UPDATE ON RUSSIA’S PROPOSED NEW COUNTER-SANCTIONS

The Russian government is preparing to introduce new counter-measures in response to US and EU sanctions.

Draft Bill on Russian Countermeasures

Last week the State Duma decided to amend Draft Bill No. 441399-7 “On Measures (Countermeasures) in Response to Unfriendly Actions of the USA and (or) other Foreign States” (“Draft on Countermeasures”).

As opposed to the initial version of the Draft on Countermeasures, the new version proposes the following five measures:

1. Termination or suspension of international cooperation between Russia and Russian legal entities and US and/or other “unamicable” foreign states, including entities that are more than 25% directly or indirectly owned by entities under the jurisdiction of the US and/or other foreign states, relating to sectors determined under a separate decision of the Russian President;

2. Prohibition or restriction on the import of products and/or raw materials into Russia originating from the US and/or other foreign states or manufactured by entities that are more than 25% directly or indirectly owned by entities under the jurisdiction of the US and/or other foreign states. The list of products and/or raw materials shall be determined by the Russian Government;

3. Prohibition or restriction on the export from the Russian Federation of products and/or raw materials by (a) citizens of the US and/or other foreign states and/or (b) entities that are more than 25% directly or indirectly owned by entities under the jurisdiction of the US and/or other foreign states. The list of products and/or raw materials shall be determined by the Russian Government;

4. Prohibition or restriction on access, directly or indirectly, to public procurement for providers of works/services that are more than 25% directly or indirectly owned by entities under the jurisdiction of the US and/or other foreign states. The list of particular works/services prohibited from public procurement shall be determined by the Russian Government;

5. Prohibition or restriction on participation in privatization of state or municipal property for US persons and persons of other foreign states, including entities that are more than 25% owned by entities...
under the jurisdiction of the US and/or other foreign countries. Prohibition or restriction for such persons from (a) providing works/services for the organization of sale of federal property in the name of the Russian Federation and/or (b) fulfilling functions as a seller of federal property.

If the Draft on Countermeasures is enacted, the Russian President will be in the position to implement any other measures against “unamicable” foreign states and their persons (citizens and entities) even if such measures are not expressly provided for in the Draft.

The State Duma is expected to consider the Draft on 15 May 2018. There is a very high chance of it being approved and introduced within the next few weeks.

Draft Bill on Criminal Liability for Compliance with Sanctions

In a related development, on 14 May 2018 Russian lawmakers filed Draft Bill No. 464757-7 “On Amendments to the Criminal Code of the Russian Federation” (“Draft”), envisaging criminal liability for complying with Western sanctions.

The Draft introduces Article 284.2 of the Russian Criminal Code, which envisages criminal liability for the following types of crimes:

1. Actions (or omission to act) aimed at fulfillment of a decision of a foreign state, union of foreign states or international organization to impose restrictive measures against Russia, its citizens and legal entities (including “controlled” public and private entities) if such actions (omission to act) lead to the restriction or refusal to fulfil “ordinary economic operations or transactions” by Russia, its citizens and legal entities.

   The liability for such crime ranges from a fine of up to RUB 600,000 (approx., USD 10,000) to up to four years of imprisonment with a fine of up to RUB 200,000 (approx. USD 3,300);

2. Willful actions of a Russian citizen that contribute to the imposition of restrictive measures by a foreign state, union of foreign states, international organization on Russian public and private entities (including their controlled entities). Such willful actions may involve recommendations and provision of information that led to the imposition of such restrictive measures. Liability for such crime ranges from a fine of up to RUB 500,000 (approx. USD 8,300) to up to three years of imprisonment with a fine of up to RUB 200,000 (approx. USD 3,300).

   The Draft is formulated rather broadly and provides for broad definitions of “ordinary economic operations or transactions” and “controlled” public
and private entities. If the Draft is enacted, the risk of criminal prosecution will arise for all senior managers of companies that have a presence in Russia if such managers take the decision to terminate or suspend contractual obligations with Russian counterparts. In certain cases, refusal to enter into a new contract with a Russian counterparty could also carry the risk of criminal prosecution in Russia.

Furthermore, Russian lawmakers also intend to introduce a draft bill proposing administrative liability for legal entities that comply with anti-Russian sanctions in Russia. It is expected that such draft bill will be filed with the Russian Parliament and enacted by the end of May 2018.

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