

ALERTS

Sanctions Update: OFAC Issues Guidance on Securities Held by US Persons in Russia's National Settlement Depository and Escalates Efforts Against Russian Sanctions Evasion

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On Oct. 10, 2024, the US Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued guidance relating to the designation of the National Settlement Depository ("NSD") in response to recent actions taken by the Russian Federation to evade OFAC sanctions on the NSD. OFAC's guidance has important ramifications for US asset managers with Russian-issuer securities or with depository receipts for securities custodied at the NSD or that were recently transferred to other Russian registrars. On Oct. 30, 2024, OFAC further expanded its Russian sanctions regime, designating hundreds of individuals and entities—many non-Russian—for dealing with entities connected to Russia's military industrial sector. Notably, OFAC designated certain individuals and entities for providing trust and corporate services to Russian clients.

Background - Designation of NSD and General Licenses 99A and 100A

On June 14, 2024, pursuant to Executive Order ("E.O.") 14024, OFAC added the NSD, as well as the Moscow Exchange and the National Clearing Center, to its Specially Designated Nationals and Blocked Persons List ("SDN List").^[1] Alongside this designation, OFAC issued, and subsequently extended, two general licenses allowing US persons to wind-down certain transactions involving the NSD and to divest securities

held at the NSD, among other authorized activities (General License 99A and General License 100A, collectively, “General Licenses”).[2] The General Licenses were effective through 12:01 AM ET, Oct. 12, 2024.[3] OFAC has specifically stated that following the expiration of the General Licenses, any securities in the possession or control of US persons that are held at the NSD, or any dividends or other income received via the NSD, should be treated as blocked.[4]

Russian Decree 840 Orders Removal of “Type C” Account Russian Shares from NSD

Since March 2022, by decree of the Russian president, all non-Russian residents from designated “unfriendly jurisdictions”[5]—including the United States—have had their Russian-issuer securities recorded in special “Type C” custody accounts, which are effectively frozen due to the extensive restrictions Russia has applied to these accounts.[6] Notably, Russia’s “Type C” regime also applies to depositary receipts programs for securities maintained by Russian custodians where the nominee account holders are US legal entities.[7] On Oct. 2, 2024, the Russian president, Vladimir Putin, issued Russian Decree 840, requiring that all Russian custodians transfer their “Type C” holdings of Russian joint-stock companies from the NSD to local Russian registrars.[8]

OFAC Issues FAQ Addressing Russian Decree No. 840

On Oct. 10, 2024, OFAC issued new guidance addressing whether US persons with securities held at the NSD in “Type C” custody accounts that have been subsequently transferred to a local Russian registrar pursuant to Russian Decree 840 are required to block these securities (“FAQ 1197”).[9] OFAC cautions that the transfer of such securities to local Russian registrars may not be authorized under the General Licenses and would therefore be considered null and void under OFAC’s regulations.[10] OFAC also notes that these transactions may involve other blocked persons, including certain local Russian registrars, and that it is investigating non-blocked local Russian registrars for future designation under E.O. 14024.[11]

Designation of Hundreds of Individuals and Entities and General Licenses 110 and 111

On Oct. 30, 2024, OFAC added hundreds of individuals and entities to the SDN List for operating Russian-sanctions evasion networks spanning 17 countries, including India, the People's Republic of China, Switzerland, Thailand and Turkey.[12] Notably, OFAC's recent designation includes two Swiss attorneys and a Thailand-based entity that provided trust and corporate formation services[13] to Russian clients, including sanctioned Russian individuals.[14] Alongside these designations, OFAC issued a general license allowing US persons to wind-down certain transactions involving seven of the recently designated entities.[15] On this date, OFAC also issued a general license allowing US persons to engage in certain transactions ordinarily incident and necessary to the divestment or transfer of debt or equity issued or guaranteed by five of the recently designated entities ("Covered Entities"), in addition to authorizing the wind-down of derivative contracts involving the Covered Entities.[16] Both general licenses are effective through 12:01 AM ET, Dec. 14, 2024.

Takeaways

US asset managers holding securities at the NSD (or depositary receipts for securities custodied at the NSD) should be aware that, since the General Licenses expired as of Oct. 12, 2024, they may need to seek a specific license from OFAC to access these securities. Additionally, even if their securities held at the NSD were transferred to another local registrar pursuant to Russian Decree 840, such securities are still subject to sanctions risks and should continue to be treated as blocked. Moreover, blocked property must be reported to OFAC within 10 days of blocking,[17] and therefore US asset managers should evaluate whether they have any reporting obligation for their Russian-issuer securities. US asset managers should also review OFAC's Oct. 30, 2024, SDN designations and General Licenses 110 and 111 to ensure they are not engaging in transactions with persons that are now blocked.

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If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel or one of the authors.

[1] OFAC, Press Release, "As Russia Completes Transition to a Full War Economy, Treasury Takes Sweeping Aim at Foundational Financial

Infrastructure and Access to Third Country Support” (June 12, 2024), available here.

[2] OFAC, General License 99A, “Authorizing the Wind Down of Transactions and Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, MOEX, NCC, or NSD” (Aug. 2, 2024), available here; OFAC, General License 100A, “Authorizing Certain Transactions Related to Debt or Equity or the Conversion of Currencies Involving MOEX, NCC, or NSD” (Aug. 2, 2024), available here.

[3] *Id.*

[4] OFAC FAQ 1197 (Oct. 10, 2024), available here.

[5] Russia’s list of “unfriendly” countries or jurisdictions also includes, among others, the United Kingdom and 27 EU member states. Since its 2022 invasion of Ukraine, Russia has imposed restrictions on assets from businesses in these “unfriendly” jurisdictions. US Dep’t of Treasury, Press Release, “Risks and Considerations for Doing Business in the Russian Federation and Russian-Occupied Territories of Ukraine” (Feb. 23, 2024), available here.

[6] Bank of Russia Board of Directors, Resolution, “On the Establishment of a ‘C’ Type Account Regime for the Purpose of Fulfilling Commitments Owed by Residents to Non-residents as Set out in Decree of the President of the Russian Federation No. 95 of 5 March 2022, Entitled ‘On the Temporary Procedure for Fulfilling Commitments to Some Foreign Creditors’” (March 18, 2022).

[7] *Id.*

[8] OFAC FAQ 1197 (citing Presidential Decree of the Russian Federation No. 840 (Oct. 2, 2024)).

[9] *Id.*

[10] *Id.* (citing 31 C.F.R. Part 587.202).

[11] OFAC FAQ 1197.

[12] OFAC, Press Release, “Treasury Takes Aim at Third-Country Sanctions Evaders and Russian Producers Supporting Russia’s Military Industrial Base” (Oct. 30, 2024), available here.

[13] For the purposes of E.O. 14024, OFAC interprets “trust and corporate formation services” to include: assisting persons in forming or structuring a legal person; acting or arranging for another person to act as director, secretary, administrative trustee, trust fiduciary, registered agent, or nominee shareholder of a legal person; providing a registered office, business address, correspondence address, or administrative address for a legal person; and providing administrative services for a trust. OFAC FAQ 1038 (May 11, 2022), available [here](#).

[14] *Id.*; *see also* US Embassy in Switzerland and Liechtenstein, Press Release, “US Government Announces Russia-Related Sanctions Designations” (Oct. 30, 2024), available [here](#) (noting that the two sanctioned Swiss nationals had facilitated the “illicit flow of funds” and sanctions evasion on behalf of Russian clients).

[15] OFAC, General License 110, “Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on Oct. 30, 2024” (Oct. 30, 2024), available [here](#).

[16] OFAC, General License 111, “Authorizing Certain Transactions Related to Debt or Equity of, or Derivative Contracts Involving, Certain Entities Blocked on Oct. 30, 2024” (Oct. 30, 2024), available [here](#).

[17] 31 C.F.R. § 501.603(b)(1)(i).

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