

CLIENT ALERT

New Russia Sanctions: A Warning to Non-U.S. Banks

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On December 22, 2023, President Biden significantly increased the pressure on non-U.S. financial institutions doing business with Russia by signing Executive Order (“**E.O.**”) [14114](#) (the “**Order**”).¹ The Order amended prior Russia-related E.O.s [14024](#) and [14068](#) to authorize additional sanctions related to Russia’s harmful foreign activities in Ukraine, which we have previously discussed in our client alerts [Russia Sanctions Update: Expanding U.S. Sanctions Put Further Pressure on Key Russian Sectors](#) and [One Year After Russia’s Invasion of Ukraine: Expanding U.S. Sanctions Continue to Put Pressure on Key Russian Sectors](#).

Chief among these new measures is expansive new designation authority for the United States to impose sanctions on foreign financial institutions (“**FFIs**”) for engaging in two broad categories of significant transactions in support of Russian harmful foreign activities. These new measures are a shot across the bow to any FFIs that may have thought they were outside the scope of U.S. sanctions on Russia. As Secretary of the Treasury Janet Yellen stated, “We expect financial institutions will undertake every effort to ensure that they are not witting or unwitting facilitators of circumvention and evasion. And we will not hesitate to use the new tools provided by this authority to take decisive, and surgical, action against financial

¹ [Executive Order \[14114\] on Taking Additional Steps With Respect to the Russian Federation’s Harmful Activities](https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/22/executive-order-on-taking-additional-steps-with-respect-to-the-russian-federations-harmful-activities/), WHITE HOUSE (December 22, 2023), <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/12/22/executive-order-on-taking-additional-steps-with-respect-to-the-russian-federations-harmful-activities/>.

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institutions that facilitate the supply of Russia's war machine."² The Order also further restricts key revenue-generating exports of Russia in the diamond, gold, alcoholic beverages, and fishing industries.

FFIs engaging in transactions with a potential nexus to Russia and importers of products in sectors with a significant Russian presence should review these updated restrictions to ensure compliance with U.S. sanctions.

I. New Secondary Sanctions Authorities Related to Foreign Financial Institutions

The Order amends E.O. 14024 to insert a new section that authorizes blocking sanctions and other restrictive measures related to correspondent accounts against FFIs that conduct or facilitate two types of significant transactions supporting Russian military activity. Transactions involving individuals or entities ("**Persons**") designated for operating in sectors covered by E.O. 14024 Section 1(a)(i), described in detail below, and transactions "involving Russia's military-industrial base," even if the transactions do not involve a blocked person, are both bases for imposing blocking sanctions and correspondent accounts sanctions.³ The Office of Foreign Assets Control ("**OFAC**") has also announced in newly issued [FAQ 1153](#) that, in order to aid compliance efforts, it intends to update the SDN List to indicate the sector in which a Person was designated under E.O. 14024 for operating.

With respect to the second category of transactions, OFAC defines "Russia's military-industrial base" in [FAQ 1151](#) to include the technology, defense and related materiel, construction, aerospace, and manufacturing sectors.⁴ This authorization is not limited to transactions with Persons on the SDN List that have been designated for operations within those sectors; it broadly applies to Persons operating in these sectors writ large. OFAC has determined that 29 types of items are of high military importance to Russia, and transactions related to the sale, supply, or transfer of these items are grounds for measures under this section.⁵

Importantly, these restrictions are authorized without respect to whether FFIs have knowledge that a transaction falls under one of the relevant categories described below. This marks a significant change from other secondary sanctions authorizations, which require that FFIs "knowingly" engage in activities that could result in sanctions or other restrictions.⁶ The risk of imposition of these restrictive measures raises the bar for FFIs connected to the U.S. financial system to ensure that they conduct substantial due diligence on transactions that may have a Russian nexus. While the removal of the knowledge qualifier presents significant risk, OFAC has stated that "the level of awareness of management and whether

² *Statement from Secretary Yellen on President Biden's Executive Order Taking Additional Steps With Respect to Russia's Harmful Activities*, DEPT. TREASURY (December 22, 2023), <https://home.treasury.gov/news/press-releases/jy2011>.

³ Order Sec. 1.

⁴ *FAQ 1151*, OFAC (December 22, 2023), <https://ofac.treasury.gov/faqs/1151>.

⁵ *Determination Pursuant to Section 11(a)(ii) of Executive Order 14024*, OFAC (December 22, 2023), <https://ofac.treasury.gov/media/932446/download?inline>.

⁶ See, e.g., 31 CFR 561.205 (prohibiting U.S. financial institutions from opening or maintaining correspondent accounts for FFIs determined to have conducted or facilitated certain transactions related to the Iranian metals sector).

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the transactions are part of a pattern of conduct” is a factor when determining whether a transaction is “significant” for the purpose of imposing sanctions or other restrictive measures.⁷ As a result, FFIs should conduct appropriate diligence on their customers and transactions to ensure they are not operating in the sectors described above, as the government need not show that an FFI had knowledge that a transaction related to these sectors to impose sanctions on the FFI.

Concurrently with the Order, OFAC issued [guidance](#) recommending that FFIs mitigate the risk of secondary sanctions under the Order by reviewing their customer bases, communicating expectations to customers, using questionnaires for exporter clients, and obtaining attestations from clients that they are not engaging in prohibited activity, among other things.⁸ At the same time, OFAC guidance reminds FFIs that there remains broad authorization for transactions otherwise prohibited by E.O. 14024 related to the production, manufacturing, sale, transport, or provision of agricultural commodities, agricultural equipment, medicine, medical devices, replacement parts and components for medical devices, or software updates for medical devices. The guidance further notes that FFIs may engage in or facilitate transactions that would be authorized for U.S. Persons under [General License 6C](#) without exposure to sanctions.⁹ OFAC therefore encourages FFIs to strike a balance between de-risking, by halting Russia-related transactions entirely, and wholesale support of Russia.

II. New Restrictions on Russian-Origin Goods

The Order also expands the preexisting prohibitions on the import of Russian-origin seafood, nonindustrial diamonds, alcoholic beverages, and gold to also now include U.S. foreign trade zones.¹⁰ The Order also authorizes the imposition of additional import restrictions on certain products that were mined, extracted, produced, or manufactured wholly or in part in the Russian Federation, or harvested in waters under the jurisdiction of Russia or by Russian-flagged vessels, *without respect to whether such goods have been incorporated or substantially transformed into other products outside of Russia, as well as products containing the products described above and products described above that transited through or were exported from Russia.*¹¹

Simultaneously with the Order, OFAC issued a Determination that the expanded scope of Russian-origin goods shall apply to salmon, cod, pollock, and crab.¹² These new restrictions on certain Russian seafood products are similar to previous restrictions related to gold, for which OFAC previously determined that the ban on the import of Russian gold applies to all

⁷ FAQ 1151, OFAC (December 22, 2023), <https://ofac.treasury.gov/faqs/1151>.

⁸ *Guidance for Foreign Financial Institutions on OFAC Sanctions Authorities Targeting Support to Russia's Military-Industrial Base*, OFAC (December 22, 2023), <https://ofac.treasury.gov/media/932436/download?inline>.

⁹ *Id.* However, OFAC stopped short of explicitly making clear that FFIs do not risk exposure to sanctions for engaging in transactions that would not require a specific license if engaged in by a U.S. Person.

¹⁰ Order Sec. 3(a). Gold was added to the list of products described in E.O. 14068 by a Determination issued by OFAC on June 28, 2022. *Determination Pursuant to Section 1(a)(i)(A) of Executive Order 14068*, OFAC (June 28, 2022), <https://ofac.treasury.gov/media/923986/download?inline>.

¹¹ Order Sec. 3(a).

¹² *Determination Pursuant to Section 1(a)(i)(B) of Executive Order 14068*, OFAC (December 22, 2023), <https://ofac.treasury.gov/media/932451/download?inline>.

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gold “of Russian Federation origin” without regard to whether the gold was imported directly from Russia.¹³ Therefore, Russian-origin salmon, cod, pollock, or crab (including seafood harvested by Russian-flagged vessels outside of waters under the jurisdiction of Russia), may not be imported to the United States, even if it has been incorporated or substantially transformed into other products outside of Russia.

The import bans will now include goods that have been transformed outside of Russia or fished using Russian-flagged vessels regardless of whether the products are considered to be of Russian origin. This will discourage third countries from importing Russian-origin goods to process and sell into the U.S. market.

* * *

FFIs exposed to Russia-related transactions should carefully review their customer base and transactions with a Russian nexus to ensure they do not inadvertently expose themselves to secondary sanctions or correspondent account sanctions. FFIs should also carefully review any updates from OFAC regarding additional sectors or items that are closely related to Russian military activity.

Importers should be mindful of new restrictions related to Russian goods transiting through third countries or imports from Russian-flagged ships outside of Russia. Moreover, importers should review any goods that may contain restricted Russian-origin products, as such products may be subject to future restrictions under the Order.

¹³ *Determination Pursuant to Section 1(a)(i)(A) of Executive Order 14068*, OFAC (June 28, 2022), <https://ofac.treasury.gov/media/923986/download?inline>.

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