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U.S. imposes additional sanctions on Russia under Chemical and Biological Weapons Control and Warfare Elimination Act

16 August 2019

On 2 August the United States announced that it will impose a second round of sanctions on Russia pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act) (22 U.S.C. § 5601 *et seq.*) and Executive Order 13883. This round of sanctions follows previous sanctions imposed on Russia in August 2018 under the CBW Act for Russia's suspected use of a "novichok" nerve agent in the March 2018 attack on Sergei Skripal and his daughter in the United Kingdom. In a fact sheet describing the sanctions, the State Department noted that the sanctions will take effect upon publication in the *Federal Register* on or around 19 August 2019 and will include the following three new measures:

1. The United States will oppose 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. U.S. banks will be prohibited from: (a) participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign and (b) lending non-ruble denominated funds to the "Russian sovereign."
3. Licenses for exports to Russia of dual-use items, software, and technology controlled by the Commerce Department for chemical and biological (CB) reasons will be subject to a "presumption of denial" policy. Similar to the previous round of sanctions, the following types of licenses will be considered for approval on a case-by-case basis:
    - Exports needed for space flight activities, including those involving government space cooperation and commercial space launch.
    - Exports needed to ensure the safe operation of commercial passenger aviation.
    - Exports to commercial end users in Russia for civil end uses.
    - Exports to wholly owned subsidiaries of U.S. and other foreign companies in Russia.
    - Deemed export licenses for Russian nationals working in the United States.

In summary, these measures are not likely to have a significant impact on most companies doing business with Russia. The Treasury Department is charged with implementing the first two sanctions provisions, while the third is the responsibility of the Commerce Department. Once effective upon publication, these sanctions are expected to remain in effect for 12 months and can only be lifted once the executive branch certifies to Congress that Russia has met the conditions necessary for sanctions removal under the CBW Act (22 U.S.C. § 5605).

Bureau of Industry and Security (BIS) implementation

As indicated in the announcements from the State Department, BIS will be implementing regulations to account for these changes to licensing policy. While specific details are not yet known, a rule implementing the changes for items controlled for national security (NS) reasons (which were announced in August of last year) is in the final stages of review and is expected to be published in the near future. The rule will implement the first round of sanctions against Russia under the CBW Act announced in August 2018, and it may coincide with the publication of the second round of sanctions announced on 2 August.

Treasury Department issues implementation guidance

In response to the sanctions announcement, on 3 August the Treasury Department issued a CBW Act Directive to implement the sanctions. This directive is effective 26 August 2019, per the congressional notification period required by the CBW Act. In the directive, the Treasury Department issued the following information defining the scope of the new round of sanctions.

- **"U.S. banks"** are broadly defined as entities under U.S. jurisdiction 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." This 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," including the "branches, offices and agencies of foreign financial institutions that are located in the United States" and meet the definitional requirements above.

- **"Russian sovereign"** as used in the State Department's sanctions fact sheet and the CBW Act Directive includes "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." Notably, state-owned enterprises are not included within this definition.

The Office of Foreign Assets Control (OFAC) has similarly issued several FAQs to provide additional guidance. Notably, OFAC clarified that the CBW Act Directive does not apply to the secondary market for Russian sovereign debt (FAQ 678) or bonds or loans denominated in rubles (FAQ 675).

Moving forward

Businesses, particularly financial institutions, should remain alert to any additional guidance issued by the State, Treasury, and Commerce departments and should carefully evaluate any existing financial arrangements with entities that fall under the definition of "Russian sovereign" in order to avoid sanctions violations.

From an export controls perspective, licenses for exports of items controlled for CB or NS reasons have been practically, if not officially, subject to a "presumption of denial" by BIS for quite some time. As such, the announced changes to licensing policy are unlikely to result in significant change for most exporters.

For further information or assistance, please contact any of the Hogan Lovells lawyers identified below.

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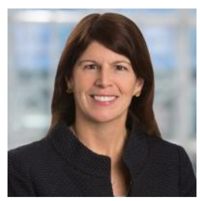

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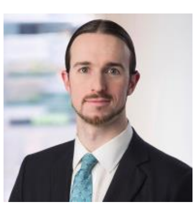

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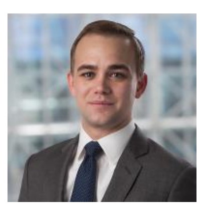

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