GIBSON DUNN

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BIDEN ADMINISTRATION IMPOSES ADDITIONAL SANCTIONS ON RUSSIA

To Our Clients and Friends:

On April 15, 2021, the United States announced a significant expansion of sanctions on Russia, including new restrictions on the ability of U.S. financial institutions to deal in Russian sovereign debt and the designation of more than 40 individuals and entities for supporting the Kremlin's malign activities abroad. As part of a sprawling package of measures, the Biden administration imposed sectoral sanctions on some of Russia's most economically consequential institutions—including the country's central bank, finance ministry, and sovereign wealth fund. The administration also blacklisted an array of individuals and entities implicated in Russia's annexation of Crimea, foreign election interference, and the SolarWinds cyberattack. Most of the sanctions authorities included in newly issued Executive Order ("E.O.") 14024 were already in force across a range of earlier Executive Orders and actions promulgated to respond to Russia's initial incursion into Crimea in 2014, Moscow's malicious cyber activities, election interference, chemical weapons attacks, and human rights abuses. This new initiative, however, suggests that the Biden administration is prepared to move aggressively to deter Moscow from further engaging in destabilizing activities. Moreover, we assess that this new initiative by the Biden administration is designed, at least in part, to elicit multilateral support, principally from the United Kingdom and the European Union. Whether Washington's transatlantic allies take up the call (London is apparently poised to follow soon) and whether these measures ultimately change Russia's behavior remains to be seen. In the meantime, the already frosty relationship between the West and Moscow appears likely to further deteriorate, which could have significant repercussions for multinational companies active in both jurisdictions.

Executive Order 14024

E.O. 14024 authorizes blocking sanctions against, among others, (1) persons determined to operate in certain sectors of the Russian economy; (2) those determined to be responsible for or complicit in certain activities on behalf of the Russian Government such as malicious cyber activities, foreign election interference, and transnational corruption; (3) Russian Government officials; and (4) Russian Government political subdivisions, agencies, and instrumentalities. As noted above, many of these bases for designation already exist under earlier Executive Orders. The duplication of these authorities suggests that the Biden administration may be looking both to put its own stamp on U.S. sanctions policy and to have a single, consolidated sanctions tool that it can use to target the full range of Russian malign behavior. E.O. 14024 also expands upon some of those earlier authorities, for example, by authorizing the imposition of sanctions against the spouse and adult children of individuals sanctioned pursuant to the new E.O. This is a somewhat uncommon provision apparently designed to prevent sanctions evasion by those who may seek to shift assets to close relatives—a strategy that the United States has seen in its implementation and enforcement of Russian sanctions, especially with respect to oligarchs.

Restrictions on Russian Sovereign Debt

While the 46 individual and entity designations (discussed more fully below) are potentially impactful on the specific parties targeted, the most systemically important component of E.O. 14024 comes in the form of a new Directive issued by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"). Such directives have in the past only been issued in the context of sectoral sanctions imposed against Russia. This latest Directive prohibits U.S. financial institutions, as of June 14, 2021, from either (1) participating in the primary market for "new" ruble and non-ruble denominated bonds issued by the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation (Russia's principal sovereign wealth fund), or the Ministry of Finance of the Russian Federation, or (2) lending ruble or non-ruble denominated funds to those three entities. Modeled on earlier sectoral sanctions targeting major actors in Russia's financial services, energy, defense, and oil sectors, the new Directive prohibits U.S. financial institutions from engaging only in certain narrow categories of transactions involving the targeted entities. Absent some other prohibition, U.S. banks may continue engaging in all other lawful dealings with the named entities. This reflects the delicate balance that President Biden and earlier administrations have attempted to strike by imposing meaningful consequences on large, globally significant actors without at the same time roiling global markets or imposing unpalatable collateral consequences on U.S. allies. Notably, the Biden administration stopped far short of more draconian measures such as blacklisting Russia's sovereign wealth fund, or the Russian Government itself (as the Trump administration did in Venezuela).

The sectoral sanctions on Russia's central bank, sovereign wealth fund, and finance ministry are further circumscribed in several key respects. First, they do not become effective until 60 days after the issuance of the Directive. Second, they are one of the rare instances in which OFAC's Fifty Percent Rule does not apply, meaning that the Directive's restrictions extend only to bonds issued by, and loans made to, the three named Russian Government entities and not to any other entities in which they may own a direct or indirect majority interest. Third, the Directive also does not prohibit U.S. financial institutions from participating in the secondary market for Russian sovereign bonds—a potentially wide loophole under which U.S. banks may continue to purchase such debt, just not directly from the three targeted entities. This is a loophole that could be significantly closed if the United Kingdom and European Union adopted similar measures—further supporting our assessment that the administration designed these restrictions in part to be imposed alongside similar restrictions promulgated by London and Brussels.

Particularly in light of existing restrictions on U.S. banks' ability to participate in the primary market for *non-ruble* denominated Russian sovereign bonds, and from lending *non-ruble* denominated funds to the Russian sovereign, the Directive's main significance is that it will make it more difficult for the Russian Government, starting on June 14, 2021, to borrow new funds in local currency. From a policy perspective, the Directive therefore appears calculated to further restrict potential sources of financing for the Russian state—in effect, penalizing the Kremlin by driving up its borrowing costs. Such a seemingly narrow expansion of restricted activities also leaves room to further strengthen measures if the Kremlin's malign activities continue.

Sanctions Targeting Russia's Other Troubling Activities

In addition to imposing restrictions on Russian sovereign debt, the Biden administration also designated dozens of individuals and entities to OFAC's Specially Designated Nationals and Blocked Persons ("SDN") List for their involvement in Russia's destabilizing operations abroad. As a result of these designations, U.S. persons are generally prohibited from engaging in transactions involving the targeted individuals and entities and any property and interests in property of the targeted persons that come within U.S. jurisdiction are frozen. Underscoring the scope of the Biden administration's concerns, these sanctions designations target an accumulation of Russian activities during the preceding months, including efforts to cement Russian control of the Crimea region of Ukraine, foreign election interference, and the SolarWinds cyberattack.

Among those targeted were eight individuals and entities involved in Russia's annexation of Crimea. In particular, OFAC designated various persons involved in constructing the Kerch Strait Bridge, which connects the Crimean peninsula by rail to the Russian mainland. These designations also targeted Russian and local government officials for attempting to exercise control over Crimea, as well as a detention facility in the Crimean city of Simferopol that has been implicated in human rights abuses. Through these actions—which come amid reports of Russian troops massing on the eastern Ukrainian border—the United States appears to be signaling its continuing commitment to the territorial integrity of Ukraine.

In a second batch of designations, OFAC added a further 32 individuals and entities to the SDN List for attempting to influence democratic elections in the United States and Africa at the behest of the Russian state. Notably, these designations include a network of Russian intelligence-linked websites that allegedly engaged in a campaign of disinformation and election interference. OFAC also targeted associates and enablers of Yevgeniy Prigozhin, the principal financial backer of the Russia-based Internet Research Agency, as well as the Russian political consultant Konstantin Kilimnik. This set of sanctions targets not only Russian actors engaged in disinformation on behalf of the Russian government, but also those that facilitate this harmful behavior—adding a new layer of accountability to the extensive disinformation-related sanctions put in place over the last five years.

Finally, the Biden administration announced a long-awaited group of designations targeting six companies in the Russian technology sector in response to last year's high-profile SolarWinds cyberattack on government and private networks—which the United States for the first time definitively attributed to Russia's intelligence services. These technology companies, which were the first to be designated pursuant to E.O. 14024, were targeted because they are funded and operated by the Russian Ministry of Defense and allegedly helped research and develop malicious cyber operations for Russia's three main intelligence agencies.

Taken together, these actions targeting a broad spectrum of disruptive activities beyond Russia's borders mark a significant escalation of U.S. pressure on Moscow. U.S. Secretary of the Treasury Janet Yellen in a statement described the measures as "the start of a new U.S. campaign against Russian malign behavior," implying that additional designations may be on the horizon. For example, a fresh round of sanctions could soon be announced if further harm were to come to the jailed Russian dissident Alexey Navalny.

Next Steps Between Washington and Moscow

This week's wide-ranging sanctions on Moscow suggest that President Biden is likely to continue using sanctions and other instruments of economic coercion to deter and impose costs on the Kremlin. As for what this latest development means for foreign investors and multinational companies, the answer depends in part on how Russia ultimately responds. By reportedly holding out the possibility of a U.S.-Russia summit in a recent call with Russia's President Vladimir Putin, as well as refraining from imposing more biting sanctions, President Biden appears to have left open the possibility of limited retaliation by Russia and an eventual de-escalation of tensions between Washington and Moscow. The Kremlin's public response so far has been muted, including the expulsion of a handful of U.S. diplomats and the imposition of sanctions against eight senior U.S. officials. However, if Russia were to respond more forcefully—such as by launching an incursion further into Ukraine or through renewed cyberattacks against the United States and allied nations—the imposition of more severe sanctions barring U.S. persons from participating in the secondary market for Russian bonds or the designation of a major enterprise in the country's energy sector could occur. At a minimum, the sanctions announced this past week are likely to further increase the risks, and the yield, associated with new issuance of Russian sovereign debt—marking the beginning of a new chapter in U.S. Government efforts to change the Russian Government's behavior, or at least impose significant costs if the Kremlin refuses to alter course.

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