

Russian Countersanctions: Bill Introduced to Criminalize Dissemination of Information That May Result in Introduction or Expansion of Sanctions Against Russian Persons

On May 15, 2019, a bill was introduced to the Russian State Duma proposing amendments to Federal Law 127 “On Actions to Influence (Counter) Unfriendly Actions of the United States of America and Other Foreign Governments” and the Criminal Code to prohibit the “uncontrolled transfer of information to foreign counterparties” in favor of “measured presentation of necessary and unharmed information.”

The bill, if passed in its current form, would prohibit the public dissemination by means of mass media and data telecommunications networks, as well as the transfer and disclosure to (i) organizations organized under the laws of an unfriendly state, (ii) organizations directly or indirectly under the control of an unfriendly state or a citizen of an unfriendly state affiliated with such organizations, of information that:

- Evidences non-compliance with sanctions by organizations or individuals subject to sanctions imposed by foreign governments, unions of foreign governments and/or multinational organizations, or
- Facilitates the introduction of sanctions by foreign governments, unions of foreign governments and/or multinational organizations

The proposed amendments to the Criminal Code provide for fines up to 5 million rubles and imprisonment of up to five years for violations of the prohibitions on information dissemination, transfer and disclosure of the enumerated information.

The bill provides that the foregoing prohibitions do not extend to persons who, within the scope of their professional obligations or acting on the basis of a civil law contract or other legal grounds, perform actions intended to remove or mitigate sanctions imposed on impacted organizations and persons and safeguard property, persons and organizations from the imposition or expansion of sanctions. The exemption, however, does not neatly correlate to the offense, so it is unclear how they work together. The only examples that come to mind would be the disclosure of information to a US law firm or OFAC by an SDN seeking to be removed from the list, which is a rather narrow exception.

The proposed bill as currently drafted is troublesome because of the broad prohibition on disclosing information to persons or companies organized under the laws of unfriendly states, which is defined as all states that have imposed sanctions on the Russian Federation, its citizens and legal persons organized under its laws. As drafted, the bill also lacks any element of criminal intent, particularly in respect of information that facilitates the imposition of sanctions. The key hurdle for any prosecution would seem to be connecting a disclosure to the subsequent imposition of sanctions or penalties, but given the risk of pretrial detention and the high conviction rates in criminal cases in Russia, there is a risk that the allegation alone may prove to be enough.

Accordingly, if adopted, the bill would put businesses (Russian and foreign) in the difficult position that its employees could be exposed to criminal liability for making disclosures necessary to maintain operations. For example, a Russian person asked to provide information to conduct KYC by a US bank or a Russian bank necessary to process a US dollar denominated transfer, will not know if the transfer of such information could later be alleged to have facilitated to the introduction or expansion of sanctions and, thus, may refuse to provide such information for fear of criminal liability. There may also be preexisting contractual obligations to provide ongoing disclosure or audit rights. The result could be major disruptions and a substantial reduction in economic activity.

Given the grave consequences of the offense, one would hope that the necessity of the bill in the first instance and the drafting of the bill are carefully considered to provide clear guidance and safe harbors to avoid unintended consequences and allow businesses to continue to operate without undue risk.

Contacts

For more information on this issue or others related to sanctions, contact one of the lawyers listed below.

Patrick J. Brooks

Partner, Moscow

T +7 495 363 1670

E patrick.brooks@squirepb.com

Sergey Treshchev

Partner, Moscow

T +7 495 258 5250

E sergey.treshchev@squirepb.com