

## Russian Parliament Introduces New Legislation in Retaliation for U.S. Sanctions

### IN SHORT

**The Situation:** The Duma, the Russian parliament's lower chamber, has introduced a Draft Law that, if enacted, imposes criminal liability for compliance with U.S. and other foreign sanctions against Russian parties.

**The Result:** If implemented in its current form, the Draft Law could have profound negative ramifications for business operations of U.S. and European companies in Russia.

**Looking Ahead:** If approved after two more "readings," the Draft Law would go for approval to the Federation Council, the upper chamber of the Russian parliament, where it is expected to get a quick approval.

#### Criminal Liability for Compliance with or Facilitation of Sanctions

On May 14, 2018, the Duma (the lower chamber of the Russian parliament) introduced a draft law, "On Amendments to the Russian Federation Criminal Code" ("Draft Law"), which imposes criminal liability for compliance with U.S. and other foreign sanctions against Russian parties. On May 15, 2018, the Duma approved the Draft Law during the first "reading." If approved during two more "readings," the Draft Law would go for further approval to the Federation Council, the upper chamber of the Russian parliament.

Section 1 of proposed Article 284.2 of the Criminal Code would criminalize any action or inaction aimed at compliance with foreign sanctions resulting in restrictions on, or refusal to engage in, the customary business activities or transactions with Russian nationals, companies, governmental entities, and their controlled affiliates. For the purposes of this provision, customary business activities and transactions include actions aimed at performance of legal or contractual obligations or entering into agreements where a refusal is not customarily expected based on individual characteristic of a counterparty (e.g., opening bank accounts, processing payments, transactions with securities). Violation of this provision could result in criminal liability for individuals of up to four years' imprisonment or fine of up to 600,000 rubles (approximately US\$9,700). The application of this provision is not limited to Russian parties and can be construed also to apply to foreign companies and/or individuals.



If the Draft Law is adopted in its current form, it would effectively subject to criminal liability any officer or employee of a Russian or foreign company that complies with the U.S., EU, or other sanctions and, therefore, may have a major impact on its operations in Russia.



Section 2 of proposed Article 284.2 criminalizes intentional facilitation by a Russian national of foreign sanctions—for example, by providing recommendations or derogatory information that results or may result in the imposition of sanctions on a Russian party or its controlled affiliates. Violations of this provision may subject a Russian national to up to three years' imprisonment or a fine of up to 500,000 rubles (approximately US\$8,000). The likely targets of this provision appear to be Russian political opposition figures who bring to the attention of foreign government officials information that may be used to sanction specific Russian parties. This provision can also be potentially interpreted very broadly to include investigative reports or media coverage of activities or relationships of specific Russian companies and individuals that may be used by foreign governmental entities in imposing sanctions.

If the Draft Law is adopted in its current form, it would effectively subject to criminal liability any officer or employee of a Russian or foreign company that complies with the U.S., EU, or other sanctions and, therefore, may have a major impact on its operations in Russia.

Generally, Russian law does not impose criminal liability on legal entities as opposed to individuals. There have been reports in the Russian media that the Russian Code of Administrative Violations may be amended to introduce penalties on companies for compliance with foreign sanctions.

The Draft Law was sponsored by all major legislative factions, the speaker of the Duma, and the chairwoman of the Federation Council. It received positive reviews from the executive branch and the Russian Supreme Court. While it is possible that the draft law may undergo some changes in the course of parliamentary debates, chances of its adoption within the next months or even weeks are high. Given the unprecedented speed with which the Draft Law was approved by the Duma, it is clearly on a fast

track.

Given the breadth of potential application, risk of criminal liability, and significant room for prosecutorial discretion, Western companies operating in Russia should proceed with caution in their dealings with any Russian party subject to existing sanctions or at high risk of future sanctions, particularly in the context of performance or termination of existing commercial agreements.

### Retaliatory Sanctions

In our [Alert](#) of April 16, 2018, we described the initial draft Federal Law "On Measures to Counter Unfriendly Actions of the United States of America and/or Other Foreign States." Unlike the Draft Law, which criminalizes compliance with sanctions, this law does not amend the existing legislation. Instead, it gives the executive branch broad authority to introduce restrictions on activities of companies and individuals from jurisdictions that have imposed sanctions on Russia, something that the executive branch could do even in the absence of the new legislation.

On May 15, 2018, it was approved by the Duma during the first "reading" but is expected to undergo a number of significant changes prior to the second "reading" aimed at mitigating potential adverse impact of certain provisions on Russian companies and individuals. The second "reading" is scheduled for May 17, 2018. It appears to be on the same approval track as the Draft Law and may very well be on its way for approval by the Federation Council within weeks.

We continue to closely monitor these developments and will provide further updates.

### THREE KEY TAKEAWAYS

1. Given broad support of the Draft Law in both chambers of the Russian parliament, chances of its adoption in the near future are high.
2. If adopted, the Draft Law would put at risk of criminal liability officers and employees of U.S. and other foreign companies that comply with U.S., EU, or other sanctions.
3. If the Draft Law is adopted, Western companies operating in Russia should proceed with caution in their dealings with any party subject to sanctions or at high risk of future sanctions, to ensure that they do not expose themselves to liability in Russia, the United States, the European Union, or other jurisdictions that imposed sanctions on Russian parties.

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