Russia Sanctions Outlook: Potentially Imminent and Far-Reaching Changes

With over 100,000 Russian troops now on the Ukrainian border and rising tensions with the United States, the Biden Administration is preparing a response to a possible Russian invasion of Ukraine. With little to no domestic appetite in the U.S. for a military solution despite President Joe Biden's deployment of 3,000 troops to Eastern Europe, and Russian leader Vladimir Putin's long record of imperviousness to "soft" diplomatic measures, economic sanctions are the one substantial tool left in the Biden Administration's belt.

U.S. Administration officials have not been shy about openly discussing "broad" and "sweeping" sanctions designed to cripple the Russian economy, using the threat as a deterrent to a Russian invasion of Ukraine. Moreover, NATO allies are also discussing tougher sanctions, and there are reports that the European Union (EU) is considering cutting off Russia's access from the SWIFT international financial messaging system.

This client alert addresses (1) the speed with which sanctions could be imposed; (2) what those sanctions may look like; and (3) certain steps companies should consider given the current uncertainty.

Sanctions can be imposed quickly

The International Emergency Economic Powers Act ("IEEPA"), 50 U.S.C. §§ 1701 – 1706, grants President Biden broad authority to declare a national emergency with respect to foreign threats to national security, foreign policy, or economy of the U.S. that are "unusual or extraordinary." Pursuant to § 1702, the President may issue an Executive Order (E.O.) imposing new sanctions on Russia if it invades Ukraine. As a result, Biden can impose such sanctions unilaterally without congressional action, and it is likely that the Administration already has Executive Orders in place, ready for execution upon any Russian move seen as a provocation. In short, the Administration could implement sanctions within hours of a Russian invasion. Once issued, such Executive Orders can remain in effect until they are revoked, canceled, expire, or are adjudicated unlawful.

IEEPA sanctions are typically administered civilly by the Department of the Treasury's Office of Foreign Assets Control ("OFAC"), which has continually phased in Ukraine-related sanctions regulations since 2014. OFAC often issues regulations codifying or otherwise incorporating Executive Orders and can name individuals and entities to its list of Specially Designated Nationals and Blocked Persons (the "SDN List"), which can prohibit U.S. persons from engaging in most business with such entities and require them to block the such entities' assets under possession . When new regulations or restrictions are put in place, OFAC can issue a "general license" – a broad authority enabling U.S. persons or others a typically brief window to wind-down ongoing activities that the agency's latest actions prohibit. OFAC also administers licensing regimes by which U.S. persons and others can obtain specific

4. Secondary Sanctions
Beyond primary sanctions on Russian individuals and entities, the Biden Administration could also impose "secondary sanctions," akin to the framework presently in place against Iran, which seek to use the power of the U.S. market to dissuade foreign companies from doing business with Russia. While unilateral sanctions can impact the activities of U.S. entities dealing with Russia and place Russian parties onto the SDN List, secondary sanctions impose punitive measures on third country entities engaging in certain business sectors in Russia, usually in the form of limitations on their activities in or with the U.S.

5. Potential Punitive Measures
H.R. 6470 also calls for the restrictions on designated parties' asset transfers of both currency and property in and through the U.S. visa bans on designated individuals, and general reporting. These punitive measures often have the effect of chilling activity generally, causing companies to engage in substantial "derisking" of activities in and with the sanctioned target more severely than required by law.

What companies should be considering now
Given the speed with which the hostilities between the U.S. and Russia could escalate and impact international finance and trade, U.S. and non-U.S. companies should be thinking proactively about the following:

- What ongoing direct or indirect transactions or contracts does the business have with Russian counterparties?
- What financial relationships does the business have with Russian financial institutions, both private and state-owned?
- To the extent that the business has commercial entanglements in Russia or with Russian counterparties, can it unwind such relationships, and, if so, how quickly?
- If certain relationships are difficult to unwind, should the business apply for an OFAC license enabling more time for the unwinding?
- Will the business' supply chain be affected by sanctions? If so, how will the company secure items in the supply chain from substitute suppliers?
- What disclosures must be made regarding business with Russia or financing from Russian financial institutions?

Conclusion
In addition to the already existing sanctions on Russia, an invasion of Ukraine will almost certainly be met with significant measures having substantial effects on various sectors and affect many U.S. and non-U.S. businesses and individuals. These sanctions will likely be imposed very quickly and may be springboards for future action. It is therefore critical that companies plan proactively, carefully considering their touchpoints with Russian and preemptively devising strategies enabling them to move swiftly and thoughtfully should the need arise.

To the extent general licenses are issued, they should be utilized where applicable, and if more time is needed a contingency plan to apply for a specific license should be considered, particularly as any continued activity that becomes prohibited will constitute a per se violation and as OFAC may be more responsive to a timely request than one that is filed after the prescribed wind-down has lapsed.

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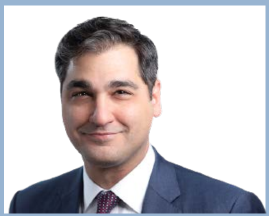

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