bureau of Industry and Security (BIS) issued two rules on May 19, 2023, that, according to BIS, "continue efforts to impose powerful and coordinated restrictions on Russia for its ongoing full-scale invasion of Ukraine." Both rules became effective on May 19, 2023.

- **Implementation of additional sanctions against Russia and Belarus under the Export Administration Regulations (EAR) and refinements to existing controls:** Among other changes, this rule expands existing restrictions on the export, reexport, or transfer (in-country) of certain EAR99 items to or within Russia or Belarus by making the following regulatory revisions:
  - BIS expanded its Russian Industry Sector Sanctions under Supplement No. 4 to part 746 by adding 1,224 HTS-6 Code entries corresponding to 1,224 types of industrial items. Following the publication of this rule, all items described under HTS Chapters 84, 85, and 90 require licensing for export, reexport, or transfer (in-country) to or in Russia, absent an applicable license exception. These items include:
    - a broad set of medical items, such as syringes and needles, medical sterilizers, hearing aids, pacemakers, X-ray equipment, and other instruments and appliances used in dental, medical, surgical, and veterinary sciences; and
    - certain machines, engines, boilers, reactors, industrial process equipment, electronics equipment, electrical devices, machine tools, and test, inspection and instrumentation equipment.
  - BIS expanded its Russian Industry Sector Sanctions under Supplement No. 6 to part 746 by adding additional chemical items. According to BIS, these chemicals were not targeted for their potential use in chemical and biological weapons production, but for their possible use in "other" activities of concern. This change is designed to align with controls imposed by US partners and allies.
  - BIS added an additional HTS-6 Code entry corresponding to one industrial item to Supplement No. 7 to part 746, the list of foreign-produced items relating to unmanned aerial vehicles for which a license is required for export or reexport to Iran, Russia, or Belarus that BIS established pursuant to a February 27, 2023, Rule. This entry will cover a variety of electrical parts of machinery or apparatus not elsewhere specified or indicated in the regulations.
  - BIS expanded the destination scope of the Russia/Belarus-Foreign Direct Product Rule to add the Crimea region of Ukraine.
  - BIS also added Export Control Classification Number (ECCN) 5A991 to exclusions in EAR Sections 746.8 (Sanctions against Russia and Belarus) and 746.10 ("Luxury goods" restrictions) that previously applied to ECCNs 5A992 and 5D992. ECCN 5A991 covers telecommunication equipment not covered by more restrictive ECCN 5A001.
- **New entity list additions:** In a separate rule, BIS added a total of 71 entities to its Entity List. Of those, 69 were added under the country heading of Russia, with one entity added under each of Armenia and Kyrgyzstan. The 69 Russian entities, which BIS added for "providing support to Russia's

military and defense sector," are also designated as "Russian/Belarusian Military End Users," which subjects them to additional restrictions under the Russia/Belarus-Military End User Foreign Direct Product Rule.

FinCEN and BIS Joint Alert

Also on May 19, 2023, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) and BIS issued a Joint Alert to "urge continued vigilance for potential Russian export control evasion attempts." This notice is the second FinCEN-BIS Joint Alert on this topic, with the first published in June 2022. BIS, OFAC, and the Department of Justice also published a Tri-Seal Compliance Note on March 2, 2023, which is discussed in this March 20, 2023, Client Alert.

The Joint Alert is designed to provide "financial institutions additional information regarding new BIS export control restrictions related to Russia," as well as reinforcing "ongoing U.S. Government engagements and initiatives designed to further constrain and prevent Russia from accessing needed technology and goods to supply and replenish its military and defense industrial base." In particular, it focuses on the following areas:

- **Impact of US sanctions and export controls relating to Russia:** According to the Joint Alert, "Russia's military-industrial complex and defense supply chains have been significantly degraded by sanctions and export controls over the past year." In response to efforts by Russian intelligence to circumvent these restrictions, the interagency Task Force KleptoCapture and DOJ-BIS Disruptive Technology Strike Force have been active in investigating and enforcing potential export control violations. On May 16, 2023, the Strike Force announced its first five enforcement actions, including the May 9, 2023, arrest of a Greek national involved in a scheme to "supply U.S.-origin military and dual-use technologies to Russia."

- **New export control restrictions:** The Joint Alert describes BIS efforts over the past year to cut off "Russia's access to critical components used for aircraft and tanks, semiconductors, other items needed for advanced military applications, and low-technology consumer goods needed for Russia to sustain its war effort." BIS has issued several rules to enhance existing controls, impose restrictions on hundreds of low-level items (included those classified under the HS codes listed in Supplement No. 7 to Part 746), bring the US into further alignment with foreign partners, and add numerous entities to its Entity List.

- **Applying a risk-based approach to trade finance and red flag indicators of export control evasion:** The Joint Alert encourages financial institutions to conduct due diligence when processing payments or opening accounts for customers engaged in international trade. This diligence should include evaluating: (i) the customer's date of incorporation; (ii) the end user and end use of the item; and (iii) whether the customer's physical location and public-facing website raise any red flags. Other red flag indicators of potential export control evasion include customers who lack or refuse to provide details about end users, intended end use, or company ownership, as well as transactions involving smaller-volume payments from the same end user's foreign bank account to multiple suppliers of dual-use products.

What's Next?

Latham & Watkins is tracking developments across all regions closely and expects that the US, the EU, the UK, and other governments around the world may impose additional rounds of sanctions as events unfold. The firm is well positioned to advise clients on the legal and practical impacts of these measures.

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