

OFAC Announces New Sanctions on Accounting, Trust/Corporate Formation, and Management Consulting Services to Russia

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On May 8, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced a Determination pursuant to Section 1(a)(ii) of Executive Order 14071 of April 6, 2022, Prohibiting New Investment in and Certain Services to the Russian Federation in Response to Continued Russian Federation Aggression ("EO 14071"), determining that **effective 12:01am ET, June 7, 2022, U.S. Persons^[1] are prohibited to directly or indirectly export, reexport, sell, or supply accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation (the "EO 14071 Determination").** The EO 14071 Determination excludes from these restrictions: "(1) any service to an entity located in Russia that is owned or controlled, directly or indirectly, by a [U.S. Person]," and "(2) any service in connection with the wind-down or divestiture of any entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person."

The same day, OFAC also announced another Determination pursuant to Section 1(a)(i) of Executive Order 14024 of April 15, 2021, Blocking Property With Respect To Specified Harmful Foreign Activities of the Government of the Russian Federation ("EO 14024") determining that **effective immediately, any person that the Secretary of the Treasury/Secretary of State and/or their designees determines operates or has operated in such sectors (i.e., the accounting, trust and corporate formation services, and management consulting sectors of the Russian economy) shall be subject to sanctions pursuant to EO 14024 section 1(a)(i) (the "EO 14024 Determination").** The EO 14024 Determination does not at this time designate any individuals or entities, but rather means that sanctions may be imposed on any individual or entity determined to operate or have operated in any of those sectors.

This blog post: (1) provides a brief background section on the EO 14071 Determination and the EO 14024 Determination (the "Determinations"); (2) discusses the issued guidance, exceptions, and licenses; and (3) lists some key compliance takeaways.

Background

As a result of Russia's invasion of Ukraine, the U.S. Government has undertaken several actions, including but not limited to imposing: blocking sanctions on important Russian banks, political figures, and oligarchs; certain debt and equity restrictions relating to several major firms; restrictions on Russian sovereign debt; 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; certain import and export prohibitions; prohibitions on making new investments in the "energy sector" of the Russian economy, and more. The sanctions imposed do not yet amount to a full embargo but are continuing to be rolled out.

One of the Russia-related authorities, EO 14024, permits sanctions on any person determined by the Secretary of the Treasury in consultation with appropriate persons "to operate or have operated in the technology sector or the defense and related materiel sector of the Russian Federation economy, *or any other sector of the Russian Federation economy* as may be determined by the Secretary of the Treasury, in consultation with the Secretary of State..." See EO 14024 Sec. 1(a)(i) (emphasis added). Since the issuance of EO 14024, several Russian sectors have already been identified, permitting sanctions on those that operate in or have operated in the aerospace, marine, electronics, financial services, technology, and defense and related materiel sectors of the Russian Federation economy.

Most recently, on April 6, 2022, President Biden issued EO 14071, which, among other things, prohibited "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..." See EO 14071 Sec. 1(a)(ii) (emphasis added). Since issuing EO 14071 over a month ago, no prohibited categories of services had been announced, until May 8, 2022.

On May 8, 2022, OFAC announced the first Determination of prohibited categories of services under EO 14071 Sec. 1(a)(ii): accounting, trust and corporate formation, or management consulting services. OFAC also announced such sectors as included under EO 14024 Sec. 1(a)(i). In its [Press Release](#), OFAC explained that, "[w]ealthy Russians have relied on U.S. expertise to set up shell companies, move wealth and resources to alternate jurisdictions, and conceal assets from authorities around the world. In addition, Russian companies, particularly state-owned and state-supported enterprises, rely on these services to run and grow their businesses, generating revenue for the Russian economy that helps fund Putin's war machine." Thus, the determinations aim to "cut off access to services that are used by the Russian Federation and Russian elites to evade sanctions."

As a result of the EO 14071 Determination, effective 12:01am ET, June 7, 2022, U.S. Persons are prohibited to directly or indirectly export, reexport, sell, or supply accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation. Note that the EO 14071 Determination excludes: "(1) any service to an entity located in Russia that is owned or controlled, directly or indirectly, by a [U.S. Person]," and "(2) any service in connection with the wind-down or divestiture of any entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian person."

As a result of the EO 14024 Determination, effective immediately, sanctions may be imposed on any individual or entity determined to operate or have operated in the accounting, trust and corporate formation services, or management consulting sectors of the Russian Federation economy.

Guidance and Definitions

In connection with the Determinations, OFAC issued several Frequently Asked Questions ("FAQs") (FAQs [1033-1038](#)) and two General Licenses. OFAC published slight amendments to three of these FAQs (FAQs 1034, 1035, and 1038) on May 11, 2022, and may continue to amend the FAQs or issue more FAQs as appropriate. Although each of the FAQs should be reviewed, FAQ 1034 and FAQ 1038 provide helpful definitions of the impacted sectors for the purposes of the EO 14071 Determination and for the EO 14024 Determination and thus are noted below:

i. EO 14071 Determination

Per FAQ 1034, OFAC anticipates publishing regulations defining these terms to include the following:

- “Accounting services” – includes services related to the measurement, processing, and evaluation 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.^[1]
- “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.

OFAC also notes in FAQ 1034 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.”

As a reminder, the EO 14071 Determination is effective 12:01 am ET, June 7, 2022 and does not prohibit: “(1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a [U.S. person],” or “(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 issued two General Licenses related to the EO 14071 Determination:

1. General License 34 Authorizing the Wind Down of Accounting, Trust and Corporate Formation, and Management Consulting Services through 12:01 am ET July 7, 2022; and
2. General License 35 Authorizing Transactions Involving Credit Rating and Auditing Services through 12:01 am ET August 20, 2022.

Because EO 14071 is broadly written, it is possible and likely that OFAC will announce further categories of services as prohibited under Sec. 1(a)(ii).

ii. EO 14024 Determination

Per FAQ 1038, OFAC interprets the following terms to include activities related to products and services in or involving the Russian Federation in the following:

- “Accounting sector” – includes the measurement, processing, and evaluation of financial data about economic entities.
- “Trust and corporate formation services sector” – includes 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.
- “Management consulting sector” – includes 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.

As a reminder, the EO 14024 Determination takes effect immediately. In addition, similar to the above, because EO 14024 is broadly written, it is possible and likely that OFAC will continue to announce specific sectors which may result in designation for persons having operated/for operating in such.

Key Takeaways

- Starting June 7, 2022, U.S. Persons are prohibited to directly or indirectly export, reexport, sell, or supply accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation.
- The prohibition does not cover: (1) any service to an entity located in Russia that is owned or controlled, directly or indirectly, by a U.S. Person; or (2) any service in connection with the wind-down or divestiture of any entity located in the Russian Federation that is not owned or controlled, directly or indirectly, by a Russian Person.
- There are currently two General Licenses to consider (General License 34 Authorizing the Wind Down of Accounting, Trust and Corporate Formation, and Management Consulting Services through 12:01am ET July 7, 2022; and General License 35 Authorizing Transactions Involving Credit Rating and Auditing Services through 12:01am ET August 20, 2022).
- Effective immediately, there is a heightened risk of sanctions imposition (up to and including full blocking sanctions) for anyone operating in the accounting, trust and corporate formation services, and management consulting sectors of the Russian economy (likely excluding U.S. Persons operating under an authorization, license, or exemption).
- Persons engaged in accounting, trust and corporate formation, or management consulting services—including but not limited to attorneys, audit firms, persons serving as trustees, agents, or directors for Russian entities, marketing companies, management firms, credit rating providers—are now or will soon be at a heightened risk for sanctions violations and/or sanctions imposition if conducting such business with/for Russian persons and entities.
- Even if you or your company do not engage in such services as a primary practice, without further guidance or clarification from OFAC on scope, starting June 7, 2022, even one-off engagements will be prohibited as the supply of such services to any person in the Russian Federation (including but not limited to Russian entities), will be prohibited under EO 14071 unless authorized or exempt.
- Sanctions violations are strict liability offenses and OFAC has broad discretion in pursuing enforcement actions. In addition, OFAC expects U.S. Persons and non-U.S. Persons conducting business in the United States to maintain risk-based sanctions compliance policies and procedures. Thus, internal sanctions-related policies and procedures should be updated to account for new risks related to such services and mitigating actions should be taken as appropriate.
- OFAC may (and will likely) continue to announce “categories of services” that U.S. Persons will be prohibited to export, reexport, sell, or supply to persons located in the Russian Federation under EO 14071 Sec. 1(a)(ii). In addition, certain sectors will likely continue to be announced under EO 14024 Sec. 1(a)(i), authorizing sanctions on persons who have been found to operate or have operated in such sectors.

ⁱⁱⁱ “U.S. Persons” means any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States. See EO 14071 Sec. 4(c).

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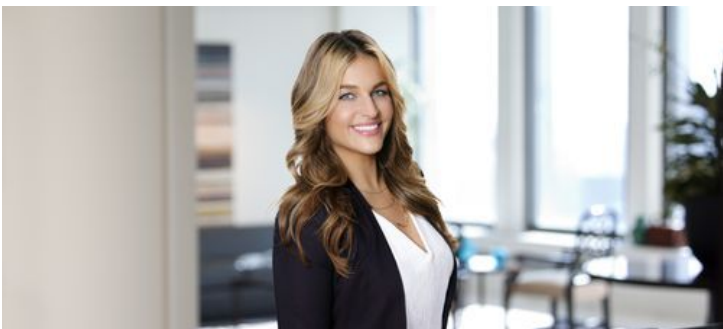
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