RUSSIA: U.S. SANCTIONS

by The Swedish Club and Reed Smith LLP
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BACKGROUND

U.S. sanctions in relation to Russia and Ukraine comprise the following:

1. *Embargoed Regions* – prohibiting U.S. persons (and non-U.S. persons using U.S. dollars) from engaging in virtually any transaction that has a nexus to the Crimea, Donetsk and Luhansk regions of Ukraine.

2. *Blocking Sanctions* – designation of large numbers of Russian individuals and entities as Specially Designated Nationals ("**SDNs**"), prohibiting the involvement of U.S. persons/U.S. dollars in transactions with such persons.

3. *Sectoral Sanctions* – prohibiting, where there is a U.S. nexus, certain types of transactions (enumerated in directives) with entities identified on the Sectoral Sanctions Identification List ("**SSI List**").

4. *Imports into the U.S.* – prohibition on the importation of Russia-origin:

    - Crude oil, petroleum, petroleum fuels, oils, and products of their distillation, as well as liquefied natural gas, coal and coal products.

    - Fish, seafood, and preparations thereof; alcoholic beverages; and non-industrial diamonds; and gold.

5. *Exports to Russia* – prohibition on the export of luxury goods and other items that contribute to the industrial capabilities of Russia, as well as all U.S.-origin items on the Commerce Control List ("**CCL**") without a license, subject to limited exceptions.[1]

6. *New Investment* – prohibition on U.S. persons (and non-U.S. persons using U.S. dollars) from engaging in "new investment" in Russia.

7. *U.S. Port Ban for Russian Affiliated Vessels* – Presidential Proclamation prohibiting from entering U.S. ports vessels of Russian registry, vessels that are Russian owned, vessels that are Russian operated.

8. *Professional Services* – prohibition on U.S. persons (and non-U.S. persons using U.S. dollars) from providing accounting, trust/corporate formation, management consulting, quantum computing, architecture, and engineering services to persons in Russia.

    - Potential secondary sanctions exposure to persons determined to be "operating in" certain sectors "of the Russian economy," including marine, metals & mining, construction, manufacturing, transportation.

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[1] These include the export of less sensitive (*e.g.* "mass market") items destined to the Russian subsidiaries/JVs of exempt country companies; or certain consumer communication devices.

9. *Price Cap Restriction* – prohibiting U.S. persons from providing maritime transport related services for Russian crude oil and petroleum products bought above the applicable price cap.

LEGISLATIVE FRAMEWORK

The legal framework for the U.S. sanctions on Russia includes executive orders issued by the President, and public laws (statutes) passed by Congress. These authorities are then codified by the U.S. Treasury Department, Office of Foreign Assets Control ("**OFAC**") in its regulations, which are published on the Code of Federal Regulations ("**CFR**").

I. Executive Orders

- 14114 - Taking Additional Steps With Respect to the Russian Federation's Harmful Activities (December 22, 2023)
- 14071 - Prohibiting New Investment In And Certain Services To The Russian Federation In Response To Continued Russian Federation Aggression (April 6, 2022)
- 14068 - Prohibiting Certain Imports, Exports, and New Investment with Respect to Continued Russian Federation Aggression (March 11, 2022)
- 14066 - Prohibiting Certain Imports And New Investments With Respect To Continued Russian Federation Efforts To Undermine the Sovereignty And Territorial Integrity Of Ukraine (March 8, 2022)
- 14039 - Blocking Property with Respect to Certain Russian Energy Export Pipelines (August 20, 2021)
- 14024 - Blocking Property With Respect To Specified Harmful Foreign Activities Of The Government Of The Russian Federation (April 15, 2021)
- 14065 - Blocking Property Of Certain Persons And Prohibiting Certain Transactions With Respect To Continued Russian Efforts To Undermine The Sovereignty And Territorial Integrity Of Ukraine (February 21, 2022)
- 13685 - Blocking Property of Certain Persons and Prohibiting Certain Transactions with Respect to the Crimea Region of Ukraine (December 19, 2014)

II. Statutes

- Countering America's Adversaries Through Sanctions Act of 2017 (CAATSA)
- Protecting Europe's Energy Security Act of 2019 (PEESA)
- Protecting Europe's Energy Security Clarification Act of 2021 (PEESCA)

III. Code of Federal Regulations

- 31 CFR Part 587 - Russian Harmful Foreign Activities Sanctions Regulations
- 31 CFR Part 589 - Ukraine-/Russia-Related Sanctions Regulations

APPLICATION: WHO DO THE U.S. SANCTIONS APPLY TO?

I. U.S. Persons

The U.S. sanctions regime primarily applies to U.S. persons, which means "any United States citizen, permanent resident alien, 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." 31 CFR § 587.314; 31 CFR § 589.339. The same restrictions that apply to U.S. persons also effectively apply to non-U.S. persons where U.S. dollars are used. This is because it is separately a violation to "cause" a U.S. person to violate sanctions. 50 U.S.C. § 1705(a).

U.S. persons (and non-U.S. persons using U.S. dollars) are prohibited from engaging in virtually any transaction with a SDN. Per the 50 Percent Rule,[2] the blocking sanctions on an SDN also extend to entities that the SDN (or multiple SDNs in the aggregate) owns by at least 50% - such that U.S. persons and U.S. dollars similarly cannot be involved. *See* OFAC FAQ 401.

II. Non-U.S. Persons

Even where there is no U.S. nexus to the transaction, OFAC may pursue secondary sanctions on a non-U.S. person, if it determines the non-U.S. person has provided "material support" to the SDN.

There is no trigger threshold for what constitutes "material," however, it is generally more risky to transact with an SDN that is sanctioned for reasons such as the proliferation of weapons of mass destruction or support of global terrorism. In addition, large or recurring payments increase the risk profile for such finding.

Other contexts of potential secondary sanctions application include:

- Special Russian Crude Oil Projects, requiring sanctions on non-U.S. persons who make significant investments in a certain Russian crude oil projects.
- Persons who are determined to have operated in the certain sectors of the Russian Federation Economy, including the aerospace, electronics, military, marine, and transportation sectors.
- Energy Pipelines, authorizing sanctions against non-U.S. persons who invest in Russian energy export pipelines.
    - Secondary sanctions can also be imposed on non-U.S. persons who have leased, sold or provided vessels for the construction of Nord Stream 2 or TurkStream gas pipeline projects.

OVERVIEW OF U.S. SANCTIONS AGAINST RUSSIA

On August 2, 2017, the U.S. significantly expanded sanctions targeting Russia when the President signed into law the Countering America's Adversaries through Sanctions Act ("**CAATSA**"). The Act is significant because it codified many of the Russia-related sanctions previously imposed through executive order, thereby requiring the President to obtain Congressional approval before easing the targeted U.S. sanctions relating to Russia. The Act also expanded several key restrictions in the oil and gas industry, and designated as SDNs a number of Russian Oligarchs and their businesses.

In December 2019 and January 2021, the U.S. imposed secondary sanctions targeting persons selling, leasing, or providing vessels engaged in certain construction activities for the Nord Stream 2 or TurkStream gas pipeline projects. Since February 2022, the U.S. has been imposing new sanctions in response to the Russian invasion into Ukraine.

I. Embargoed Regions

Previously, the major element of the OFAC Russia sanctions program had been the embargo on Crimea that

[2] https://ofac.treasury.gov/media/6186/download?inline

was imposed in 2014. Specifically, pursuant to Executive Order 13685, U.S. persons (and non-U.S. persons using U.S. dollars) are prohibited from engaging in virtually any transaction that has a Crimea nexus – including exports, imports, and investments.

Similar to the comprehensive sanctions imposed against Crimea, on February 21, 2022, Executive Order 14065 was issued effectively excluding U.S. persons (and non-U.S. persons using U.S. dollars) from conducting any transaction with a nexus to the Donetsk ("**DNR**") and Luhansk ("**LNR**") regions of Ukraine ("**Covered Regions**").[3] Even where there is no U.S. nexus, OFAC can theoretically designate individuals and entities that it determines to be "operating in" these Covered Regions.

Ukraine General License 18 authorizes the export of agricultural commodities, medicine and medical devices to the DNR/LNR regions. Similarly, for Crimea, the general license codified in 31 CFR § 589.513 can be benefited from.

II. Blocking Sanctions

1. What is prohibited?

Through the process, OFAC has designated a large number of key Russia related individuals and entities, including Nord Stream 2 AG. In addition, the financial sector of Russia was heavily targeted. Some of the pertinent banks that are now SDNs are following:

- Alfa-Bank
- Bank Otkritie
- Bank Primorye
- Bank Saint-Petersburg
- Bank Zenit
- Black Sea Bank for Development and Reconstruction
- Credit Bank of Moscow
- Industrial Savings (IS) Bank
- Lanta Bank
- Gen Bank
- Metallurgical Investment Bank (Metallinvestbank)
- Moscow Industrial Bank
- MTS Bank
- Novikombank
- Novosibirsk Social Commercial Bank Levoberezhny
- Promsvyazbank (PSB)
- Rosbank
- Rossiya Bank
- Russia Direct Investment Fund
- Sberbank
- SDM Bank
- SMP Bank
- Sovcombank
- Transkapitalbank
- Ural Bank for Reconstruction and Development
- Uralsib
- Vnesheconombank (VEB)
- VTB Bank

In addition to the above, OFAC is authorized to block and designate a non-U.S. person when it has been determined that the person:

[3] *See* Ukraine General License Number 24, authorizing certain transactions related to the provision of maritime services (March 18, 2022).

- Has materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services for any person blocked pursuant to an executive order.

- Has knowingly "facilitate[d] a significant transaction . . ., including deceptive or structured transactions, for on behalf of . . . any person subject to the sanctions imposed by the United States with respect to the Russian Federation." *See* Section 226 of CAATSA.

  - OFAC has explained that "facilitating" a transaction refers to the provision of "assistance for a transaction from which the person in question derives a particular benefit of any kind. . ." *See* FAQ 545.

  - OFAC will consider a totality of circumstances when determining whether a specific transaction is "significant," while also providing seven factors to be considered when making that analysis. Those factors include (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis. 31 CFR § 589.413*.*

    - Per § 589.413(i), a transaction is not "significant" if a U.S. person would not require a specific license from OFAC to engage in the activity.

OFAC may impose secondary sanctions on non-U.S. financial institutions that have knowingly facilitated "significant financial transactions" for any Russian person who has been designated pursuant to the Ukraine-/Russia-related authorities. *See* CAATSA Section 226.

2. What penalties can be imposed on non-U.S. persons?

Non-U.S. persons who engage in transactions with SDNs that OFAC finds to be "significant" (and thus sanctionable under Section 231 of CAATSA) may face five or more of the sanctions described in Section 235 of CAATSA. These secondary sanctions include: prohibitions on Export-Import Bank assistance, export licenses for exports to sanctioned persons, prohibitions on loans to sanctioned persons of more than $10 million over a 12-month period from any U.S. financial institution, prohibition of any transactions in foreign exchange by the sanctioned person within the jurisdiction of the United States, and asset blocking, as well as various additional sanctions directed at financial institutions and transactions and measures against corporate executives. These measures are designed to function as economic leverage to dissuade non-U.S. persons from engaging in transactions with anyone subject to secondary sanctions.

In addition, IEEPA foresees civil as well as criminal penalties for a U.S. sanctions violation. These penalties are laid out in 31 CFR § 560.701. In pertinent part:

- The applicable maximum civil penalty per violation of IEEPA is the greater of $356,579 or an amount that is twice the amount of the transaction that is the basis of the violation with respect to which the penalty is imposed. The enforcement actions often include multiple penalties so the fines are typically much higher.

- A person who wilfully commits, wilfully attempts to commit, or wilfully conspires to commit, or aids or abets in the commission of a violation of any license, order, regulation, or prohibition may, upon conviction, be fined not more than $1,000,000, or if a natural person, be imprisoned for not more than 20 years, or both.

In the worst-case scenario, the non-U.S. person may be designated as an SDN, however, this is a harsh determination with a high threshold.

3. How is the shipping industry affected by the blocking provisions/asset freeze?

If a shipping industry participant is designated as an SDN, U.S. persons (and non-U.S. persons using U.S. dollars) would be prohibited from engaging in virtually any transaction with it. U.S. persons would also be required to block or freeze all property and interests in property of the SDN in their possession and report it to OFAC. Non-U.S. persons should also avoid dealings with SDNs, as OFAC has the discretion to pursue secondary sanctions (even barring U.S. nexus) if it deems "material support" was provided to the SDN.

4. How can I find out which parties are designated?

The full SDN List may be downloaded from the OFAC website. It is also possible to search the list, using the OFAC search engine at Sanctions List Search Tool.

III. Sectoral Sanctions: The Directives

Prior to the 2022 military action, OFAC had maintained four "Directives" that impose targeted sanctions upon the Russian economy, all of which were promulgated under Executive Order 13662. The primary purpose of Executive Order 13662 was to focus on entities in certain sectors of the Russian economy, such as "financial services, energy, metals and mining, engineering, and defense and related materiel."

Each Directive governs activities between U.S. persons and those listed on the SSI List. Note that, with most Directives, sanctions that apply to entities on the SSI List also apply to any entities that are owned by at least 50% by one or more persons on the SSI List (*i.e.* the 50 Percent Rule applies in the context of sectoral sanctions just like in the context of the blocking sanctions of SDNs).

1. Directive 1 (as amended on September 29, 2017) Under Executive Order 13662 (13-Day New Debt/No Equity) targeting Russia's financial services sector

Directive 1 was established in 2014 to target the financial services sector of the Russian economy. This directive originally prohibited US persons (or those within the United States) from engaging in transactions in, providing financing for, or otherwise dealing in new debt with a maturity of longer than 90 days (July 16, 2014 version) and then 30 days (September 12, 2014 version), or equity for persons identified on the SSI List under Directive 1.

However, under CAATSA, OFAC was required to modify Directive 1 to reduce the "new" debt prohibition to 14 days. This was done on September 29, 2017, and the reduction came into effect in respect of new debt or new equity issued on or after November 28, 2017.

2. Directive 2 (as amended on September 29, 2017) Under Executive Order 13662 (60-Day New Debt) targeting Russia's energy sector

Directive 2 targets Russia's energy sector of the Russian economy by prohibiting transactions in, the provision of financing for, and other dealings in new debt with a maturity of longer than 60 days for persons identified on the SSI List under Directive 2. Originally, Directive 2 covered new debt with a maturity of longer than 90 days but CAATSA required OFAC to reduce the period to 60 days. This was done on 29 September 2017, and the reduction came into effect in respect of new debt issued on or after November 28, 2017.

3. Directive 3 (30-Day Debt) Under Executive Order 13362 targeting Russia's defense and related material sector

Directive 3 targets the Russian defense and related material sector by prohibiting all transactions in, the provision of financing for, and other dealings in new debt of longer than 30 days for persons identified on the SSI List under Directive 3.

4. Directive 4 (as amended on October 31, 2017) under Executive Order 13662 (Energy Industry Prohibitions) further targeting Russia's energy sector

Directive 4 expands on the sanctions targeting the Russian energy sector. The original version of Directive 4 prohibited US persons from: (1) "the provision, exportation, or reexportation, directly or indirectly, of goods, services (except for financial services), or technology"; (2) "in support of exploration or production for deepwater [underwater activities at depths of more than 500 feet], Arctic offshore, or shale projects" (hereafter "Covered Projects"); (3) "that have the potential to produce oil in the Russian Federation, or in maritime area claimed by the Russian Federation and extending from its territory"; (4) that involve any person identified on the SSI List under Directive 4, including that person's property, or its interests in property.

OFAC modified Directive 4 to prohibit US persons not only from providing goods, services and technology for Covered Projects in Russia, but also to such projects anywhere in the world, if they involved persons designated under Directive 4. Notably, the expansion of Directive 4 to reach Covered Projects beyond Russia applied only to "new" Covered Projects where the Directive 4 target "has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest." The amendment was made on October 31, 2017 and covers projects that were initiated on or after January 29, 2018.

Other Directives

With the 2022 invasion of Ukraine, the U.S. added to the sectoral sanctions that it had on Russia. As a reminder, sectoral sanctions prohibit a subset of transactions specifically specified in the directives. In addition, they only apply where U.S. persons and U.S. dollars are involved. Hence, not all directives will be applicable or necessarily create a sanctions exposure. Of potential pertinence are:

- Directive 3 under EO 14024 – Prohibitions Related to New Debt and Equity of Certain Russia-related Entities (February 24, 2022)
- Directive 4 under EO 14024 – 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 (May 19, 2023)

Pursuant to Directive 3, where U.S. persons or U.S. dollars are involved, the entities that are named in the directive (as well as entities 50%-owned by them) must pay within 14 days from when their obligation to pay arises (*e.g.* from the date of invoice).[4]

It is noticeable that a number of the entities listed in Directive 3 are from the energy sector of Russia. In this regard, Russia-related General License 8G - *Authorizing Transactions Related to Energy* may be benefited from through November 1, 2023. OFAC might extend the expiry of this license.

Separately, pursuant to Directive 4, where U.S. persons or U.S. dollars are involved, it is prohibited to enter into:

> "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, including any transfer of assets to such entities or any foreign exchange transaction for or on behalf of such entities."

Distinct from the other directives, the 50 Percent Rule does not apply in the context of Directive 4. OFAC FAQ 1001. In addition, FAQ 999 clarifies that General License 13E authorizes U.S. persons to pay taxes, fees, or import duties and purchase or receive permits, licenses, registrations, or certifications, provided such transactions are ordinarily incident and necessary to such persons' "day-to-day operations" in the Russian

[4] Please note that some of the Directive 3 entities have subsequently been designated as SDNs (*e.g.* Credit Bank of Moscow, Alfa Bank, Sberbank). In such cases, the SDN restrictions override the restrictions of the directive, and U.S. dollars/persons should not be used.

Federation.[5]

For further information on the types of transactions authorized by GL 13E, *see* FAQ 1118. Most notably, payment of "exit tax" is not considered ordinarily incident and necessary to "day-to-day operations" in the Russian Federation. In contrast, General License 31 authorizes certain transactions related to patents, trademarks, and copyrights.

Finally, OFAC issued General License 14, authorizing transactions involving a Directive 4 entity where the Directive 4 entity's sole function in the transaction is to act as an operator of a clearing and settlement system (*i.e.* is not a counterparty or beneficiary to the transaction). FAQ 1003. GL 14 does not authorize any debit to an account on the books of a U.S. financial institution of a Directive 4 entity.

IV. Special Russian Crude Oil Projects

The President is required, unless he/she determines it is not in U.S. national security interests, to impose sanctions on any person who "knowingly makes a significant investment" in a "special Russian crude oil project," defined as "a project intended to extract crude oil from (i) the exclusive economic zone of the Russian Federation in waters more than 500 feet deep; (ii) Russian Arctic offshore locations; or (iii) shale formations located in the Russian Federation."

V. Energy Pipeline Secondary Sanctions

The U.S. has also imposed secondary sanctions targeting non-U.S. persons engaged in certain transactions related to Russian energy pipelines.

Investments

CAATSA gives the President the power to impose (but does not require) secondary sanctions on non-U.S. persons who knowingly: (1) make an investment of $1 million or more (or $5 million or more over a 12-month period) that directly and significantly contributes to enhancing Russia's ability to construct energy export pipelines or (ii) sell, lease, or provide to the Russian Federation, goods, services, technology, information, or support (valued at $1 million or more, or during a 12-month period with an aggregate value of $5 million or more) that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipeline.

Pipe-laying Vessels

PEESA, which was signed into law in December 2019, requires the President to impose secondary sanctions on non-US persons who knowingly: (1) sell, lease or provide vessels engaged in pipe-laying at depths of 100 feet or more below sea level for the construction of the Nord Stream 2 pipeline project or the TurkStream pipeline project (a pipeline that runs from Russia to Turkey across the Black Sea) and any successor to either project; or (2) facilitate deceptive or structured transactions to provide those vessels for the construction of such a project.

The secondary sanctions consist of: (1) blocking sanctions and prohibitions on all transactions in U.S. property and interests in property of any person sanctioned under PEESA if such property and interests in property are in the U.S. or in the possession or control of a U.S. person; and (2) prohibiting the entry into the U.S. and the issuance of a U.S. visa to any non-U.S. person that is a corporate officer or principal shareholder of a person sanctioned under PEESA.

In January 2021, the United States congress enacted PEESCA, which threatens sanctions on companies providing, among other things, insurance, underwriting, inspection, pipe-laying, services related to retrofitting, upgrading, or tethering pipe-laying vessels, or pipe-laying vessels, goods, services, information, technology, or other support for either project.

[5] This authorization currently expires on August 17, 2023, however, OFAC might extend it further.

PROFESSIONAL SERVICES RESTRICTIONS

On May 8, 2022, the U.S. issued a determination pursuant to Section 1(a)(ii) of Executive Order 14071 that prohibits:[6]

> the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, of accounting, trust and corporate formation, or management consulting services to any person located in the Russian Federation.

OFAC FAQ 1058 clarifies that a "person located in the Russian Federation" means "individuals ordinarily resident in the Russian Federation, and entities incorporated or organized under the laws of the Russian Federation or any jurisdiction within the Russian Federation." However, it is also clarified in the same FAQ:

> For the purposes of E.O. 14071, OFAC interprets the "indirect" provision of such services to include when the benefit of the services is ultimately received by a "person located in the Russian Federation."

In pertinent part, the covered services are "accounting," "trust and corporate formation," and "management consulting." In FAQ 1034, OFAC defines these terms as:

- "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.

A subsequent determination included architecture and engineering, and quantum computing services, there is a risk of sanctions for U.S. persons (or to use U.S. dollars) when providing such services to Russia.[7]

Per OFAC FAQ 1128:

- Architecture services include advisory services; pre-design services; design services, including schematic design, design development, and final design; contract administration services; combined architectural design and contract administration services; including post construction

[6] The same determination was made pursuant to Executive Order 14024 and creates a theoretical exposure for non-U.S. persons that OFAC determines to be "operating in" the enumerated services sectors "of the Russian economy." FAQ 1127 clarifies that "[a] sector determination does not automatically impose sanctions on all persons who operate or have operated in the sector. Only persons explicitly determined to operate or have operated in the identified sectors are subject to sanctions." Hence, the practical exposure to this secondary sanctions provision is lower and for mitigation it usually suffices to eliminate the U.S. nexus.

[7] Please note a similar determination was made pursuant to EO 14024, which create a theoretical secondary sanctions exposure to non-U.S. persons OFAC determines are "operating in" certain other sectors of Russia, such as metals and mining, construction, manufacturing, and transportation. The relevant definitions may be found at FAQ 1115 and FAQ 1126. Once again, a sector determination does not automatically impose sanctions on all persons who operate or have operated in the sector. Only persons explicitly determined to operate or have operated in the identified sectors are subject to sanctions.

services; and all other services requiring the expertise of architects. The prohibition applies to such services as they relate to residential, institutional, leisure, commercial, and industrial buildings and structures; recreational areas; transportation infrastructure; land subdivisions; and not necessarily related to a new construction project. The term also includes urban planning services (i.e., land use, site selection, and servicing of land for systemic, coordinated urban development) and landscape architectural services. OFAC intends to interpret this term consistent with UN Central Product Classification (CPC) Codes 86711-86704, 86719, and 86741-86742.

- Engineering services include assistance, advisory, consultative, design, and recommendation services concerning engineering matters or during any phase of an engineering project. Engineering design services may be for: the construction of foundations and building structures (i.e., structural engineering); mechanical and electrical installations for buildings; the construction of civil engineering works; industrial processes and production; or other engineering designs, such as those for acoustics, vibration, traffic control systems, or prototype development for new products. The term additionally includes geotechnical, groundwater, and corrosion engineering services; integrated engineering services, such as those for transportation infrastructure or other projects; engineering-related scientific and technical consulting services, including geological, geophysical, geochemical, surface or subsurface surveying, and map making services; testing and analysis services of chemical, biological, and physical properties of materials or of integrated mechanical and electrical systems; and technical inspection services. OFAC intends to interpret this term consistent with UN CPC Codes 86721-86727, 86729, 86731-86733, 86739, 86751-86754, 86761-86764, and 86769. Additionally, OFAC does not consider maritime classification services to be subject to the prohibition.

Per OFAC FAQ 1086:

- Quantum Computing services include activities related to products and services in or involving the Russian Federation in research, development, manufacturing, assembling, maintenance, repair, sale, or supply of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing. OFAC also interprets the term “quantum computing sector of the Russian Federation economy” to include any of the following services when related to quantum computing: infrastructure, web hosting or data processing services; custom computer programming services; computer systems integration design services; computer systems and data processing facilities management services; computing infrastructure, data processing services, web hosting services, and related services; repairing computer, computer peripherals, and communication equipment; other computer-related services; as well as the exportation, reexportation, sale, or supply, directly or indirectly, of quantum computing, quantum computers, electronic assemblies thereof, or cryogenic refrigeration systems related to quantum computing to or from the Russian Federation.

With all of the services prohibitions, the following activities are allowed: (1) any service to an entity located in the Russian Federation that is owned or controlled, directly or indirectly, by a United States person; (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.

NEW INVESTMENT PROHIBITION

According to Section 1(a)(i) of EO 14071, U.S. persons (and non-U.S. persons using U.S. dollars) are prohibited from engaging in new investment in Russia. FAQ 1049 clarifies that OFAC views “investment” as the commitment of capital or other assets for the purpose of generating returns or appreciation. Examples include:

- The purchase or acquisition of real estate in the Russian Federation, other than for non-commercial, personal use;

- Entry into an agreement requiring the commitment of capital or other assets for the establishment or expansion of projects or operations in the Russian Federation, including the formation of joint ventures or other corporate entities in the Russian Federation;
- Entry into an agreement providing for the participation in royalties or ongoing profits in the Russian Federation;
- The lending of funds to persons located in the Russian Federation for commercial purposes, including when such funds are intended to be used to fund a new or expanded project or operation in the Russian Federation;
- The purchase of an equity interest in an entity located in the Russian Federation (*see* FAQs 1054 and 1055); and
- The purchase or acquisition of rights to natural resources or exploitation thereof in the Russian Federation.

In contrast, the following activities are not prohibited:

- Entry into, performance of, or financing of a contract, pursuant to ordinary commercial sales terms, to sell or purchase goods, services, or technology to or from an entity in the Russian Federation (*e.g.*, a payment of an invoice for goods, where payment is made within the contracted time period and such payment does not involve participation in royalties or ongoing profits);
- Maintenance of an investment in the Russian Federation, where the investment was made prior to April 6, 2022, including maintenance of pre-existing entities, projects, or operations, including associated tangible property, in the Russian Federation (*see* FAQ 1050); and
- Wind down or divestment of a pre-existing investment, such as a pre-existing investment in an entity, project, or operation, including any associated tangible property, located in the Russian Federation (*see* FAQs 1053 and 1054).

Per OFAC FAQ 1050, "maintenance" of investments includes:

- Transactions to ensure continuity of pre-existing projects or operations located in the Russian Federation, including payments to employees, suppliers, landlords, lenders, and partners;
- The preservation and upkeep of pre-existing tangible property in the Russian Federation; and
- Activities associated with maintaining pre-existing capital investments or equity investments.

As a general matter, "maintenance" includes all transactions ordinarily incident to performing under an agreement in effect prior to April 6, 2022, provided that such transactions are consistent with previously established practices and support pre-existing projects or operations. However, "maintenance" does not include the expansion of pre-existing projects or operations beyond those in effect prior to April 6, 2022, even if pursuant to a pre-existing agreement, where such expansion occurs after April 6, 2022. Nor does "maintenance" include commitments pursuant to the exercise of rights under a pre-existing agreement where such commitment is made on or after April 6, 2022.

In connection with maintenance activity, U.S. persons also may modify or alter pre-existing agreements, or enter into new contracts or agreements, provided that any transaction under such contracts or agreements are consistent with previously established practices and support pre-existing projects or operations. For example, a pre-existing agreement may be modified, or new contract established, to substitute suppliers, conduct maintenance or repairs, or comply with new environmental or safety standards. In assessing whether activity is consistent with past practice, OFAC will consider all relevant facts and circumstances, including the transaction history between contract parties prior to April 6, 2022.

U.S. PORT BAN FOR RUSSIAN AFFILIATED VESSELS

On April 21, 2022, a Presidential Proclamation was issued prohibiting "Russian-affiliated vessels" from entering into U.S. ports. The Proclamation was extended[8] on April 18, 2023 for another year. Per Section 3 of the Proclamation, this term encompasses:

- vessels of Russian registry (*i.e.*, the vessel is Russian flagged);
- vessels that are Russian owned (*i.e.*, the legal title of ownership of the vessel that appears on the ship's registration documents is the Government of the Russian Federation or a Russian company, citizen, or permanent resident); or
- vessels that are Russian operated (*i.e.*, a Russian company, citizen, or permanent resident is responsible for the commercial decisions concerning the employment of a ship and decides how and where that asset is employed).

There are certain exceptions to the Proclamation, however, these are rather narrow and are limited to:

- Russian-affiliated vessels used in the transport of source material, special nuclear material, and nuclear by product material for which the U.S. Government determines that no viable source of supply is available that would not require transport by Russian-affiliated vessels; and
- Russian-affiliated vessels requesting only to enter U.S. ports due to force majeure, solely to allow seafarers of any nationality to disembark or embark for purposes of conducting crew changes, emergency medical care, or for other humanitarian need.

The Proclamation is based on the Magnuson Act, and the penalties are laid out in 46 U.S.C § 70052 – contemplating seizure and forfeiture of vessel; fines and imprisonment. The so-called "General Rule penalties" which contemplate seizure, forfeiture, fines and imprisonment, apply to "any owner, agent, master, officer, or person in charge, or any member of the crew."

Outside of this there may be exposure to other parties, given the provision stating:

> "If any other person knowingly fails to comply with any regulation or rule issued or order given under the provisions of this subchapter, or knowingly obstructs or interferes with the exercise of any power conferred by this subchapter, he shall be punished by imprisonment for not more than ten years and may, at the discretion of the court, be fined not more than $10,000."

The Magnuson Act does not provide for secondary sanctions against non-U.S. persons.

PRICE CAP RESTRICTION

Since December 5, 2022 and February 5, 2023 respectively, U.S. service providers are prohibited from providing services relating to the maritime transport of Russia-origin crude oil (HS 2709) and petroleum products (HS 2710) bought above the applicable price cap. The cap for crude oil is $60 per unit, while for petroleum products it will differ depending on whether the subject product is considered "discount" or "premium" to crude. A reference chart may be accessed here.

Per the OFAC Guidance on Implementation of the Price Cap Policy, the covered services are:

- **Trading/commodities brokering:** Buying, selling, or trading commodities and/or brokering the sale, purchase, or trade of commodities on behalf of other buyers or sellers.

[8] https://www.whitehouse.gov/briefing-room/presidential-actions/2023/04/18/notice-on-the-continuation-of-the-national-emergency-and-of-the-emergency-authority-relating-to-the-regulation-of-the-anchorage-and-movement-of-russian-affiliated-vessels-to-united-states-ports/

- **Financing:** A commitment for the provision or disbursement of any debt, equity, funds, or economic resources, including grants, loans, guarantees, suretyships, bonds, letters of credit, supplier credits, buyer credits, and import or export advances. For the purposes of the crude oil determination and the petroleum products determination, the term “financing” does not include the processing or clearing of payments by intermediary banks.

- **Shipping:** Owning or operating a ship for the purpose of carrying or delivering cargo and/or freight transportation; chartering or sub-chartering ships to deliver cargo or transport freight; brokering between shipowners and charterers; and serving as a shipping/vessel agent.

- **Insurance:** The provision of insurance, reinsurance, or protection and indemnity (“**P&I**”) services; satisfying claims related to underwriting insurance policies that protect policyholders against losses that may occur as a result of property damage or liability; assuming all or part of the risk associated with existing insurance policies originally underwritten by other insurance carriers, including the reinsurance of a non-U.S. insurance carrier by a U.S. person; and liability insurance for maritime liability risks associated with the operation of a vessel, including cargo, hull, vessel, P&I, and charterer’s liability.

- **Flagging:** Registering or maintaining the registration of a vessel with a country’s national registry of vessels. This definition does not include the deflagging of vessels transporting Russian oil or Russian petroleum products sold above the price cap.

- **Customs brokering:** Assisting importers and exporters in meeting requirements governing imports and exports. This definition does not include legal services or assisting importers and exporters in meeting the requirements of U.S. sanctions.

Most notably, the processing, clearing, or sending of payments by banks is not included in the definition of “financing” where the bank (1) is operating solely as an intermediary and (2) does not have any direct relationship with the person providing services related to the maritime transport of the Russian oil or Russian petroleum products (*i.e.* the person is a non-account party) as it relates to the transaction. Thus, the crude oil determination and the petroleum products determination do not impose any new prohibitions or requirements related to the processing, clearing, or sending of payments by intermediary banks.

In such case, the use of U.S. dollars is <u>not</u> a jurisdictional hook that brings the transaction within OFAC jurisdiction like the rest of the U.S. sanctions regime.

Unlike, the UK and the EU, OFAC chose to keep a 3-tier system and divide providers into three “tiers” of actors, imposing obligations commensurate with the level of knowledge each actor practically has regarding the underlying trade.

- **Tier 1 Actors**: Actors who regularly have direct access to price information in the ordinary course of business, such as commodities brokers and oil traders, are “Tier 1 Actors.”

  - To be afforded the safe harbor, Tier 1 Actors must retain documents showing that Russian oil or Russian petroleum products were purchased at or below the relevant price cap, including itemized ancillary cost information (e.g., shipping, insurance, and freight costs). Such documentation may include invoices, contracts, or receipts/proof of payment.

- **Tier 2 Actors**: Actors who are sometimes able to request and receive price information from their customers in the ordinary course of business, such as financial institutions, ship/vessel agents, and customs brokers, are “Tier 2 Actors.”

  - To be afforded the safe harbor, Tier 2 Actors must, to the extent practicable, request and retain documents that show that Russian oil or Russian petroleum products were purchased at or below the relevant price cap, including itemized ancillary cost information. When not practicable to request and receive such

information, Tier 2 Actors must obtain and retain customer attestations, in which the customer commits that for the service being provided, the Russian oil or Russian petroleum products were purchased or will be purchased at or below the relevant price cap. Certain Tier 2 Actors should obtain attestations within 30 days of a counterparty's lifting or loading of Russian oil or Russian petroleum products (e.g., calling at a port in the Russian Federation or performing a ship-to-ship transfer to load Russian oil or Russian petroleum products).

- **Tier 3 Actors**: Actors who do not regularly have direct access to price information in the ordinary course of business, such as insurers, P&I clubs, shipowners, and flagging registries, are "Tier 3 Actors."
    - To be afforded the safe harbor, Tier 3 Actors must obtain and retain customer attestations, in which the customer commits that for the service being provided, the Russian oil or Russian petroleum products were purchased or will be purchased at or below the relevant price cap. As explained in greater detail later in this guidance, most Tier 3 Actors should obtain attestations each time a counterparty loads or lifts Russian oil or Russian petroleum products, (e.g., calling at a port in the Russian Federation or performing a ship-to-ship transfer to load Russian oil or Russian petroleum products). These Tier 3 Actors should also require counterparties to share additional information upon request, including itemized ancillary costs such as freight and insurance costs. Examples of triggers for requests for additional information (including ancillary cost information) include if a Tier 3 Actor becomes suspicious about a possible violation in the course of their own due diligence or if a Tier 3 Actor receives information about a suspected violation (i.e., from open source reporting or a request from relevant authorities). Reinsurers can use a sanctions exclusion clause in their policies or contracts.

Per the OFAC Guidance, this "safe harbor" for service providers through the recordkeeping and attestation process is designed to shield such service providers from strict liability for breach of sanctions in cases where service providers inadvertently deal in the purchase of Russian oil or Russian petroleum products sold above the relevant price cap owing to falsified or erroneous records provided by those who act in bad faith or make material misrepresentations. For example, where a service provider without direct access to price information reasonably relies on a customer attestation, and retains the attestation, that service provider will not be held liable for sanctions violations attributable to those acting in bad faith who cause a violation of the crude oil determination or the petroleum products determination, or an evasion of OFAC sanctions.

To be afforded the safe harbor, U.S. service providers must retain relevant records for five years. In the context of Tier 3 actors, OFAC expects the following:

- **Shipowners/carriers:** Shipowners or other carriers who perform the transportation of cargo (who do not in the ordinary course of business have information regarding the pricing of the underlying cargo) must obtain and retain an attestation from their customer/contractual counterparty regarding compliance with the price cap to be afforded the safe harbor. This attestation must be obtained prior to each loading or lifting of Russian oil or Russian petroleum products. In addition, shipowners or other carriers must require their Tier 1 Actor counterparties to share additional information upon request. Such information should include, at a minimum, ancillary itemized cost information (e.g., freight, insurance, and other ancillary costs aside from the underlying cost of the Russian oil or Russian petroleum products).

- **Insurers/P&I clubs:** Insurers and P&I clubs can be afforded the safe harbor by receiving a signed attestation each time a vessel lifts or loads Russian oil or Russian petroleum products. This attestation must be obtained within 30 days of each lifting or loading of Russian oil or Russian petroleum products. In addition, these actors must require their counterparties (i.e., the shipowner or manager) to obtain and share additional information beyond an attestation upon

request. Such information should include, at a minimum, itemized ancillary cost information (*e.g.*, freight, insurance, and other ancillary costs aside from the underlying cost of the Russian oil or products). This information would be passed "up the chain" to the insurer or P&I club from the shipowner's Tier 1 counterparty upon request, through the shipowner.

  - An insurer, reinsurer, or P&I club may in the ordinary course of business, such as a claims investigation, request additional information from customers, including additional attestations or price information. A party's refusal to provide such information should be considered a red flag for potential sanctions evasion.

- **Reinsurers:** Reinsurers can be afforded the safe harbor through the use of sanctions exclusion clauses in policies or contracts, including pre-existing sanctions exclusion clauses. Alternatively, or in addition to sanctions exclusion clauses, these actors can be afforded the safe harbor through the use of clauses that exclude coverage for activities related to the maritime transport of Russian oil or Russian petroleum products purchased above the price cap. These actors can also use signed attestations, should they so choose.

  - Although these actors may wish to update their policies to include price-cap-specific clauses, this is not required to be afforded the safe harbor. A standard sanctions exclusion clause is sufficient to be afforded the safe harbor, per the guidance in FAQ 102.

- **Flagging registries**: Flagging registries can be afforded the safe harbor by receiving a signed attestation within 30 days of a vessel lifting or loading Russian oil or Russian petroleum products. Flagging registries can require by contract, regulation, or other enforceable means that their customers will be de-flagged if they fail to provide required documentation or violate the crude oil determination or the petroleum products determination.

  - The responsibility is on the flagging registries' counterparty (i.e., the shipowner or manager) to provide the flagging registry with an attestation within 30 days of lifting or loading Russian oil or petroleum products. If the flagging registry discovers that a customer has lifted Russian oil or Russian petroleum products and failed to provide an attestation within the 30-day period, the flagging registry should request one immediately

Further guidance as to Tier 1 and Tier 2 actors may be found in the OFAC Guidance. In addition, a table for safe harbor documentation is available.

ADDITIONAL GUIDANCE

Maritime Safety Advisory

October 12, 2023, the Price Cap Coalition also issued a Maritime Safety Advisory (the "**Advisory**") designed in order to reduce the exposure of industry stakeholders to possible risks associated with recent developments in the maritime oil trade. Specifically, the Advisory makes seven recommendations:

Recommendation 1: Require appropriately capitalized P&I insurance. Requiring that vessels have "continuous and appropriate" maritime insurance coverage for the entirety of their voyages. Specifically, the Advisory recommends that industry stakeholders require vessels to be insured by legitimate insurance providers with sufficient coverage for International Convention on Civil Liability for Oil Pollution Damage (CLC) liabilities.

If an industry participant is engaging with a ship that is not insured by such a legitimate insurance provider, the Advisory recommends that the industry participant conduct sufficient due diligence to ensure that the insurer can cover all relevant risks. Such due diligence might include, as is reasonable, a review of the insurer's financial soundness, track record, regulatory record, and/or ownership structure.

Recommendation 2: Receive classification from an International Association of Classification Societies member society. The Advisory notes the usefulness of the information gathered by classification societies in enabling insurers, port states, and other industry stakeholders to make informed decisions about the seaworthiness of vessels. It is emphasized that some ships involved in the "shadow trade" have shifted away from industry standard classification societies, and instead use societies that are not a part of, or have been removed from, the International Association of Classification Societies. In response to this, the Advisory encourages industry stakeholders to ensure counterparties receive classification from IACS member classification societies to ensure vessels are fit for the service intended.

Recommendation 3: Best-practice use of Automatic Identification Systems ("AIS"). The Advisory recommends that, consistent with the International Convention for the Safety of Life at Sea ("**SOLAS**"), industry stakeholders promote the continuous broadcasting of AIS throughout the lifetime of a voyage. If a ship needs to disable its AIS in response to a legitimate safety concern, the ship should be able to document the circumstances that necessitated the disablement.

The Advisory also recommends the vigilant monitoring of irregular AIS patterns or data that are inconsistent with actual ship locations, with the goal of improving understanding of vessels' activities, and reducing exposure to criminal actors and associated risks. It is further noted:

> "If accessible, complement AIS Tracking with Long-Range Identification and Tracking ("**LRIT**"). In instances of AIS outages or suspected AIS manipulation, industry stakeholders such as flagging registries that have access to LRIT should use it to determine the true location of vessels, including, where feasible, those leased to third parties. For those industry stakeholders who have access to LRIT, combining AIS and LRIT is a best practice for mitigating risk."

Recommendation 4: Monitor high-risk ship-to-ship ("STS") transfers. While recognizing that STS transfers may indeed be conducted for legitimate purposes, the Advisory emphasizes that such transfers can also be used to conceal the origin or destination of cargo in circumvention of sanctions or other regulations. Accordingly, the Advisory encourages the industry stakeholders to recognize enhanced risks and, in a commensurate manner, conduct enhanced due diligence in the context of STS transfers.

This includes the notification of STS oil cargo transfers as required by Annex I of the International Convention for the Prevention of Pollution from Ships ("**MARPOL**"), especially in areas at higher risk for illicit trading activity or AIS manipulation. The Advisory also recommends that industry stakeholders verify oil record logs to hold accountable record of cargo movements aboard vessels.

Recommendation 5: Request associated shipping and ancillary costs. The Advisory notes that one of the methods of circumventing the price cap is through the inflation of shipping and ancillary costs (*e.g.* freight, customs, insurance), or the bundling of such costs. Industry participants are accordingly advised to pay special attention to instances of billing of commercially unreasonable or opaque shipping and ancillary costs. Shipping, freight, customs, and insurance costs are not included in the price caps and must be invoiced separately and at commercially reasonable rates.

The Advisory recommends that industry stakeholders using "Cost, Insurance, Freight" contracts or whose counterparts use such agreements request an itemized breakdown of all costs to determine the price paid for the actual oil or petroleum products. It is acknowledged that this might necessitate the updating of inconsistent contractual terms and conditions with sellers or counterparts or adjust invoicing models to show the price of the oil until the port of loading and the price for transportation and other services separately.

Recommendation 6: Undertake appropriate due diligence. The Advisory notes that heightened diligence may be appropriate for ships that have undergone numerous administrative changes (*e.g.* re-flagging). Potential red flags include intermediary companies (*e.g.* management companies, traders, brokerages etc.) that conceal their beneficial ownership or otherwise engage in unusually opaque practices. This is because such companies are more likely to engage in deceptive practices and expose counterparties to heightened risks.

As always, a risk-based approach must be attained, and due diligence should especially be robust where

market assessments indicate that Russian oil prices exceed the price cap, and services are being used or sought of a Price Cap Coalition country company (as such companies are prohibited providing services to above cap trade).

Recommendation 7: Report ships that trigger concerns. Finally, reporting breaches or suspected breaches is encouraged. The Advisory emphasizes that collective action can help protect the trade from malign activity, while promoting safety and integrity across the market.

EXPORT CONTROLS

Since April 9, 2022, the export of all U.S.-origin[9] items that are found under any of the categories of the Commerce Control List (*i.e.* that have an ECCN) require an export license from the Department of Commerce Bureau of Industry and Security ("**BIS**"). BIS currently employs a "policy of denial" when reviewing most of these applications. However, BIS guidance states that, in certain instances, applications may be reviewed on a "case-by-case basis" rather than a policy of denial. These instances are:

- applications related to safety of flight;
- applications related to maritime safety;
- applications for civil nuclear safety;
- applications to meet humanitarian needs;
- applications that support government space cooperation;
- applications for items destined to:
    - wholly-owned U.S. subsidiaries,
    - foreign subsidiaries of U.S. companies that are joint ventures with other U.S. companies,
    - joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR,
    - wholly-owned subsidiaries of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, and
    - joint ventures of companies headquartered in Country Groups A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6
- applications for companies headquartered in Country Groups A:5 and A:6 to support civil telecommunications infrastructure; and
- applications involving or in support of government-to-government activities.

The Country Groups may be viewed here. Licenses to support the above activities will be reviewed on a case-by-case basis. According to the guidance, "humanitarian needs" include ensuring the availability of basic foodstuffs and agricultural commodities, safeguarding access to medicine and medical devices, and enabling telecommunications services to support the flow of information and access to the internet.

Pertinent license exceptions (which do not require an application) are:

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[9] Per the de minimis rule, items that comprise of more than 25% U.S.-origin controlled content are also themselves considered to be "U.S. origin."

- (TSU) Technology and Software Unrestricted – for software updates destined to civil end users that are companies of exempted[10] jurisdictions (*see* § 740.13(c) of the EAR).

- (AVS) License Exception Aircraft, Vessels and Spacecraft – paragraphs (a) and (b) of § 740.15 of the EAR, excluding any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or Belarus, or a national of Russia or Belarus;

- (ENC) Encryption commodities, software, and technology – for exporting less sensitive items (*e.g.* mass market) to civil end users of exempted[11] jurisdictions (see § 740.17 of the EAR); and;

- (CCD) Consumer Communication Devices – for exporting certain eligible commodities and software as described in § 740.19 of the EAR.

Finally, please note while there may be overlap, the export controls of the CCL operate distinctly from the sanctions export restrictions contained in Section 1(a)(ii) of EO 14068. The list for the latter may be found here. If any of these listed goods are being exported to Russia, U.S. persons and U.S. dollars cannot be involved barring a license – if the product is considered to be U.S.-origin under the EAR.

Disclaimer: This Member Alert is intended to provide only general guidance and information pertaining to the issues identified and commented upon herein. The content of this Alert is not intended to be, and should not be treated as being final and binding legal advice. If Members consider they are likely to or in fact have encountered problems or difficulties as discussed in this Alert, they are asked to contact the Club and obtain further legal advice relevant to their specific circumstances.

[10] License Exception TSU for software updates for civil end-users that are wholly-owned U.S. subsidiaries, branches, or sales offices, foreign subsidiaries, branches, or sales offices of U.S. companies that are joint ventures with other U.S. and companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries, the wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6 (§ 740.13(c) of the EAR).

[11] License Exception ENC for civil end-users that are wholly-owned U.S. subsidiaries, branches, or sales offices, foreign subsidiaries, branches, or sales offices of U.S. companies that are joint ventures with other U.S. companies, joint ventures of U.S. companies with companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740 of the EAR countries, the wholly-owned subsidiaries, branches, or sales offices of companies headquartered in countries from Country Group A:5 and A:6 in supplement no. 1 to part 740, or joint ventures of companies headquartered in Country Group A:5 and A:6 with other companies headquartered in Country Groups A:5 and A:6 (§ 740.13(c) of the EAR) (§ 740.17 of the EAR).