

## Newsletter:

*THE RUSSIAN COUNTER SANCTIONS LAW ENACTED TODAY. DRAFT LAW PENALIZING COMPLIANCE WITH WESTERN SANCTIONS PENDING IN SECOND READING.*

*The counter-sanctions package includes bans and limitations for foreign economic activities in Russia and criminalization of compliance with western sanctions.*

*04 June 2018*

Dear Ladies and Gentlemen,

On 13 April and 14 May 2018, the drafts of the following two laws were introduced to the lower house of the Russian Parliament ("State Duma") respectively as countermeasures against US sanctions:

- "Counter Sanctions Law" – draft of the Federal Law "On Measures in Response to Unfriendly Actions of the USA and (or) Other Foreign States"; and
- "Criminal Liability Draft Law" – draft of the Federal Law "On Implementation of Amendments to the Criminal Code of the Russian Federation". This law still remains a draft subject to further discussions.

These legal acts could make a significant impact on economic activities of foreign companies and might impose criminal liabilities and it is advisable to take these into consideration while doing business in Russia.

We set out some of key points of the counter sanction acts below.

### **1 Criminal Liability Draft Law**

#### **1.1 Current status of the draft law**

Criminal Liability Draft Law was adopted by the State Duma in the first reading on 15 May 2018. The second reading has been postponed due to strong complaints among Russian business communities and not yet scheduled.

#### **1.2 Content of the draft law**

##### *1.2.1 Activities subject to criminal liability*

The current version of the Criminal Liability Draft Law proposes to establish criminal liability for persons supporting existing and facilitating introduction of new sanctions against

Russia. The draft law sets two new criminally prosecuted activities:

- a) activities performed with the purpose of compliance with the foreign sanctions if such activities resulted in limitations in Russian entities etc. to conduct their normal business activities;
- b) intended facilitation of introduction by the foreign states or international organizations of new sanctions against Russian entities etc.

The above actions lead from fine in the amount of RUB 600,000 (for a) above) or 500,000 (for b) above) to imprisonment for the term up to 4 years (for a) above) or 3 years (for b) above) with or without fine (under discretion of the court).

##### *1.2.2 Examples of possible criminal acts*

As you can see from the wording mentioned in section 1.2.1 a), actions falling within the scope of the draft law can be interpreted widely. As we understand, the draft law covers at least the following actions:

- (i) termination of an existing contract;
- (ii) refusal to execute obligations under existing contract; and
- (iii) refusal to conclude a public contract or a contract where it is not customary to receive a refusal due to the individual characteristics of the counterparty.

##### *1.2.3 Who will be subjects of the liability?*

Only individuals (natural persons) are subject of criminal liability. Therefore, in case actions in fulfillment of sanctions are performed by a legal entity, the subject of liability is a person

responsible for making such decision (e.g. director having taken decision to terminate a contract with a Russian company etc.).

## 2 Counter Sanctions Law ("CSL")

### 2.1 Status of the CSL

The CSL was signed by the President of Russian Federation on June 04, whereby the law immediately came into force.

### 2.2 Contents of the CSL

#### 2.2.1 Who will be the target of the sanctions?

Under the law, the President and Government of the Russian Federation will be entitled to establish the sanctions on activities of the following ("Target"):

- unfriendly countries;
- citizens of unfriendly countries;
- legal entities under jurisdiction of unfriendly countries; and
- entities directly or indirectly controlled by the above or affiliated with them.

#### 2.2.2 Unfriendly countries

It is not clear which countries besides USA can be estimated as "unfriendly countries". In accordance with the CSL, a country can be estimated as unfriendly in case it conducts unfriendly actions against Russia. Unfriendly actions include, *inter alia*, introduction of economic and political sanctions against Russia, its entities or citizens. This issue shall be finally decided by the Russian President and Government and will depend on the further development of the political situation.

#### 2.2.3 Types of possible sanctions

Under the law, the following activities can be banned or restricted as a counter sanction:

- a) international cooperation with the Target;
- b) import of products and/or materials from the Target to Russia;
- c) export of products and/or materials from Russia to the Target;
- d) performance of works and services by the Target for the Russian public authorities and state owned corporations; and
- e) access by the Target to participation in privatization of state and municipal property of Russia as well as performance of works on respective arrangements from behalf of Russia;

In addition, the CSL will give the Russian President a power to impose any other measures under his discretion.

#### 2.2.4 Impacts on foreign companies

The CSL does not limit the scope of the Target by any criteria and, therefore, it can be interpreted that any entity under jurisdiction of unfriendly countries or controlled by such entities will be subject to sanctions in case the President and the Government decide to extend sanctions to them.

Even if a foreign company is not the Target, the CSL could indirectly impact the company's activities through a ban or restriction on trades with its business partners in unfriendly countries etc.

*Note: Please be aware that all information provided in this letter was taken from open sources. The author of this letter bears no liability for consequences of any decisions made in reliance upon this information.*

If you have any questions, please do not hesitate to contact Anton Dzhuplin or Andrey Zharskiy, ALRUD Partners.

Sincerely,

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