

Second Round of Sanctions on the Russian Federation under Chemical and Biological Weapons Control and Warfare Elimination Act

August 7, 2019

On August 3, 2019, the **U.S. Department of State** and the **Department of the Treasury** announced a second round of sanctions on the Russian Federation pursuant to the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (**CBW Act**) in response to Russia's involvement in a chemical weapons attack in the United Kingdom in March 2018. The newly announced sanctions include:

- A prohibition on U.S. banks participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign and lending non-ruble denominated funds to the Russian sovereign;
- Continuation of the United States' opposition to the extension of any loan or financial or technical assistance to Russia by international financial institutions, such as the World Bank or International Monetary Fund; and
- Imposition of further export restrictions, including a "presumption of denial" approach for items controlled for chemical and biological weapon proliferation reasons.

The sanctions take effect after August 26, 2019, following a required Congressional notification period.

Background

On August 6, 2018, the U.S. Department of State made a determination pursuant to the CBW Act that the Government of the Russian Federation had used chemical weapons in violation of international law or had used lethal chemical weapons against its own nationals in connection with the March 4, 2018 use of a "novichok" nerve agent against two individuals in Salisbury, United Kingdom. Effective August 27, 2018, the United States imposed a first round of sanctions on the Russian Federation pursuant to the CBW Act, which included termination of assistance to Russia under the Foreign Assistance Act, termination of arms sales and arms sales financing, denial of United States Government credit or other financial assistance, and a prohibition on the export of national security-sensitive goods and technology (subject to certain exceptions).¹

On November 6, 2018, the Department of State determined that the Government of the Russian Federation had failed to meet the conditions necessary to avoid the imposition of a second round of sanctions, including failing to provide reliable assurances that it would not engage in future chemical weapons attacks. The administration did not immediately act to impose the required sanctions, a delay that became the subject of increasing and bipartisan criticism from Congress, including most recently a **letter** from the Chair and Ranking Member of the House Committee on Foreign Affairs urging immediate action. On August 1, 2019, President Trump signed an **executive order** delegating to the Secretary of the Treasury authority to implement the CBW Act sanctions related to international financial institution

¹ Determinations Regarding Use of Chemical Weapons by Russia Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991, 83 Fed. Reg. 43,723 (Aug. 27, 2018).

assistance and to U.S. bank loans (**Executive Order**).² The Executive Order also delegates to the Secretary of the Treasury authority to take certain actions to implement the sanction related to U.S. bank loans.

The Second Round of Sanctions

In order to implement the newly announced sanctions, the Department of the Treasury's Office of Foreign Assets Control (**OFAC**) issued a **CBW Act Directive** pursuant to the Executive Order (**Directive**). The Directive prohibits a "U.S. bank"³ from (1) participating in the primary market for non-ruble denominated bonds issued by the Russian sovereign; and (2) lending non-ruble denominated funds to the Russian sovereign. The term "Russian sovereign" is defined to mean any ministry, agency, or sovereign fund of the Russian Federation, including the Central Bank of Russia, the National Wealth Fund, and the Ministry of Finance of the Russian Federation, but does not include state-owned enterprises of the Russian Federation. OFAC also published **additional FAQs** providing guidance on the Directive, including to clarify that the Directive does not prohibit U.S. banks from participating in the secondary market for Russian sovereign debt. The Directive will become effective after August 26, 2019, following the congressional notification period required by the CBW Act.

The Department of the Treasury will also continue the U.S. Government's opposition to the extension of any loan or financial or technical assistance to Russia by international financial institutions.

Additional export restrictions are being imposed only on goods and technology controlled by the Department of Commerce for chemical and biological weapon proliferation reasons. Under the newly announced sanctions, licenses for the export of such controlled items to Russian state-owned or funded entities will be subject to a "presumption of denial." Exceptions to export licensing requirements will continue to be available for U.S. firms fulfilling existing contracts with Russian customers. Licenses will be considered on a case-by-case basis in certain circumstances, including with respect to exports needed for space flight activities, to ensure the safe operation of commercial passenger aviation, to commercial end-users for civil end-uses, and to wholly-owned subsidiaries of U.S. and other foreign companies in Russia.

² 22 U.S.C. § 5605(b)(2)(A)-(B).

³ For the purposes of the Directive, the term "U.S. bank" means any entity organized under the laws of the United States or any jurisdiction within the United States (including its foreign branches), or any entity in the United States, that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures, or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes branches, offices, or agencies of foreign financial institutions that are located in the United States.

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