CLIENT MEMORANDUM

New U.S. Law Imposes Secondary Sanctions Against Russia, But Impact May Be Limited

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AUTHORS

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On December 13, 2014, Congress approved the Ukraine Freedom Support Act of 2014 (the "UFSA") (H.R. 5859),[1] which further expands U.S. sanctions against Russia and provides material support for Ukraine, Moldova, Georgia and Syria. Although President Obama initially expressed reluctance to sign the bill because of concerns that it would signify a new policy direction that lacks EU support, he signed the bill into law on December 18, 2014. The White House statement released with the signing notes that the President does not intend to impose any of the sanctions "at this time." The UFSA imposes secondary sanctions that target the activities of foreign persons, which are on the order of those imposed against Iran. More specifically, the statute imposes mandatory sanctions against Russia's Rosoboronexport and certain Russian arms suppliers and sets up discretionary sanctions that the President may impose against the Russian energy sector and foreign financial institutions that knowingly facilitate significant transactions involving sanctioned activities or entities. However, it also gives the President choices within a menu of sanctions and significant waiver authority.

The UFSA passed unanimously in both the House and the Senate. The legislation was prompted by Russia's deployment of thousands of troops in Eastern Ukraine and the opening of a new front on the Sea of Azov.

1 H.R. 5859 may be viewed here.

The measure requires the President to impose a minimum of three sanctions on Rosoboronexport and other Russian arms suppliers that contribute to instability in Ukraine, Moldova, Georgia and Syria. In addition, the measure provides the President with the authority to impose sanctions on foreign companies that make significant investments in "special Russian crude oil projects," which include Russia's deep water, Arctic offshore and shale projects. The USFA also requires the President to impose prohibitions on certain debt or equity investments and "contingent sanctions relating to Gazprom," "if the President determines that Gazprom is withholding significant natural gas supplies" from NATO member states or countries such Ukraine, Moldova or Georgia.

Furthermore, if the President determines that foreign financial institutions have knowingly engaged in significant transactions involving sanctionable activities and sanctioned entities, the President may prohibit or restrict the dealings of those foreign financial institutions with the U.S. banking system. In addition, beginning 180 days after the date of enactment, the President may impose sanctions against foreign financial institutions that engage in significant financial transactions on behalf of Russian persons/entities included on the List of Specially Designated Nationals and Blocked Persons (the "SDN List") that is maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC").[2]

All of the sanctions provided for in the legislation, even the "mandatory" sanctions, are subject to waiver authority, which provides the President with significant flexibility. The menu of sanctions includes the following:

1. Deny Export-Import Bank assistance;
2. Ban procurement by executive agencies of the federal government;
3. Prohibit arms exports and deny State Department export licenses;
4. Deny export licenses for items subject to the Export Administration Regulations;
5. Block assets subject to U.S. jurisdiction;
6. Prohibit banking transactions subject to U.S. jurisdiction;
7. Prohibit investment in the equity or debt of a sanctioned entity (the debt must have a maturity of longer than 30 or 90 days);
8. Exclude sanctioned persons from the United States; and
9. Impose sanctions on the principal executive officers of sanctioned entities.

[2] The SDN List and related OFAC lists may be viewed here.

There are several exceptions to these sanctions. For example, the President's authority does not include the authority to block or prohibit the importation of goods into the United States. Similarly, certain provisions would protect existing defense procurement and other preexisting contracts. The bill also contains exceptions for spare parts, component parts, the performance of routine service and maintenance as well as information and technology related to certain U.S. products. There is also a general exemption for food, medicine, medical devices and agricultural commodities.

Companies potentially affected by the new sanctions program should monitor President Obama's actions to determine whether and what additional sanctions will be imposed. In addition, companies that continue to do business in or with Russia or Russian entities should continually monitor their own activities so that they can steer clear of these new potential sanctions.

Related Links

Executive Order 13662, Blocking Property of Additional Persons Contributing to the Situation in Ukraine, Federal Register, Volume 79, Number 56 (March 24, 2014)

Office of Foreign Assets Control, Specially Designated Nationals List Update, Ukraine-Related Designations (July 16, 2014)

Office of Foreign Assets Control, Sectoral Sanctions Identification List (July 16, 2014)

Office of Foreign Assets Control, FAQs Related to Sectoral Sanctions under Executive Order 13662 (July 16, 2014)

Relevant U.S. Press Releases

Press Release, U.S. White House, Statement by the President on Ukraine (July 16, 2014)

Press Release, U.S. Department of Treasury, Announcement of Treasury Sanctions on Entities Within the Financial Services and Energy Sectors of Russia, Against Arms or Related Material Entities, and those Undermining Ukraine's Sovereignty (July 16, 2014)

Press Release, U.S. Department of Commerce, Commerce Department Announces Further Expansion of Export Restrictions on Russia (July 16, 2014)

Press Release, U.S. White House, Statement by the President on the Ukraine Freedom Support Act (Dec. 18, 2014)

If you have any questions or need any assistance in determining whether your company may be affected by U.S./EU sanctions against Russia, please contact Russell L. Smith (202-303-1116, rsmith@willkie.com), Miriam A. Bishop (202-303-1126, mbishop@willkie.com) or the Willkie attorney with whom you regularly work.

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