

## Recent Trends in Japan's Sanctions Against Russia on the Prevention of Evasion and Circumvention

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### 1. Recent Trends in the Prevention of Evasion and Circumvention of the Russia Sanctions

Since Russia began its invasion of Ukraine, Japan has imposed various sanctions against Russia ("**Russia Sanctions**") under the Foreign Exchange and Foreign Trade Act of Japan ("**Act**"), in cooperation with other major countries, including the United States and the European Union. Recently, it has been pointed out that there have been cases involving evasion or circumvention of the sanctions against Russia introduced by major countries; in response, major countries have agreed to strengthen measures aimed at preventing these evasive actions.<sup>1</sup>

In this context, while maintaining the existing framework of the Russia Sanctions, Japan recently announced that certain circumventive or evasive acts are subject to the Russia Sanctions, and detailed specific items to which companies should pay attention when performing due diligence, to prevent such acts. In the following sections, we will explain the recent announcements by the Japanese government concerning (1) restrictions on payments and capital transactions (i.e., financial regulations), and (2) prohibitions on exports, as well as the implications for companies.

### 2. Restrictions on Payments and Capital Transactions

The Russia Sanctions include restrictions on payments and capital transactions involving individuals and entities associated with Russia who are subject to the asset freeze measure (collectively, "**Sanctioned Individuals and Entities**"). Specifically, the restriction on payments imposes an obligation to obtain permission from the Japanese government before making payments to Sanctioned Individuals and Entities when the payments are made from Japan to foreign countries or made by a resident<sup>2</sup> to a non-resident.<sup>3</sup> In

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<sup>1</sup> See, e.g., [G7 Leaders' Statement on Ukraine](#) (May 19, 2023) ("We will further prevent the evasion and circumvention of our measures against Russia, including targeting entities transporting material to the front.").

<sup>2</sup> The term "resident" means a natural person with a domicile or residence in Japan or a corporation whose principal office is in Japan (Article 6(1)(v) of the Act), and the term "non-resident" means a natural person or corporation other than a resident (Article 6(1)(vi) of the Act).

<sup>3</sup> Article 16(1) of the Act, Article 6(1) of the Foreign Exchange Order (the "**Order**"), Items (i)(wa) and (ka) of the Public Notice of the Ministry of Finance No. 97 of 1998 and Item (i)(ri) of the Public Notice of the Ministry of Economy, Trade and Industry No. 229 of 2009. These Public Notices also require that permission be obtained for payments from Japan to foreign countries by Sanctioned Individuals and Entities.

addition, the restriction on capital transactions imposes an obligation to obtain permission from the Japanese government for transactions involving accrual, alteration, or extinguishment of claims under deposit contracts, trust contracts, and money loan contracts between a resident and any Sanctioned Individuals and Entities.<sup>4</sup>

The Act states that the following are Sanctioned Individuals and Entities: (a) individuals and entities whose names appear on a list established in a public notice issued by the Ministry of Foreign Affairs (“**Listed Individuals and Entities**”); and (b) entities in which 50% or more of the total number of shares or the total amount of capital contributions are directly owned by Listed Individuals and Entities<sup>5</sup> (“**50%-or-More Directly Owned Entities**”).<sup>6</sup> In other words, item (b) above means that even if the counterparty to a payment or capital transaction is not one of the Listed Individuals and Entities, the payment or capital transaction is subject to the restriction if the entity that “directly” owns 50% or more of the counterparty’s shares or capital contributions is one of the Listed Individuals and Entities.

On the other hand, the Act does not specify whether payments or capital transactions are subject to the restrictions when (c) an entity that “indirectly” owns 50% or more of the shares or capital contributions of the counterparty to a transaction, or (d) an “individual” that directly or indirectly owns 50% or more of the shares or capital contributions of the counterparty to a transaction, is one of the Listed Individuals and Entities.

With respect to the foregoing requirements, on May 26, 2023, the Ministry of Finance published the “[FAQs for the Payment Public Notice and Capital Transactions Public Notice Effective on June 1, 2023](#)” (“**FAQs**”). The FAQs were published mainly with respect to the amendment of a public notice under the Act,<sup>7</sup> which was made based on the Financial Action Task Force (FATF) Mutual Evaluation of Japan in 2021. However, the FAQs also contain some references to the Russia Sanctions (translated by the authors; footnotes and emphasis in bold text are added by the authors):

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<sup>4</sup> Article 21(1) of the Act, Article 11(1) of the Order, and Items (i)(ka) and (yo); (ii)(wa) and (ka); and (iii)(nu) and (ru) of the Public Notice of Ministry of Finance No. 99 of 1998. In addition, residents are obliged to obtain permission from the Japanese government when they intend to conduct transactions with the Sanctioned Individuals and Entities concerning the accrual, alteration, or extinguishment of claims under loan or guarantee contracts with certain contents in direct association with the importing and exporting of goods or concerning the transfer, etc. of mining rights, industrial property rights, etc. (Article 24(1) of the Act, Article 15(1) of the Order and Item (ii)(j) of the Public Notice of the Ministry of Economy, Trade and Industry No. 193 of 2003).

<sup>5</sup> Excluding the Central Bank of the Russian Federation and the National Welfare Fund of the Russian Federation.

<sup>6</sup> See, “[Entities and Individuals in the Russian Federation Subject to Asset Freeze and Other Measures](#)”.

<sup>7</sup> This amendment clarifies the restrictions in the Act regarding persons associated with the Taliban, terrorists, persons associated with North Korea’s missile or weapons of mass destruction programs, and persons involved in Iran’s nuclear activities, in light of the points raised in the FATF Fourth Mutual Evaluation of Japan.

(Q3) Are sanctioned persons who are not subject to this amendment (including “entities and individuals in the Russian Federation subject to asset freeze and other measures”) exempt from the restrictions on payments<sup>8</sup> and capital transactions made indirectly for the sanctioned persons, such as payments and capital transactions made on behalf of the sanctioned persons in the name of third parties?

**(A) Regarding the restrictions on payments and capital transactions under the Foreign Exchange and Foreign Trade Act, the applicability of the restrictions is not determined on the basis of the names of the participating parties, in a formal sense, but by comprehensively taking into account who is the substantive party making the decisions on the payments and capital transactions, to whom the benefit is attributed, and any other relevant matters.** Even under the pre-amendment regulations, payments and capital transactions made in the name of a third party, and indirect payments and capital transactions are also subject to the restrictions. This amendment is not intended to change the scope of the restrictions, but rather to clarify the scope of the restrictions in light of the points raised in the FATF Fourth Mutual Evaluation of Japan. Therefore, there has been no change in the concept of the restrictions before and after the amendment, and even for those subject to sanctions who are not covered by the amendment (e.g., “entities and individuals in the Russian Federation subject to asset freeze and other measures”), **payments made in the name of a third party, and indirect payments and capital transactions will continue to be subject to the restrictions.**

The FAQs clearly state that Sanctioned Individuals and Entities are to be determined by “comprehensively taking into account who is the substantive party making the decisions on the payments and capital transactions, to whom the benefit is attributed, and any other relevant matters.” Therefore, even if the counterparty to a transaction is not one of the Listed Individuals and Entities or the 50%-or-More Directly Owned Entities, if its substantive decision-maker is, or if the benefit is attributed to, one of the Listed Individuals and Entities or the 50%-or-More Directly Owned Entities, the relevant payment or capital transaction is subject to the aforementioned restrictions.

Therefore, in addition to verifying that the counterparty to a payment or capital transaction and its 50%-or-more direct shareholder or investor are not any of the Listed Individuals and Entities, companies also must verify whether any suspicion exists that a substantive decision-maker for the transaction exists separately from the parties nominally involved in the transaction, or that funds subject to the payment or capital transaction belong to another individual or entity. If such a suspicion exists, it is necessary to confirm that the substantive decision-maker is not, and that the benefit is not attributed to, any of the Listed Individuals and Entities or the 50%-or-More Directly Owned Entities.

### 3. Restrictions on Export

Russia sanctions prohibit both (i) the export of certain goods to Russia and (ii) the export of goods to Russia through direct or indirect transactions with persons designated in a public notice by the Ministry of Economy, Trade and Industry (“**Export Prohibitions Against Russia**”).<sup>9</sup>

The Export Prohibitions Against Russia apply to exports whose “destination” is Russia. The term

<sup>8</sup> The original text in the FAQs will be literally translated as “payments, etc.,” which is a legally defined term that includes both payments and receipt of payments. However, we use the simplified term “payments” here for clarity in translation. Also, the Russia Sanctions do not impose restrictions on the receipt of payments from Sanctioned Individuals and Entities.

<sup>9</sup> Article 48(3) of the Act, Article 2(1)(i)-4 through (i)-7 of the Cabinet Order on Export Trade Control.

“destination” here refers to the country or territory in which the final port of discharge for the exported goods is located. However, when it is clear that the goods will be consumed or processed in a third country (i.e., a country different from the one where the final port of discharge is located), the third country in which the goods will be consumed or processed is considered the “destination”.<sup>10</sup> In other words, even if the exported goods are discharged in a country other than Russia, when it is clear that the goods will be consumed or processed in Russia, the “destination” becomes Russia.

On October 20, 2023, the Ministry of Economy, Trade and Industry published the “[Cautionary Note on Export Prohibition Measures and Export of ‘Common High Priority Items’, etc., to Russia](#)” (available in Japanese only; hereinafter, “**Cautionary Note**”). The Cautionary Note provides a warning against circumventing exports by stating “with respect to items designated as prohibited for export to Russia, exporting those items through countries and territories other than Russia (circumventing exports) is a violation of the export prohibition measures under the [Act]”.

The Cautionary Note also requests that even when exporting items to countries and territories other than Russia, the final destination country, end-use, and end-user (along with other relevant things), should be scrutinized with reference to the following examples of cases requiring attention:<sup>11</sup>

- The use of the goods does not match the nature of the consumer’s business.
- The company to which the goods will be exported does not provide any clear or reasonable response to questions on the end-use of the goods.
- Either the final destination is designated as a transportation company, or the end-user is undetermined.
- The company to which the goods will be exported has a branch office in Russia, or can be confirmed (through its website, etc.) to have transactions with Russian companies.
- The company to which the goods will be exported is subject to sanctions by the United States, the United Kingdom, or the European Union.
- The first inquiry was received after Russia began its invasion of Ukraine in February 2022.
- The volume of orders increased significantly after Russia began its invasion of Ukraine in February 2022.
- The volume of the order is excessively large compared with the size of the consumer’s business.
- The transportation route to the destination is unclear, or the transportation is planned to be routed via Russia.
- The company is attempting to acquire the item to be exported at a higher price than the market price or on terms more favorable than normal (e.g., full payment in advance).
- The delivery date for the item to be exported is extremely soon, compared with normal delivery times.

Companies exporting items to third countries that are prohibited for export to Russia must confirm that the relevant exports do not constitute circumventing exports to Russia, in accordance with the case examples listed

<sup>10</sup> See Appendix 3, 1-4-1 of the Circular Notice on the Operation of the Cabinet Order on Export Trade Control.

<sup>11</sup> Attachment 2 of the Cautionary Note.

above. In particular, in addition to verifying the final destination country, end-use, and end-user, companies also must verify whether the transaction counterparty has a base in Russia and whether it is subject to sanctions by other countries. Further, Companies should pay attention to whether any suspicions or anomalies can be found in the process of initiating the transaction, or in the volume, price, payment terms, transportation route, and delivery time.

In addition, the Cautionary Note contains a list of 45 items called “**Common High Priority Items**” which was compiled based on the results of an investigation by major countries, including Japan, into parts and other items used in Russian military weapons found in Ukraine. The listed items are classified from Tier 1 to Tier 4 based on their importance, as listed below, with Tier 1 being items of highest concern (see Attachment 1 to the Cautionary Note for specific items and their HS codes<sup>12</sup>).

Tier 1 (4 items)	Electronic components such as integrated circuits
Tier 1 (5 items)	Equipment used for communication purposes
Tier 3	
A (16 items)	Electronic equipment such as diodes, transistors, and digital cameras
B (9 items)	Machine parts and optical equipment, etc.
Tier 4 (11 items)	Items used in the design and manufacture of electronic components such as semiconductors

Among the many items that are prohibited from being exported to Russia, these 45 items are listed specifically as those with the high practical risk of being exported to Russia. Companies exporting goods that fall within this list of 45 items to third countries are required to pay special attention to ensure that the exports are not circumventions of exports to Russia, by referring to the case examples listed above.

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<sup>12</sup> The list was developed based on cooperation among certain major countries, including Japan, the United States and the European Union, and as a result, the same list is published by the United States and the European Union, and is available in English. For the version from the United States, see <<https://www.bis.doc.gov/index.php/all-articles/13-policy-guidance/country-guidance/2172-russia-export-controls-list-of-common-high-priority-items>> and for the European Union’s version, see <[https://finance.ec.europa.eu/system/files/2023-09/list-common-high-priority-items\\_en.pdf](https://finance.ec.europa.eu/system/files/2023-09/list-common-high-priority-items_en.pdf)>.