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Russian Duma Approves Draft Law on Countersanctions

On May 22, 2018 Russia's State Duma (the lower house of parliament) passed the third and final reading of the draft law "On measures to influence (counteract) the unfriendly actions of the United States of America and (or) other foreign states" (the "Draft Law on Countersanctions").

The Draft Law on Countersanctions has been significantly revised from the original version published on April 13, 2018 by removing express references to key sectors and goods/services (including pharmaceuticals, nuclear, aeronautical and advisory) and providing for a more generic mandate.

The Draft Law on Countersanctions grants broad authority to the Russian Government and the Russian President to enact certain countermeasures to protect and defend the interests of the Russian Federation and the rights of its citizens from political and economic sanctions imposed by United States of America and other foreign states (defined collectively as the "Unfriendly Foreign States").

The countermeasures in question may be implemented against the Unfriendly Foreign States, as well as legal entities under the jurisdiction of the Unfriendly Foreign States and legal entities owned (directly or indirectly) by the entities under the jurisdiction of the Unfriendly Foreign States, and citizens of the Unfriendly Foreign States, if such entities and citizens participate in "unfriendly actions" against the Russian Federation.

The list of possible countermeasures includes the following:

- (i) ceasing or suspending international cooperation in industries determined by the decision of the Russian President;
- (ii) the prohibition or restriction of the import of goods and/or raw materials produced in the Unfriendly Foreign States or by entities under the jurisdiction of the Unfriendly Foreign States or by entities owned by such entities under jurisdiction of the Unfriendly Foreign States (hereinafter – "owned entities");



- (iii) the prohibition or restriction of the export of goods and/or raw materials by entities under jurisdiction of the Unfriendly Foreign States, or by owned entities, or by citizens of the Unfriendly Foreign States;
- (iv) the prohibition or restriction of the performance of works and the provision of services in the territory of the Russian Federation for the federal government, for regions and municipalities and for other Russian entities that are subject to Russia's procurement regulations, in each case by legal entities under jurisdiction of the Unfriendly Foreign States, or by owned entities;
- (v) the prohibition or restriction of participation in the privatization of state and municipal property, as well as the performance of works and the rendering of services with respect to the organization or administration of the sale of federal property on behalf of the Russian Federation, in each case by entities under jurisdiction of the Unfriendly Foreign States, or by owned entities;
- (vi) other countermeasures as decided by the President of the Russian Federation.

For the items (ii)-(iv) above, the lists of specific goods, raw materials and works and services are to be determined by the Russian Government.

Lifesaving goods (e.g., medicines) that have no analogues produced in Russia and goods imported by Russian or foreign citizens for their personal use have been carved out of application under this draft law.

The Draft Law on Countersanctions will now be submitted to the Federation Council (the upper house of parliament) for approval and then to the Russian President. If approved by the Federation Council and signed by the President, the Draft Law on Countersanctions will come into effect upon its official publication.

In addition to the Draft Law on Countersanctions, the Duma introduced the draft law "On amending the Criminal Code of the Russian Federation (in connection with ensuring implementation of the Federal Law "On measures to influence (counteract) the unfriendly actions of the United States of America and (or) other foreign states")", which was first registered on May 14, 2018 and was approved in its first reading at the Duma on the next day, May 15, 2018 (the "Draft Law on the Criminalization of Sanctions Implementation").

The Draft Law on the Criminalization of Sanctions Implementation is proposed to supplement the Russian Criminal Code by adding a new article 284.2 – "Restriction or refusal to carry out ordinary economic operations or transactions in order to facilitate the implementation of restrictive measures imposed by a foreign state, a union of foreign states or an international organization". The draft law introduces criminal liability for two separate offenses:

- (i) any actions or omissions in compliance with any of the restrictive measures imposed by a foreign government, group of foreign governments or international organizations if such action or omission limits or prevents the carrying out of ordinary economic operations or transactions by the Russian Federation, the regions and municipalities of the Russian Federation, legal entities registered in Russia, or Russian citizens (as well as foreign subsidiaries of such Russian parties); and
- (ii) intentional (willful) acts by Russian citizens (including making recommendations or transferring information) that lead or could lead to the imposition of restrictive measures against a Russian public or private subject or its controlled persons.

The second reading of the Draft Law on the Criminalization of Sanctions Implementation was scheduled for May 17th; however, the second reading was postponed to allow for additional time to discuss the draft with business leaders and other experts following public statements of disagreement raised by the Russian Union of Industrialists and Entrepreneurs, big banks and other interested businesses.



Finally, we note that a third draft law introducing administrative liability for adherence to sanctions against Russia imposed by the United States and other foreign states has also been discussed in the media by senior members of the Duma; however, a draft has not yet been introduced.

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