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RUSSIA SANCTIONS UPDATE: NEW SDN DESIGNATIONS, SERVICES PROHIBITIONS; FURTHER EXPANSION OF U.S. EXPORT CONTROL RESTRICTIONS

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On September 15, 2022, the United States imposed further export control and sanctions measures in response to the ongoing conflict in Ukraine. Among the additional measures implemented are the following:

- The designation of a number of individuals and entities as Specially Designated Nationals and Blocked Persons (SDN), who have been identified as having furthered the objectives of the Government of Russia in Ukraine. The designations include executives of entities providing payment processing and other financial services used to circumvent existing sanctions; the leader of Russia's Republic of Chechnya and members of his family; a Russian official responsible for deporting Ukrainian children to Russia; Russian prosecutors and judges operating in the Crimea region; and a Russian paramilitary group operating in the Donbas region of Ukraine along with two of its leaders. The prohibitions extend to any entities owned 50% or more, directly or indirectly, by one or more SDNs. U.S. persons must cease activities with any SDNs immediately, unless authorized by a general license or specific license. Further, any property or property interests of an SDN that come within the possession or control of a U.S. person must block that property immediately and file a blocking report with OFAC within 10 business days from the date of designation. Ongoing activities with SDNs by non-U.S. persons may trigger secondary sanctions risks, which could include the non-U.S. party itself being designated as an SDN.

- Issuance of two new general licenses – General License 51 for wind down activities involving Limited Liability Company Group of Companies Akvarius (valid through 12:01 am eastern daylight time on October 15, 2022) and General License 52 authorizing certain journalistic activities and the establishment of new bureaus. Parties wishing to rely on a general license should ensure that they comply with all associated requirements and restrictions.

- Restrictions on the quantum computing sector. This includes authorizing the designation as a target of US sanctions any persons that operate or have operated in the quantum computing sector of the Russian economy. OFAC has also issued a prohibition on the export, reexport,

sale, or supply (whether directly or indirectly) from the United States, or by a United States person of quantum computing services to any person located in Russia. As with the prohibition on the provision of accounting, trust and corporate formation, and management consulting services, the services prohibition excludes services that are provided to entities located in Russia that are owned or controlled by U.S. persons, as well as services in connection with wind down or divestiture of entities in Russia that are not owned or controlled (directly or indirectly) by a Russian person.

- In addition to the changes announced on September 15, 2022, OFAC also issued on September 9, 2022, preliminary guidance related to a forthcoming ban on services related to the maritime transportation of Russian-origin crude oil and petroleum products. The services ban with respect to maritime transportation of crude oil will take effect on December 5, 2022, and, the ban with respect to maritime transportation of petroleum products on February 5, 2023. Jurisdictions or actors that purchase seaborne Russian oil at or below a price cap to be established by a coalition including the G7 and EU countries will be excluded from the scope of the ban on services. Organizations that provide any services related to the maritime transportation of Russian-origin crude oil and petroleum products would be well placed to review those arrangements now so that they are prepared to meet the documentary requirements associated with reliance on the exclusion for purchases at or below the price cap.

- Also on September 15, 2022, the Department of Commerce's Bureau of Industry and Security (BIS) issued a Final Rule expanding Russian industry sector sanctions. The BIS final rule creates a new Supplement No. 6 to Part 746 of the EAR, which includes items and equipment useful for Russia's chemical and biological weapons production capabilities. A license is required for the export, reexport, or transfer of items identified in the Supplement to or within Russia or Belarus. In addition, the scope of the Russia/Belarus Foreign Direct Product Rule has also been expanded so that it also captures foreign-produced items identified on Supplement No. 6 that are the direct product of software or technology subject to the EAR and controlled on the Commerce Control List (CCL) or the direct product of a plant or major component of a plant that is a direct product of software or technology subject to the EAR and controlled on the CCL. (Previously this aspect of the Rule required that the resulting foreign-produced item be described on the CCL.) The exclusion for countries listed in Supplement No. 3 to Part 746 from the scope of the foreign direct product rule and the calculation of controlled US-origin content for purposes of the *de minimis* calculation will apply with respect to items described in Supplement No. 6. However, foreign made items from countries not listed in Supplement No. 3 to Part 746 and that are described in Supplement No. 6 or contain US-origin content described in Supplement No. 6 to Part 746 will need to be reviewed to determine whether they are now subject to the EAR under the revised Russia/Belarus Foreign Direct Product Rule or *de minimis* when they are for export, re-export or transfer to or within Russia or Belarus.

- Further expands the scope of industrial items covered by the license requirements in Supplement No. 4. In addition to the addition of 57 new entries to the Supplement, the Supplement now includes any modified or designed components, parts, accessories, and attachments for items listed in Supplement No. 4, regardless of whether those items are themselves described in the Supplement, except for fasteners, washers, spacers, insulators, grommets, bushings, springs, wires, or solders. All such items require a license for export, reexport, or transfer to or within Russia or Belarus. Parts, components, accessories, and attachments (even if not previously covered because they were not described in Supplement No. 4) will now need to be reviewed to determine whether they are subject to a license requirement for export, reexport or transfer to or within Russia or Belarus by virtue of being modified or designed for items described in Supplement No. 4 to Part 746.

- Expands the restrictions applicable to items identified in 746.5(a)(1) of the EAR to include covered oil or gas projects in Russia and Belarus.

- Revision to certain entries on the list of restricted luxury goods to reflect a minimum value threshold of $300 per unit U.S. whole price. The minimum value only applies to certain listed luxury goods.

- Expands the Military End Use/Military End User restrictions in 744.21 of the EAR to allow for BIS to identify military end users in countries other than those identified in 744.21. Military end users located outside of Burma, Cambodia, China, or Venezuela are limited to entities identified on the MEU List under supplement no. 7 to Part 744, while military end users located outside of Belarus or Russia are identified on the Entity List with a footnote 3 designation. The rule does not change the need to conduct due diligence to determine whether a particular end use or end user in one of the countries specified in 744.21 is a military end use or military end user as defined in the rule.

- Expands the Military Intelligence End Use/Military Intelligence End User restrictions in 744.22 of the EAR to allow for BIS to identify military intelligence end users in countries other than those identified in 744.22; such end users will be limited to those identified in paragraph (f)(2) of 744.22.

- Clarifies that in-country transfers are within the scope of prohibited activities described in General Prohibitions 5 and 6 (addressing exports, reexports, and transfers to prohibited end uses or end users and to embargoed destinations) and that reexports and in-country transfers are within the scope of activities covered by General Prohibition 10.

Organizations should ensure they are continuing to evaluate and update their compliance procedures to address potential touchpoints to these new sanctions and export control measures.

RELATED PRACTICE AREAS

- International Trade

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