

U.S. Bars Accounting, Trust and Corporate Formation, and Management Consulting Services and Adds Export Restrictions to Russia

by Lawrence Ward, Dave Townsend, and T. Augustine Lo

The United States has announced yet another round of economic sanctions against Russia that builds on existing sanctions and extends them to new sectors of the Russian economy. The U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") announced the new sanctions on May 8, 2022. First, as of June 7, 2022, it will be unlawful to provide accounting services, trust and corporate formation services, and management consulting services from the United States or by U.S. persons located anywhere else to Russia. Second, OFAC has laid the groundwork to impose future additional sanctions on persons who continue to operate in those three sectors of the Russian economy after May 8, 2022. Third, OFAC added dozens of entities, individuals, and cargo vessels affiliated with Russian companies to its Specially Designated Nationals and Blocked Persons List ("SDN List"). At the same time, OFAC issued three General Licenses ("GLs") to allow the winding-down of certain transactions affected by these new prohibitions. Finally, on May 9, 2022, the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") separately issued a new rule that significantly expands the variety of industrial goods subject to export license restrictions when the destination is Russia.

New OFAC Actions

OFAC made two determinations under Executive Orders ("EOs") 14024 and 14071, both of which concern services in accounting, trust and corporate formation, and management consulting services. The U.S. Departments of State and Treasury issued these determinations after finding that these sectors contribute to ongoing emergencies declared by President Biden with respect to Russia under the International Emergency Economic Powers Act ("IEEPA") and thus warrant the further imposition of economic sanctions. In August 2021, President Biden had issued EO 14024, which authorized the U.S. Secretary of the Treasury to issue determinations that subject persons operating in certain sectors of the Russian economy to potential sanctions designations because of

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Russia's continued aggression and efforts to undermine the security of countries and regions important to U.S. national security. Under this two-step process, OFAC then has the authority to target specific persons operating in those sectors subject to the determinations for sanctions. President Biden had also issued EO 14071 in April 2022 in the wake of Russia's expanded invasion of Ukraine, which authorizes OFAC to prohibit the provision of "any category of services" from the United States or by U.S. persons to any person in Russia.

Because of this latest OFAC determination under EO 14071, starting on June 7, 2022, U.S. persons will no longer be able to export, directly or indirectly, accounting, trust and corporate formation, and management consulting services to Russia. However, this prohibition does not apply to companies in Russia that are owned or controlled by U.S. companies and also does not apply to wind-down transactions to terminate or divest existing business operations with Russia. In addition, OFAC issued GL 35 to authorize transactions ordinarily incident and necessary to the exportation by U.S. persons or from the United States of credit rating or auditing services to any persons in Russia until August 20, 2022.

Under EO 14024, the Treasury Department determined that the Russian accounting, trust and corporate formation, and management consulting sectors could become the subject of future sanctions designations. This determination enables future sanctions designations by OFAC against specific companies or persons operating in those sectors, which could include full blocking sanctions under the SDN List or other less restrictive prohibitions. Under this EO 14024 determination, OFAC could potentially impose future sanctions against non-Russian persons, including international accounting and consulting companies, if they were to continue operating in those sectors of the Russian economy after May 8, 2022.

OFAC also added 22 entities, 33 individuals, and 69 cargo vessels to its SDN List. Some of these sanctioned entities and individuals are associated with other entities that were already subject to U.S. sanctions (including 27 board members of Gazprombank). The sanctioned Russian vessels are owned by sanctioned persons already on the SDN List. The newly sanctioned entities include three major Russian state-owned media outlets: Channel One Russia, Television Station Russia-1, and NTV Broadcasting Company.

OFAC also issued several GLs to allow certain transactions to continue that otherwise would be subject to the new prohibitions. GL 33 authorizes the wind-down of operations under existing contracts with the three newly sanctioned Russian media companies until 12:01 am EDT on June 7, 2022. (OFAC amended GL 25A to specify that authorization for certain telecommunications and internet-based communication related transactions does not extend to transactions with the three newly sanctioned Russia media companies noted above). GL 34 authorizes the wind-down of services to Russia that are in the three sectors subject to the EO 14071 prohibition with the same June 7 deadline as GL 33. As mentioned above, GL 35 authorizes the provision of credit rating and auditing services to Russia until 12:01 am EDT on August 20, 2022. Each of these GLs

contains specific limitations that require close reading to ensure compliance with OFAC rules.

New Definitions of Russian Accounting, Trust and Corporate Formation, and Management Consulting Services

OFAC also issued frequently asked questions (“FAQs”) that provide additional details about how OFAC defines services for accounting, trust and corporate formation, and management. These definitions apply to both the prohibition against the provision of services from the United States or by U.S. persons, which takes effect on June 7, 2022, and the determination of Russian economic sectors that have been subject to potential sanctions designations as of May 8, 2022. Anyone operating in these sectors in Russia after May 8, 2022 might become such an OFAC sanctions target without advance notice, such as by addition to the SDN List.

OFAC provided the following three definitions.

- Accounting Sector includes the measurement, processing, and transfer 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, and 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 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.

New BIS Rule.

The new BIS rule adds 478 different ten-digit Schedule B provisions (under 205 subheadings at the six-digit level) to Supplement No. 4 of Part 746 of the Export Administration Regulations (“EAR”). Supplement No. 4 contains a list of industrial goods that require an export, re-export, or in-country transfer license when the destination is Russia. BIS has a policy of denying license applications for items on this Supplement No. 4 list except if the item is required for health, safety, or humanitarian purposes.

This BIS rule aligns the EAR export sanctions against Russia with allied efforts. The list includes a wide range of machinery and equipment that are already subject to European Union export restrictions because of Russia’s aggression against Ukraine. The BIS rule also adds new Schedule B codes and descriptions to Supplement No. 4 to make it more user-friendly for members of the trade community that may be more accustomed to the ten-digit system used for Schedule B and the Harmonized Tariff Schedule of the United States (“HTSUS”) for U.S. import duties.

The expanded BIS adoption and use of such Schedule B numbers clearly signal that the Administration intends to bring more and more non-strategic industrial goods that are not

normally subject to export controls under the EAR's Commerce Control List ("CCL") into the BIS export licensing system if the destination is Russia. This steady BIS escalation of export controls thus mirrors how OFAC is gradually imposing economic sanctions on additional sectors of the Russian economy, both of which will continue to erode the normal functioning of Russian industry and commerce and thus add to the economic cost of the Russian war in Ukraine.

Conclusion

Many leading international companies have already suspended or ceased transactions with Russia due to U.S. and allied sanctions or reputational concerns due to Russia's brutal war in Ukraine. Because of these latest OFAC and BIS actions, certain service providers and goods exporters that still have business in Russia must now consider the broad new sanctions imposed on services and goods exports to Russia, which could affect their ability to continue performing under any existing contracts or commitments.

OFAC and BIS imposed these sanctions after imposing several earlier rounds of sanctions against Russia and Belarus, which we summarized [here](#), [here](#), [here](#), [here](#), and [here](#). As with such previous rounds, the Biden Administration adopted these sanctions in concert with similar actions by the European Union, the United Kingdom, and other allies. Although the United States has not yet imposed on Russia a total trade embargo under U.S. law of the kind leveled against Cuba or Iran, these new sanctions described above will definitely further reduce the scope of remaining business ties with Russia that are permissible under U.S. law.

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