

**SAPRONOV & ASSOCIATES, P.C.**

ATTORNEYS AT LAW

[info@wstelecomlaw.com](mailto:info@wstelecomlaw.com)

[www.wstelecomlaw.com](http://www.wstelecomlaw.com)

1300 I STREET, NW, SUITE 400  
WASHINGTON, D.C. 20005  
TEL. 770.309.0462

5555 GLENRIDGE CONNECTOR SUITE 200  
ATLANTA, GEORGIA 30342  
TEL. 770.399.9100

**CILS “Fireside Chat”**

**Dealing with Russia in the Current Geopolitical Environment**

**Presentation by Walt Sapronov at the Center for International Legal Studies,**

**Bad Gastein, Austria**

[https://lnkd.in/g5ft\\_c5F](https://lnkd.in/g5ft_c5F)

Updated January 5, 2024

A. What are some of the Current Western Sanctions, Russian Countersanctions, and Other Complications in Dealing with Russia today?

- First, a caveat. Our practice in Russia is focused on cross-border transactions and finance. My responses are thus based on practical considerations and our experience in this specialized practice area. We do not purport to comment or give advice about foreign policy or geopolitical trends generally.
  - Also, additional details regarding Western Sanctions, Russian Counter-Sanctions, and their transactional implications for cross-border financial transfers are discussed in our series of Alerts/Webinars (sponsored by Thomson Reuters West LegalEd Center). See <https://wstelecomlaw.com/2023/08/negotiable-hostilities-webinars/>.
1. Prior to Russia’s invasion of Ukraine in 2022, what were the Western sanctions on Russia?
    - There were already multiple rounds of Western sanctions imposed on Russia prior to the invasion of Ukraine in 2022. These sanctions were primarily in response to Russia’s annexation of Crimea in 2014 and its ongoing involvement in the conflict in Eastern Ukraine. Sanctions were imposed by the United States, the European Union, Canada, and other countries
  2. Had any sanctions that began with the takeover of Crimea in 2014 been lifted?

- Briefly, U.S. Sanctions are imposed by the Office of Foreign Assets Control (“OFAC”), an agency of the U.S. Treasury Departments. OFAC has a website that lists all of the so-called “Specifically Designated Nationals” (“SDN List”), including both institutions and persons, subject to sanctions. The assets of entities on the SDN List have generally been blocked and U.S. persons are generally prohibited from dealing with them. For more specifics about Crimea or Ukraine related sanctions, one should check the SDN List on [www.ofac.treasury.gov](http://www.ofac.treasury.gov).
3. How united was “the West” - or European Union – or NATO – about sanctions in the years after the takeover of Crimea?
- Very much so. In fact, former German Chancellor Angela Merkel stated that the Minsk Accords, a set of agreements intended to resolve the conflict in Eastern Ukraine following the declaration of regional independence for the Donetsk and Luhansk regions by pro-Russian separatists, were in fact just a stalling tactic to help arm Ukraine in its fight with Russia.
4. What are the key U.S. sanctions programs in place today?
- Quite a few – the U.S. Sanctions program has targeted hundreds of entities, business sectors, and assets (*e.g.*, vessels) that have “contributed to the situation in Ukraine,” (again, see [www.ofac.treasury.gov](http://www.ofac.treasury.gov)). The program is authorized by a series of U.S. Presidential Executive Orders, initially focused on the takeover of Crimea in 2014 and continually expanding since then. For a general overview on Russian Sanctions, see our Investment Alert at [https://wstecomlaw.com/wpcontent/uploads/2020/02/Foreign-Investment-Alert-Doing-Business-inRussia\\_b.pdf](https://wstecomlaw.com/wpcontent/uploads/2020/02/Foreign-Investment-Alert-Doing-Business-inRussia_b.pdf). and, more recently, <https://wstecomlaw.com/2023/08/negotiable-hostilities-webinars/>
  - In addition to OFAC sanctions, the U.S. has expanded numerous regulatory entry barriers on investments in U.S. technology investments by Russia and other unfriendly states (*e.g.*, China). Among these are expanded CIFIUS regulations (Foreign Investment Risk Review Modernization Act (FIRRMA)), Foreign Agency Registration Act (FARA), U.S. Commerce Department Supply Chain (ICTS) regulations, and “know your customer” (KYC) and money-laundering regulations enforced by the Financial Crimes Enforcement Network (FinCEN) as authorized under Title III of the U.S. Patriot Act. In the telecommunications industry, traditional FCC review of foreign investment has been expanded into a multi-agency review by “Team Telecom,” with particular emphasis on China but certainly applicable to Russian investment as well. Again, see our Investment Alert (above).

- Recently, U.S. sanctions against Russian entities have expanded to include Justice Department scrutiny of cross-border money exchange with emphasis on money laundering enforcement.
- In particular, the recently effective Corporate Transaction Act (CTA) requires, with some exceptions both domestic and foreign companies registered to do business in the U.S. to disclose their direct and indirect beneficial owners to FinCEN. (See our synopsis of the CTA at <https://wstecomlaw.com/2024/01/corporate-transparency-act-cta-a-synopsis>. The CTA will widen the net of information available to FinCEN to include personal information regarding a so-called “reporting company’s indirect owners, individual decision makers, attorneys, and others having “substantial control” over its affairs. Its purpose is to allow FinCEN to identify hitherto unknown investors, both domestic and foreign, thereby preventing illicit money laundering and other financial crimes. Treasury Secretary Janet Yellen has stated that is “key to efforts to oppose Russia’s unjust war in Ukraine”.<https://home.treasury.gov/news/press-releases/jy2017#:~:text=Corporate%20transparency%20can%20bring%20economic,%2C%20we've%20taken%20action>. It is thus not unreasonable to expect that disclosure of Russian, Ukrainian and other Eastern European ownership information will see scrutiny by U.S. authorities.
- Noteworthy also is that U.S. Banks, while exempt from the CTA, are expected to amend their loan documents and to expand KYC protocols to require customers to consent to disclosure of their confidential business ownership information (BOI) filed under the CTA. A customer’s refusal could conceivably trigger a “Suspicious Activity Report (“SAR”) under the U.S Bank Secrecy Act.
- But the most effective sanctions, from our perspective, are the pervasive ones on virtually all Russian financial institutions (*e.g.*, SberBank, VTB Bank) together with Russia’s exclusion from the SWIFT network (<https://home.treasury.gov/news/press-releases/jy0608>). Essentially, these sanctions preclude cross-border financial transfers between Russia and the West. Without securing transaction specific licenses from OFAC, international commercial transactions between Russia and the U.S., as a practical matter, are all but impossible.

5. What are some key Russian Counter-Sanctions?

- Two of the most important are Presidential Decrees (i) No. 302, (dated April 25, 2023) providing a framework for taking over of assets of persons from “unfriendly states”), and (ii) No. 618 (dated September 8, 2022) (with subsequent Guidance, March 27, 2023), requirement payment of a “Contribution” (*i.e.*, an “Exit Tax”) in an amount ranging from 5% to 10 % of the fair market value of the exiting company.

- The first of these (Decree no. 302) essentially authorized the imposition of external Russian management or nationalization of assets on companies owned by unfriendly states. A number of European companies have taken over in this fashion.
- The second of these requires approval of a Russian Government Commission for direct or indirect change of ownership of a foreign subsidiary in Russia. A condition to approval is payment of the “Exit Tax.” The problem is that such a payment is currently not permitted under U.S. law without a special license from OFAC – a “catch 22.” While payment by U.S. persons of taxes and similar fees for transactions that are “ordinarily incident and necessary to the day-day operations in the Russian Federation” are permitted (GL License 13(e)), the payment of the Russian “Exit Tax” is not. <https://ofac.treasury.gov/faqs/1118>. An OFAC license application to pay this tax may take up to six (6) months, with no guarantee of approval.
- For more details on Russian Counter-Sanctions, please see Our Negotiable Hostilities Webinar, Part III. <https://wstelecomlaw.com/wp-content/uploads/2023/08/Attachment-C-Alert-Negotiable-Hostilities-Part-III-Client-Alert-.pdf>

#### B. Prior investments in Russia

- What have US-based companies that had operations or investments in Russia done with these investments?
  - Some have pulled out, some have sold the companies to foreign buyers, others are more or less stuck pending further political development.
- Is it possible to move money out of Russia? What are the challenges?
  - All but impossible. The only alternatives are either transfers to a third country or crypto currency. In each case, a license or informal “no violation of law” opinion from OFAC is highly recommended.
- What are the risks to companies who have exited or are still trying to exit Russia?
  - Confiscation; Nationalization; Criminal prosecution for Russian tax violations; Appointment of Russian directors to Russian subsidiaries of foreign companies.
- What are available mechanisms for dealing with investment disputes?
  - See our Negotiable Hostilities Webinar, Foreign Investment Alert at <https://wstelecomlaw.com/wp-content/uploads/2023/08/Attachment-D-Negotiable-Hostilities-PART-IV-PowerPoint.pdf> and <https://wstelecomlaw.com/wp-content/uploads/2023/08/Attachment-D-Alert-Negotiable-Hostilities-Part-IV-Client-Alert.pdf>

### C. What's next?

- Do Western sanctions have any specific terms under which they would be removed?
  - U.S. Treasury Secretary Yellin says they will stay in place even if there is a peace treaty or settlement.
  -
- As a practical matter, would the end of hostilities in Ukraine be enough to end sanctions?
  - Probably not. See comment re: Secretary Yellin above.
- What are scenarios that could cause lifting of sanctions?
  - Strictly speculative, but possibly a truce – like the one that “ended” the war in Korea in 1953.
    - The Korean Conflict analogy is the one that readily comes to mind. Representatives from the People’s Republic of China (Zhou Enlai) and the U.S. (Secretary of State, Dean Acheson), attempted to negotiate an end to the conflict and prolonged it for two and a half years. Eventually, with the anticipated election of President Eisenhower – and the implied threat of a possible nuclear escalation – the two sides agreed to a ceasefire, one that was not signed by the South Korean President Rhee (but who agreed to comply with it). A parallel today would be a negotiation between U.S. Secretary of State Blinken and Russian Foreign Minister Lavrov – one not yet on the horizon. Whether Ukrainian President Zelensky would agree to any settlement that relinquishes Ukrainian territory to Russia is at least questionable.
- Would Western sanctions likely fade over time as countries struggle to maintain a unified approach?
  - Not sure. But at the very least, dismantling them will require much administrative effort (*e.g.*, vacatur of Executive Orders, adoption or reconsideration of codified regulations). Passing a regulation under the U.S. Administrative Procedures Act typically takes at least a year and sometimes much longer (requiring procedural due process, notice and comment, creation of a record upon which a decision may be based, and agency rule adoption).
- Are Western companies likely to return to doing business in Russia in the future?
  - Russia no. Ukraine yes. Think “lend-lease” and Marshall Plan post WWI. Recently, the U.S. Chamber of Commerce in conjunction with the U.S. Commerce Department organized a conference reaching out to U.S. private enterprises to invest in Ukraine reconstruction.
- Any considerations for companies that eventually might consider returning to Russia? Limit risk that investments can be seized with “capital light” strategies? Use joint

ventures or minority stakes to reduce risk (and also reduce upside)? - Here are a few thoughts based on our transactional experience.

- Foreign project finance transactions, popular in the late 1990's and early 2000's, provide a template for such an infrastructure development projects. They typically involve a U.S. Sponsor and various investors (*e.g.*, Vendor finance, syndicated loans, high yield indenture). The deal is structured with a Vendor, supply agreements, a plan build-operate agreement, Vendor Finance/Syndicated Loans/High Yield indenture – with draw-down of loan tranches tied to milestone developments.

- In the case of high political risk (as in Ukraine), deal protection would entail security agreements – with the collateral or “crown jewels” (*e.g.*, IT rights, spectrum rights) placed in a U.S. bankruptcy remote entity (*e.g.*, “LicenseCo”). Investor recourse would then be to a U.S. entity, with transfer of IP or other Ukrainian assets approved by Ukrainian authorities. Complicated – but could be done.