

OFAC Casts Wide Net with Sanctions Against Russia-Linked Indian Targets

Client Alerts

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On October 30, 2024, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) sanctioned 19 Indian private sector entities and two Indian nationals for facilitating the circumvention and evasion of US sanctions against Russia. OFAC announced its conclusion that these individuals and entities ("persons") were involved in supplying Russia with advanced technology and dual-use equipment needed for its war in Ukraine. In total, OFAC targeted over 120 persons across 17 jurisdictions, along with domestic Russian importers of key inputs and materiel for Russia's military-industrial base, for participation in "global evasion networks."

The Designations

OFAC sanctioned the Indian persons pursuant to Executive Order 14024, which gives OFAC sweeping authority to designate on the Specially Designated Nationals (SDN) List a broad list of targets (e.g., the Russian government, its officials and nationals, and persons operating in certain Russian sectors) for a long list of activities (e.g., undermining democracy, transnational corruption, providing assistance for prohibited activities, or evading, avoiding, or circumventing prohibitions). Most importantly for the India-based persons sanctioned on October 30, EO 14024 authorizes OFAC to designate the following targets:

- Persons operating or having operated in the Russian manufacturing and technology sectors;
- Persons who materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, prohibited activities or SDNs designated pursuant to EO 14024;
- Persons owned or controlled by, or who acted or purported to act for or on behalf of, directly or indirectly, any SDNs designated pursuant to EO 14024; and
- Any transaction that evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate any activities prohibited by EO 14024.

For example, OFAC designated an India-based company for operating in the Russian technology sector because OFAC determined it is (1) managed and directed by Russian nationals involved in defense procurement schemes, and (2) has been used by Russia to procure US-origin microelectronics for use in its advanced conventional weapons. OFAC designated another India-based company for operating in the Russian manufacturing sector because OFAC determined it sent multiple shipments of advanced machine tools to a sanctioned Russian company that supplies machines and parts to the Russian defense sector.

What it Means

The legal and practical implications of designation can be severe:

- OFAC prohibits “US persons” from directly or indirectly engaging in nearly all transactions involving an SDN; this broad definition includes US citizens and permanent residents anywhere in the world (e.g., a US executive living in another country), US-incorporated entities and their unincorporated foreign branches (e.g., foreign branch sales offices and distributors), and anyone physically present in the United States (e.g., a businessperson traveling to the United States). This prohibition includes US persons providing to *or receiving from* an SDN any funds, goods, or services.
- OFAC prohibits US persons from “facilitating” (e.g., approving, financing, guaranteeing, or referring) transactions involving non-US persons and an SDN if the US person could not undertake the transaction themselves. For example, a US person cannot ask a non-US person to engage in a transaction or activity with the SDN that the US person cannot do itself.
- OFAC requires US persons to block (i.e., freeze) any of the SDN’s property or “property interest” that comes into their possession. OFAC defines “property interest” broadly to include tangible and intangible assets, fiat and digital currencies, securities and other financial instruments, contracts, real property and leases, judgments, patents, and trademarks, copyrights, etc.; it also includes present, future, or contingent interest(s) in such property.
- Pursuant to the “50 Percent Rule,” these prohibitions apply to any subsidiaries owned 50% or greater—individually or in aggregate—by one or more SDNs designated under EO 14024, even if the subsidiaries’ names do not appear on the SDN List.
- Designation on the SDN List presents reputational concerns for potential counterparties. Even if such potential counterparties are third-country companies or banks or otherwise not subject to US-sanctions jurisdiction, they may determine that any financial upside to a transaction is not worth the related reputational, compliance, and enforcement risk. Relatedly, many non-US banks will not process non-US transactions involving SDNs if those transactions are denominated in US dollars (USD) because OFAC has imposed steep monetary penalties on non-US banks for eventually clearing such transactions through US-correspondent banks (under the

theory that the non-US bank “caused” the US-correspondent bank to indirectly provide financial services to the SDN).

OFAC’s Rationale

The action highlights the expansive nature of the US sanctions regime. As the US and its partners—including the UK, EU, Australia, Canada, Japan, and elsewhere—have imposed sweeping sanctions against Russia in an effort to isolate it economically and deprive it of the technology and equipment it needs for its war in Ukraine, Russia has increasingly sought to evade those sanctions by turning to third-country networks. In response, the US and its allies have shifted focus from announcing new types of sanctions against Russia to tackling circumvention and pursuing enforcement, especially in third countries.

Looking Forward

Historically, India and Russia have had friendly relations; for example, India is the largest recipient of Russian arms exports, and it benefits significantly from access to discounted Russian crude oil. India has similar historical and economic linkages to Iran, which prompted the US government to begin closely scrutinizing India-Iran relationships in the late 2000s; as a result, OFAC and the State Department have sanctioned over 30 Indian individuals and entities under various Iran-sanctions authorities. Therefore, due to these long-standing and robust Russo-Indian economic linkages, Indian firms should expect the US government to continue scrutinizing Indian companies for potential ties to or transactions involving Russia that violate sanctions.

Moreover, given the increased enforcement resources invested by, and information sharing among, the US and its allies, Indian firms should expect the level of scrutiny and rate of enforcement to *increase further*. As of these October 30 designations, OFAC has already designated over 30 Indian individuals and entities under various Russia-sanctions authorities. Therefore, Indian firms should anticipate the following:

- More detailed diligence requests from potential counterparties, including sanctions and export controls questionnaires;
- More frequent requests from counterparties to sign sanctions and export controls certifications and/or agree to stronger trade compliance language in agreements, especially from US companies seeking to “friendshore” their technology investments from China to India;
- Increased lag time by banks when processing Russia-related payments as they conduct enhanced diligence;
- More frequent end-user and end-use monitoring by the US government (e.g., “Blue Lantern” visits by Commerce Department officials from the US Embassy) to ensure products shipped from the US to India have not been diverted to Russia or Russian end-users; and

- Increased audit requests, especially of transshippers, freight forwarders, and distributors.

Indian firms can prepare for and mitigate Russia sanctions and export controls risks by working with trade compliance counsel to conduct heightened diligence on their own Russia-related transactions, implement and strengthen trade compliance programs, audit their supply chains and require the same level of compliance from their vendors, and maintain clear records in case of audit requests or monitoring visits.

The authors are members of Jenner & Block's India Practice, which partners with Indian clients and law firms on disputes, regulatory matters, counseling needs, investigations, and transactions in the United States and around the globe. Please visit the practice page for key contacts.

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Related Capabilities

India

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