HAYNES BOONE

Russia Sanctions - Steps to Take Now

February 22, 2022 Edward Lebow

PRACTICES Foreign Corrupt Practices Act FCPA, Export Controls and Trade Compliance, Trade and Export Finance, International

As the world reacts to Russia's incursion into the Luhansk and Donetsk regions and awaits Vladimir Putin's next move on Ukraine, we think it prudent to review the sanctions that have already been announced and also to consider those additional steps being considered by the U.K., the U.S. and the E.U. in the event of a full-scale invasion, so that our clients can take appropriate steps now to minimize any negative impact on their operations.

On February 21, the United States announced that all trade and investment by U.S. persons with entities in Luhansk and Donetsk is prohibited. This is similar to the action that was taken with respect to Crimea after Russia seized that territory in 2014. In addition, German Chancellor Olaf Scholz has now indicated that certification of the Nord Stream 2 pipeline will not proceed, thereby making clear that he is willing to hit back at the Russian energy sector, even if doing so will inflict some pain on Germany itself. These sanctions were followed on February 22 by President Biden's announcement that full blocking sanctions will be imposed on VEB (a Russian state development banking corporation) and on the Russian military bank. He also revealed that Russia will no longer be able to sell or trade its sovereign debt in the West, and that sanctions will be imposed on as yet unnamed members of the Russian political and economic elite, clearly with the intention of building some internal opposition to Putin's policies.

In an eleventh-hour attempt at deterrence, other, more severe sanctions were promised if the anticipated Russian invasion of more of Ukraine proceeds. Among the possible additional U.S. sanctions are:

- Tightening export controls on vital technologies, including application of the "foreign-produced direct product rule" which would limit third-country exports to Russia of products incorporating, or produced using machinery utilizing, U.S. advanced technology (principally semiconductors and semiconductor production equipment);
- Limiting future investment in Russian oil and gas exploration;
- Restricting exports to the Russian defense sector and/or Russian state-owned enterprises;
- Sanctioning additional Russian individuals deemed responsible for the invasion with asset freezes, restrictions on access to capital and travel restrictions;
- Limiting access of the Russian financial sector to capital and bond markets;
- Imposing full blocking sanctions on more Russian banks; and
- Excluding Russia from SWIFT and the international payments system.

For those companies that provide goods and services supporting the oil and gas industries, restrictions on future investment in Russian oil or gas exploration might be painful, and real estate interests could find the pool of Russian buyers diminished. Of more immediate concern, however, may be the impact of restrictions on Russian use of the international financial system on the ability of any company with receivables from Russian entities to collect on those obligations. We have seen situations in the United States where the imposition of sanctions on specific Russian companies precluded a U.S. company from accepting payment of money owned to it for services previously rendered. As of now, we do not know whether the U.K. would follow the same strict rules as the U.S., or whether in a situation involving broad-based sanctions the U.S. would provide a grace period. Thus, it may be wise to review current obligations from Russian entities and take steps to limit that exposure.

In addition to identifying and pursuing collection of outstanding debts, it may be prudent to:

- Identify alternative sources for any goods or services being sourced from Russia.

- Screen Russian customers and business partners against the latest sanctions lists. This will require identifying the actual beneficial owners of Russian trading partners. Under the so-called “50 percent rule” used by the U.S. Treasury’s Office of Foreign Assets Control (“OFAC”), if an entity is owned 50 percent or more by one or more sanctioned entities or individuals, that entity is also treated as if it is sanctioned and subject to blocking and asset freezes.

- Review contracts with Russian entities or individuals with an eye to implications of the imposition of sanctions, such as for compliance with law clauses, notice clauses, and termination provisions.

- Identify items or technology being exported to Russia and any transactions with Russian entities that have ongoing or continuing obligations in case a license will be needed for export (and assume that no such licenses will be issued).

Please contact any of the following Haynes Boone attorneys if you would like legal advice regarding U.S. sanctions.