



ONPOINT / A legal update from Dechert

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Russian Legislature Makes Way For Counter Sanctions Legislation

Second Draft Somewhat Softens Previous Provisions Widely Reported In Media

In response to the most recent round of U.S. sanctions against Russian entities and individuals, which were arguably the most profound in terms of their impact, the lower house of the Russian Parliament, the Duma, this week initiated deliberations on two laws which, if adopted, would provide additional instruments for the Russian state to apply counter sanctions on western entities/individuals. The first draft law, which was adopted in the second (out of three) readings, establishes a legal framework authorizing the President and the Government of Russia to adopt counter sanctions and various restrictive measures against parties from those nations which imposed sanctions on Russia. The second draft law, adopted in the first reading, seeks to criminalize compliance with western sanctions by Russian individuals. Both draft laws faced strong criticism from the Russian business community and human rights groups. As a result, the Duma was forced to considerably amend the framework law on counter sanctions before adopting it in the second reading, while the bill on criminal liability law was put on hold and will face greater scrutiny from experts and interest groups before it progresses to a second reading.

Both laws could have a significant impact on international business operating in Russia. However, the most recent iteration of the counter sanctions law and the postponement of the criminal liability law provide some basis to believe that a more reasonable and balanced approach to the countermeasures will prevail, taking into account the possible effect these measures would have on both Russian companies and foreign investment in Russia.

A. Draft Law Regarding Russian Counter Sanctions

The second reading of the counter sanctions draft law (the "Counter Sanctions Draft Law")¹ was adopted by the Duma on May 17, 2018. The text of the draft varies materially from what was adopted in the first reading², and these variations appear less egregious for the business community. The legal framework that the draft introduces allows the President and the Government of Russia to impose sanctions on U.S. and other countries which themselves have imposed sanctions against Russia. The law's original draft included 16 (sixteen) various specific countermeasures that could be used against hostile states, but following intense lobbying efforts and criticism by the business community, only six measures now remain and these have been significantly watered down.

The Counter Sanctions Draft Law is generally aimed at (i) the U.S. and other states, which in the view of the Duma, have carried out unfriendly actions towards Russia, its citizens and legal entities, as determined by Russian officials (“Unfriendly States”), (ii) citizens of Unfriendly States, and (iii) separate entities under the jurisdiction of Unfriendly States, including entities with a 25% direct or indirect shareholding of a person (a legal entity or a natural person) under the jurisdiction of an Unfriendly State if such person contributed to the unfriendly actions towards Russia (“Sanctioned Persons”). The draft grants Russian authorities the power to impose various measures either limiting or prohibiting certain actions of the Unfriendly States, their citizens and the Sanctioned Persons. As currently drafted, these countermeasures include:

1. Suspension or termination of international cooperation by Russia and its legal entities with Unfriendly States and Sanctioned Persons in different industries to be determined by separate decisions of Russian President;
2. Ban or limitation on import of goods and raw materials to Russia originating from the Unfriendly State or which are manufactured by Sanctioned Persons (the list of goods and raw materials to be determined by Russian Government);
3. Ban or limitation on export of goods and raw materials from Russia by the citizens of Unfriendly State or Sanctioned Persons (the list of goods and raw materials shall be determined by Russian Government);
4. Ban or limitation on provision of services in Russia by Sanctioned Persons for purposes of state or municipal needs, or the needs of separate entities (namely, the ones that have certain direct and indirect state participation; the list of services to be determined by Russian Government);
5. Ban or limitation on participation of citizens of Unfriendly States and Sanctioned Persons in the privatization of state or municipal property and in provision of services with respect to the sale of federal property; and
6. Other measures in accordance with a decision of the Russian President.

Additionally, if Unfriendly States impose restrictive actions against Russian goods and services, the draft law provides that goods and services related to Unfriendly States may be deprived of national treatment as established under Russian law (i.e. that foreign goods and services will be treated the same as Russian goods and services for purposes of taxes and charges, etc).

The Counter Sanctions Draft Law would still allow Russian citizens to import goods which may be affected by the countermeasures for personal use. If enacted, implementation of any particular countermeasure will require additional actions, namely the decision of the Russian Government based on the respective decision of the Russian President or the decision of the Russian President based on a proposal from the Russian Security Council. As such, no counter sanctions will be immediately imposed on any western states or persons under the draft law, even if adopted in its current form, and ultimately any decision on any restrictive measures will be left for the Russian Government and the President to impose. According to press reports, the third reading of the draft law may take place on May 22, 2018, after which it will move to the upper house of Russian Parliament and then to the President.

It should be noted that under existing Russian laws and regulations, the Russian President and Russian Government may at any time impose sanctions on foreign parties as has been the case several times over the last few years (e.g. in 2014 following the first round of sanctions when food bans were imposed by the Russian Government on imports from countries who had imposed sanctions on Russia and the various sanctions against Turkey that were introduced after the Turkish military shot down a Russian plane, etc.). Given the foregoing, the draft law appears to be more of a political statement/reaction to the sanctions than any new legislative initiative to add new tools for the government to use to retaliate against the imposition of sanctions.

B. Draft Law Regarding Criminal Liability for Compliance with the U.S./Other States’ Sanctions

In addition to the Counter Sanctions Draft Law, on May 15, 2018, the Duma also adopted in its first reading a separate draft law which introduces criminal liability for compliance with, or contribution to, sanctions of the U.S. or other countries (the “Criminal Liability Draft Law”). Under current Russian law, criminal liability may only be imposed on individuals.

Under the Criminal Liability Draft Law, the following actions (inactions) are prohibited:

1. Activity (inactivity) aimed at compliance with sanctions imposed by a foreign state, a union of states or an international organization which resulted in a limitation on, or a refusal from entering into ordinary

economic transactions by Russian citizens, legal entities, Russia (including, its constituent entities), and persons controlled by them (both foreign and Russian ones) (“Russian persons under sanctions”).

As currently defined by the Criminal Liability Draft Law, **ordinary economic transactions** include those actions aimed at performance of statutory or contractual obligations and carried out by Russian persons under sanctions within their ordinary economic activity. In particular, contracts which are legally required to be concluded with any person (e.g. consumer contracts) and operations carried out in the ordinary course by market participants, e.g. opening bank accounts, effecting payments, operations with securities, etc. and/or

2. Performance by a Russian citizen of deliberate acts which contribute to imposition of sanctions by a foreign state, a union of states or an international organization against Russian private or public persons (and their controlled persons), including by means of provision of recommendations and transfer of data which contributed to the imposition of such sanctions.

A violation of any of these restrictions may lead to imposition of criminal liability on foreign (only in terms of actions (inactions) set out in item (1) above) or Russian citizens in various forms, including (i) a fine, or (ii) limitation of liberty, including by imposing correctional labor or imprisonment on an individual.

Although the second reading was preliminarily scheduled for May 17, 2018, consideration of the Criminal Liability Draft Law was postponed by a week following strong criticism from the business community and human rights protection organizations. The State Duma agreed to consider and discuss various opinions before the second reading occurs. Considering this, the draft law is unlikely to be adopted in its current form.

The Criminal Liability Draft Law differs from typical anti-sanctions laws in other jurisdictions in that it criminalizes such activity, rather than simply impose monetary penalties on the violator. Therefore, we would expect this law to be further considered as it would put many companies in potentially untenable positions to the extent that they must comply with U.S or EU sanctions rules or face serious fines or possibly be added to the sanctions lists for non-compliance. It could also potentially cause western (and perhaps non-western) companies to withdraw from Russia rather than face a situation where either way a company is violating one law or the other and subjecting its employees to potential criminal liability for complying with western sanctions laws.

In general, it is unclear to what extent either law will be passed as currently drafted. The Russian Government previously slowed down the retaliatory process in April to allow for additional consideration of the proposed legislation to ensure that any such measures would not negatively impact the Russian economy, including by having foreign investors withdraw from Russia. We therefore believe that the draft laws will not make imposition of sanctions mandatory, but will rather establish a framework for the imposition of such measures to be carried out in the sole discretion of the Russian Government/President. That said, the current western situation remains fluid and unpredictable and watered down versions of the draft laws are likely to be passed, albeit most likely after the St. Petersburg International Economic Summit taking place at the end of next week.

We will, of course, continue to closely monitor developments and welcome any questions you may have for us.

Footnotes

- 1) Draft Law “On Measures in Response to Unfriendly Actions of the USA and (or) Other Foreign States”.
- 2) The original draft included various bans or limitations (such as (i) import of products, raw materials and food products, including alcohol and tobacco products, medicine originating from the U.S. and other countries; (ii) entry of specified sanctioned citizens onto Russian territory; (iii) employment of sanctioned citizens, including highly-qualified specialists), (ii) increase of air navigation charges, (iii) exhaustion of exclusive rights to trademarks registered in relation to goods, whose right holders are Sanctioned Persons and (iv) suspension or termination of international cooperation in different industries, including in the nuclear and rocket engine and air industries.

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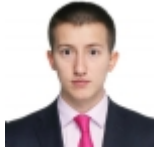


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