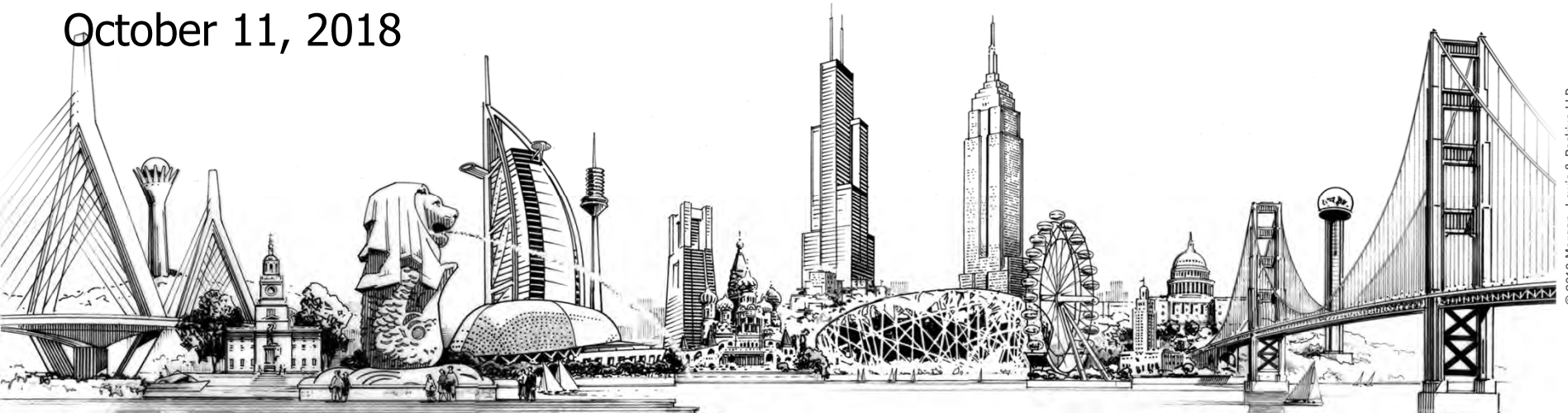


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THE US AND EU RUSSIA SANCTIONS: WHAT IS, WHAT'S TO COME, AND HOW TO DEAL WITH ALL THIS

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Agenda

- US Sanctions
- EU Sanctions
- Russian Response
- Various Legal Issues
- Takeaways



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SECTION 1

US SANCTIONS



US sanctions since 2014: brief review

- Specially Designated Nationals (SDNs)
- Sector sanctions (SSIs) - finance, energy, defense
- Comprehensive sanctions on Crimea
- CAATSA and the risk of secondary sanctions
- Implementation of CAATSA and Guidance
- CBW Sanctions
- New Executive Order on election interference (not limited to Russia)



Recent developments in 2018

- August 27: new sanctions under Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (CBW Act)
 - bans on foreign assistance, arms sales and related financing, and US credit assistance (with certain exceptions - e.g. space launches)
 - ban on exports and re-exports of national security-sensitive goods and technology to Russia: Commerce Control List “NS 1” and “NS 2”
 - several waivers to protect US national interests
 - potentially more severe round of sanctions to come in November
- September 12: Executive Order 13848 relating to election interference
- September 20: Executive Order 13849 re implementation of CAATSA secondary sanctions for cybersecurity, defense/intelligence sector, energy export pipelines etc.
- September 20: secondary sanctions and new SDN designations based on Chinese arms purchases from Russia

Recent developments in 2018 (2)

- September 21: OFAC extended general licenses relating to Rusal and EN+ until November 12
 - Fourth extension
 - November 12 is after the US mid-term elections
 - OFAC has shown willingness to accommodate concerns of the business community
 - Potential that Rusal and EN+ may be able to complete the “delisting” process by reducing SDN ownership below 50%



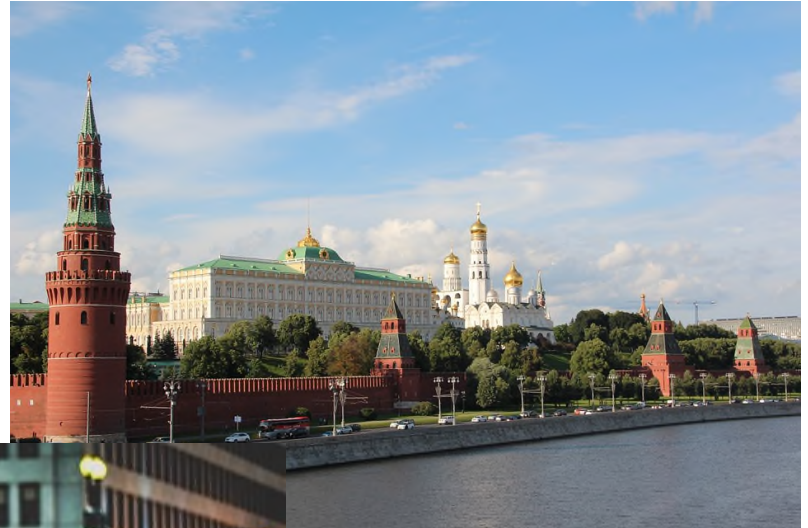
Brief comparison with other US sanctions programs

- Iran and withdrawal of US from JCPOA
- North Korea
- Venezuela
- Syria



Prospects for further enforcement of existing US sanctions

- More SDNs/SSIs? “Kremlin List”?
- CBW-Round 2
- Election and cyber-related measures?
- Energy projects?
- Energy export pipelines?
- Sanctions under other programs?
 - North Korea
 - Iran
 - Syria
- Other actions?



Prospects for new laws imposing US sanctions (1)

- Over 40 proposed bills
- DETER (“Defending Elections from Threats by Establishing Redlines Act”)
 - would be triggered by election interference
 - would impose SDN status on key Russian banks and energy companies
 - ban on Russian sovereign debt
 - also targets air carriers, railways, metals and mining
 - sponsors: Senators Marco Rubio (R-FL) and Chris Van Hollen (D-MD)

Prospects for new laws imposing US sanctions (2)

- DASKAA (“Defending American Security from Kremlin Aggression Act of 2018”)
 - would apply immediately
 - increased sanctions on Russian energy and finance sectors, “oligarchs” and parastatal entities
 - seeks to tighten secondary sanctions under CAATSA
 - sponsors: Senators Bob Menendez (D-NJ) and Lindsey Graham (R-SC)
- Possible impact of November mid-term elections

SECTION 2

EU SANCTIONS



EU sanctions since 2014: brief review

- Blocked persons list
- Differences with US SDN list
- Sectoral sanctions – finance, energy, defense sectors
- Key exceptions: finance for certain trading with EU countries, short-term financing, etc.
- Restrictions on exports of energy and defense-related goods, services, technology
- Restrictions on trade and investment with Crimea

Prospects for further EU sanctions

- Politics among 28 (27?) member countries
- Need for periodic renewal, unlike US
- Differences in EU and US policies on pipelines, trade
- Enforcement practice to date: *Siemens* turbines case
- Actions by individual countries: UK, Netherlands

SECTION 3

RUSSIAN RESPONSE



Russian response to Western sanctions (1)

- “Law on Countermeasures against Unfriendly Actions of the United States of America and/or Other Foreign Governments” – June 2018:
 - authorizes Russian President or Government to ban import of goods and services
 - based on “unfriendly actions” by US and other countries
 - also applies to organizations “under the jurisdiction of” or “directly or indirectly controlled by or affiliated with” unfriendly countries
 - as well as officials and citizens who “are involved in the unfriendly actions”
- Pending Russian law “blocking” rules that would impose
 - substantial administrative fines for compliance with foreign sanctions
 - criminal liability for willful action to facilitate imposition of anti-Russian sanctions
 - but details and status remain unclear

Russian response to Western sanctions (2)



- Proposals for “de-dollarization” in cooperation with China and other countries
- State aid (of various kinds) to Russian companies/banks hit by sanctions
- Treatment of sanctions-related contract clauses in Russia

SECTION 4

VARIOUS LEGAL ISSUES

Effect of sanctions on international contracts

- Grounds for termination?
- Force majeure?
- English law decisions: *Shere Shipping* and *Libyan Arab Bank* cases
- Proactive clauses in contracts:
 - what if new sanctions are adopted?
 - what if my counterparty (or my company) becomes an SDN (or an SSI)?



Other legal issues to consider

- Possible effect of EU, Russian, other blocking statutes
- Legal challenges to EU sanctions by Russia: unsuccessful so far (*e.g.*, *Sberbank of Russia v Council*, EUECJ T-732/14, 13 September 2018)
- UK “non-sanctions” measures
- Potential effects of Brexit on UK sanctions



Takeaways

- Need to monitor developments
- Contract drafting and remedies
- Other planning and defensive measures



Additional Resources

- [US and EU Russia Sanctions Update — Overview and Focus on the Energy Sector \(and the New Russian Countersanctions\) — September 2018](#)
- [New Russia Sanctions: Key Takeaways](#)
- [New US Sanctions Against Russia Create Unique Issues for Fund Investors](#)
- [Other International Trade and National Security Publications](#)

Questions and Discussion



Our International Trade and Sanctions Team

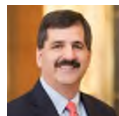
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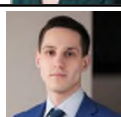
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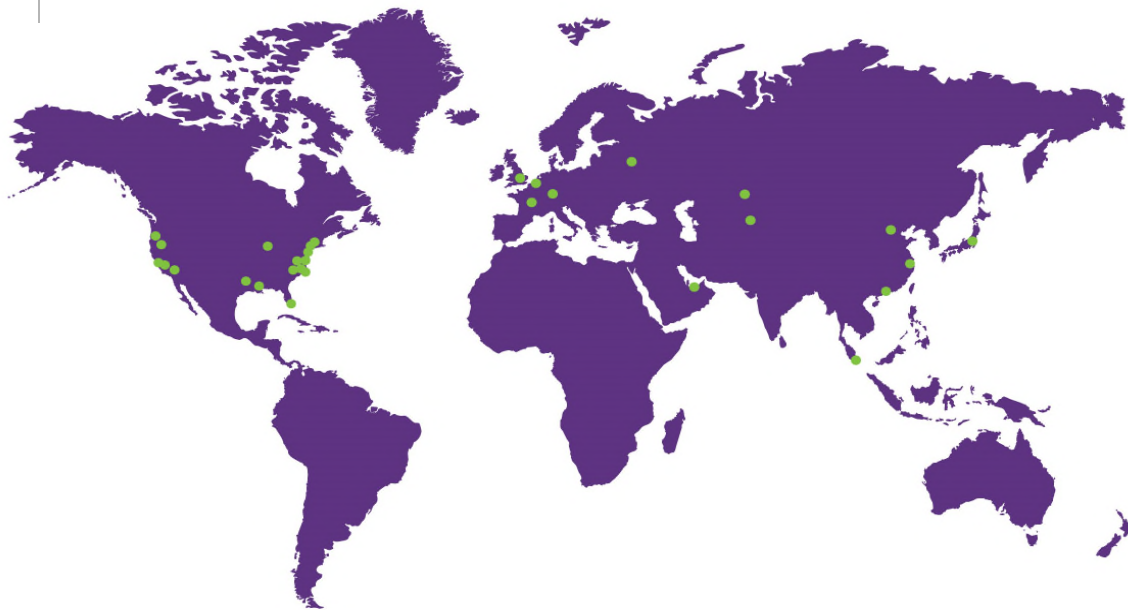
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