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Russia Sanctions Bill Will Likely Become Law

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Late last week, the Ukraine Freedom Support Act of 2014 passed both houses of the U.S. Congress in a lame duck session with strong bipartisan support. Although disposition of the Ukraine Act still depends on action by the president, it appears likely that this bill or a similar proposal will become law late this year or early next year.

Harry Clark

The Ukraine Act or similar legislation could have far-reaching effects on U.S. sanctions policy relating to Russia and, more generally, on the U.S.-Russia bilateral relationship. Beyond that, the Ukraine Act contemplates the possibility of sanctions against third-country firms in response to certain types of dealings with Russia, which could result in broader restraints on business and affect U.S. coordination with other authorities on Russia sanctions policy.

Expanded Sanctions Against Financial, Defense and Energy Sectors

First, the bill would authorize expanded sanctions on the Russian and broader non-U.S. financial sector. Section 5 of the Ukraine Act would provide for prohibition of or strict conditions on non-U.S. banks maintaining U.S. correspondent accounts or payable-through accounts if they engage in the following activities:

- facilitation of defense-related transactions for defense entities owned or controlled by the Russian government or Russian nationals, including certain manufacture, sale, transfer or brokering of, or other assistance with the transfer of, defense articles to Syria, Ukraine, Georgia, Moldova or any other country designated by the president, or entities that sponsor or provide financial, material or technological support for specified defense activities in those countries;

- facilitation of energy-related transactions involving significant investment in “special” Russian crude oil projects (defined as those projects intended to extract crude oil from the Russian exclusive economic zone in waters more than 500 feet deep, Russian arctic offshore locations, and shale formations in the Russian Federation), or facilitation of Gazprom’s withholding of natural gas from NATO members or allies, such as Ukraine, Georgia or Moldova; or

- facilitation of transactions on behalf of any Russian entity or national on the U.S. Office of Foreign Assets Control list of specially designated nationals.

Depending on how they are implemented, these measures could make Russia-related financial sector sanctions far more severe than those currently in place. Current OFAC sanctions limit certain Russian financial institutions' access to U.S. capital markets. Ukraine Act correspondent account sanctions would go much farther, cutting off sanctioned Russian or non-Russian banks' access to the U.S. banking system.

Second, the bill would generally require the president to impose additional sanctions in the Russian defense sector. The sanctions would be against (1) Rosoboronexport, a Russian agency dealing in exports/imports of defense-related and dual use items, and (2) Russian entities that manufacture, sell, transfer, broker or otherwise assist in the transfer of defense articles into Syria, Ukraine, Georgia, Moldova, or other country designated by the president. Entities that assist, sponsor, or provide financial, material or technological support for, or goods or services in support of, any of the foregoing activities in those countries would likewise be exposed to sanctions.

Third, the Ukraine Act would authorize expanded energy sector sanctions including (1) sanctions against foreign persons making a significant investment in special Russian crude oil projects; and (2) licensing limitations on the export and reexports of items for use in the Russian energy sector. In addition, the bill would generally mandate sanctions against Gazprom if it withholds natural gas supplies from NATO members, Ukraine, Georgia or Moldova.

The proposed expanded defense and energy sector sanctions under the Ukraine Act range from restrictions on Export-Import Bank assistance, to prohibitions on certain banking and property transactions subject to the jurisdiction of the United States, to extensions of sanctions currently in place that prohibit investment in certain debt or equity of the entities targeted by the Ukraine Act.

Disposition of Ukraine Act

The Ukraine Act passed both the Senate and House of Representatives on Dec. 11, and, for technical procedural reasons, again passed the Senate by voice vote on Dec. 13. The bill reportedly encountered no voting opposition in either house of Congress and now awaits presidential action. It appears likely that the Ukraine Act or a similar successor proposal will become law.

The president's public remarks indicate his reluctance to take unilateral sanctions action relating to Russia. He has publicly stressed the importance of keeping the EU "in lockstep" with the United States over Ukraine, and has opposed tightening of sanctions absent such international cooperation.

Nonetheless, there is a good chance that the president will sign the Ukraine Act into law given broad bipartisan support of the legislation in both houses of Congress. It would be politically difficult for the president to veto a piece of legislation that passed both houses of Congress with such strong bipartisan support.

Furthermore, a presidential veto probably would not be the end of the story for U.S. legislation regarding Russia sanctions. It is true that a veto would make enactment of the Ukraine Act itself difficult as the 2013-2014 Congress is coming to an end. While support for the bill appears to be adequate for override of a veto, Congress would have to take extraordinary steps to engineer override votes before the next Congress comes into session in early January. (To mitigate adverse political reactions, if the president does not sign the Ukraine Act he may “pocket veto” it — take no action on the bill — rather than actually veto it.)

If the Ukraine Act does not become law, though, the new Congress will probably pass similar, perhaps stronger, Russia sanctions legislation in 2015. Given the breadth of support for the Ukraine Act, override of a veto of a successor proposal seems more likely than not. This is particularly true given that the Senate will have a majority of Republican members in the new Congress, to add to an already Republican-controlled House of Representatives.

In sum, companies are well advised to follow closely U.S. policy-making regarding Russia sanctions and to prepare for broader sanctions as their breadth and form comes into clearer relief.

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