



ONPOINT / A legal update from Dechert's International Trade and Government Regulation Group

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U.S. Announces Second Round of Sanctions on Russia for Chemical Weapons Violations

The U.S. State and Treasury Departments announced that a second round of sanctions will be imposed against Russia pursuant to the Chemical and Biological Weapons Control Act of 1991 (“CBW Act”). The most notable new measure relates to prohibiting “U.S. banks” from participating in the primary market for certain sovereign bonds issued by the Russian government. Other sanctions include additional export licensing restrictions to Russia on items controlled for chemical and biological weapons proliferation reasons and opposing loans to Russia by international financial institutions.

Overview of New Measures

The U.S. government first issued sanctions against the Russian Government under the CBW Act in August 2018 in connection with the alleged use of a nerve agent in the United Kingdom against former Russian spy Sergei Skripal and his daughter. The CBW Act requires the imposition of a second round of sanctions unless the Russian Government meets certain conditions (either that the government provides assurances that it will no longer use chemical or biological weapons or President Trump determines that a waiver of sanctions is essential to the national security interest of the United States). Many months had passed since the statutory deadline to impose the second round of sanctions required under the CBW Act, and members of Congress (as recently as last week) had publicly called on the Trump Administration to do so.

On August 2, 2019, the State Department [announced](#) that the second round of sanctions would include the following three measures:

1. U.S. opposition to the extension of any loan or financial or technical assistance to Russia by international financial institutions, such as the World Bank or International Monetary Fund.
2. A prohibition on U.S. banks participating in the primary market for non-ruble denominated Russian sovereign debt and lending non-ruble denominated funds to the Russian government.
 - o This restriction on bank loans is being partially waived, and U.S. banks will only be prohibited from (1) participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign after the date that sanctions take effect; and (2) lending non-ruble denominated funds to the Russian sovereign after the date the sanctions take effect. As discussed in more detail below, OFAC issued a [new directive \(the “CBW Act Directive”\)](#) to implement these restrictions.
3. Additional export licensing restrictions on Department of Commerce-controlled goods and technology.
 - o The Commerce Department is expected to issue additional guidance regarding the implementation of these new licensing requirements. According to the State Department notice, however, these additional export restrictions will only apply to items controlled by the Commerce Department for chemical and biological weapons (CB) proliferation reasons, and license applications for export of

these items to state-owned or state-funded entities in Russia will be subject to a “presumption of denial” policy. Existing contracts will be grandfathered.

The first and third measures will take effect around August 19, 2019 (after publication in the Federal Register) while the second measure will take effect on August 26, 2019. The measures must remain in effect for at least one year unless the President issues a national security waiver, and can only be lifted if the Trump Administration certifies that Russia has met certain conditions, including that it will not use chemical weapons in the future, will allow international inspections to verify those assurances, and has paid restitution to the Skripals for the attack.

Existing sanctions under the first round of sanctions under the CBW Act (which were imposed in August 2018) will remain in place, including prohibitions on arms sales and exports to Russia of certain goods and technology controlled for national security reasons. The Commerce Department also will continue to consider export license applications on a case-by-case basis related to:

- Space flight activities, including government space cooperation and commercial space launches;
- The safe operation of commercial passenger aviation;
- Commercial end-users in Russia for civil end-uses;
- Wholly-owned subsidiaries of U.S. and other foreign companies in Russia; and
- Deemed export licenses for Russian nationals working in the United States.

Restriction on New Ruble-Denominated Issuances and Loans

On August 3, 2019, OFAC issued the CBW Act Directive to implement the second measure described above. Under this directive, “U.S. banks” will be prohibited from:

- Participating in the primary market for non-ruble denominated bonds issued by the “Russian sovereign”, as defined below, after August 26, 2019; and
- Lending non-ruble denominated funds to the “Russian sovereign”, as defined below, after August 26, 2019.

The CBW Act Directive and [related FAQs](#) issued by OFAC contain a number of important clarifications:

- **The restrictions apply only to “U.S. banks” and not to all “U.S. persons.”** The term “U.S. banks,” however, is defined broadly to include any U.S. entity that “is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures, or options, or procuring purchasers and sellers thereof, as principal or agent.”
 - OFAC specifically noted that the term “U.S. bank” includes, but is not limited to, depository institutions, banks, savings banks, trust companies, securities brokers and dealers, commodity futures and options brokers and dealers, forward contract and foreign exchange merchants, securities and commodities exchanges, clearing corporations, investment companies, employee benefit plans, and U.S. holding companies, U.S. affiliates, or U.S. subsidiaries of any of the foregoing. The term does not include non-U.S. subsidiaries, branches, offices, and agencies of “U.S. banks.”
 - U.S. asset managers and investment advisers are not specifically included in the examples provided by OFAC of “U.S. banks”. However, given the broad definition of the term to include any U.S. entity engaged in the business of purchasing or selling foreign securities or procuring purchasers and sellers thereof, asset managers and investment advisers should consider themselves as subject to these restrictions unless OFAC provides further guidance on this point.
 - Unlike most other U.S. sanctions programs, the restrictions will not apply to “U.S. persons” more broadly. Therefore, the restrictions do not apply to U.S. citizens or permanent residents who are not employees of “U.S. banks,” including U.S. persons employed by non-U.S. banks. Other U.S. companies that are not considered “U.S. banks” also are not covered by the new restrictions.
- **The term “Russian sovereign” does not capture all Russian state-owned enterprises or quasi-governmental entities.** OFAC stated that “Russian sovereign” means any ministry, agency, or sovereign fund of the Russian Federation, including the Central Bank of Russia, the National Wealth

Fund, and the Ministry of Finance of the Russian Federation. This term does not include state-owned enterprises of the Russian Federation.

- The new measures therefore do not impose any new restrictions on bonds or loans involving Russian state-owned enterprises such as Gazprom. Under the U.S. Sectoral Sanctions Identification List, however, U.S. persons already are restricted from dealing in certain new debt and/or new equity instruments issued by a number of Russian state-owned enterprises.
- **The restrictions will not apply to new bonds or to loans denominated in rubles.** U.S. banks are not restricted from participating in primary or secondary markets for ruble-denominated bonds issued by, or lending ruble-denominated funds to, the Russian sovereign after August 26, 2019.
 - U.S. banks therefore will be permitted to continue to participate in all trading related to ruble-denominated OFZ bonds and other ruble-denominated bonds issued by Russia in domestic and international markets. U.S. banks also will continue to be permitted to trade in all Russian sovereign bonds issued prior to August 26 (regardless of their currency).
 - It is not yet clear how the restrictions apply to non-ruble denominated bonds or loans that includes a “trigger” allowing repayment to be made in rubles.

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