

How Law Firms Are Riding A Wave Of Russia Sanction Work

By **Marco Poggio**

Law360 (May 27, 2022, 4:15 PM EDT) -- Some attorneys talk about it with enthusiasm; others play it down. But one thing that's clear about the sanctions on Russia is that they have meant new business for law firms in the United States and abroad.

Firms with a footprint in sanctions-related areas — import and export control, compliance, international trade, money laundering and foreign corrupt practices, to mention a few — are seeing a significant surge in demand.

Existing clients keep calling up. New ones arrive.

"Demand has been huge," said Ronald A. Oleynik, a partner and head of the international trade practice at Holland & Knight LLP. "The phone has been ringing off the hook."

Since February, when the first rounds of sanctions hit, Holland & Knight has dealt with issues arising in many industries: aircraft manufacturing, finance, food — even matters involving yachts.

"Certainly the Russian sanctions are the topic of the moment, and they are expanding our work, keeping us busy, and that shows in some metrics about our hiring and expanding of the group," Oleynik said. "From a business of law perspective, it's good for business."

The Surge in Sanctions Work

The two main types of sanctions the U.S. has imposed on Russia are the purview of the U.S. Treasury Department's Office of Foreign Assets Control, commonly known as OFAC, and the U.S. Commerce Department's Bureau of Industry and Security.

Since February, OFAC has added Russian President Vladimir Putin, his daughters, and thousands of Russian businesspeople, banks and companies to a list of "specially designated nationals" including drug traffickers, terrorists, counterfeiters and others the U.S. deems a threat.

U.S. citizens or companies wishing to do business with those entities must apply for licenses from the Treasury, which denies them in almost all cases.

The Bureau of Industry and Security controls exports of American products, and of any goods shipped from the country regardless of their origins. Companies seeking to ship those goods to entities under

sanctions must secure an export license.

In the past, nearly all applications were rejected. Following Russia's invasion of Ukraine, the policy has become stricter: outright denial.

The shifting environment has proved difficult for global companies, many of which have been working in Russia for decades, said John E. Smith, a partner at Morrison & Foerster LLP who served as director of OFAC from 2015 to 2018.

Starting at the end of February, when the Russian army invaded Ukraine, sanctions have been rolled out in waves.

Since then, Morrison & Foerster has dealt with a massive influx of requests from clients trying to manage the extraordinary compliance risks they are facing.

"It sounds immodest — but the requests are pouring in," Smith said. "We're not getting a lot of sleep these days."

Potential penalties for violating the sanctions exceed \$300,000 per violation, or are calculated at twice the amount of a financial transaction violating the sanction. In the case of financial institutions that used to make daily transactions with Russian entities, penalties can reach hundreds of millions, if not billions, of dollars, he said.

"The stakes are as high as they come," Smith said.

Smith said it's hard to project the profit the firm and others will generate from its heightened sanctions work. Law firms are expending significant additional resources to keep pace with the demand, he said.

"I think every major law firm with a sound sanctions practice is busy these days," he said.

The never-seen-before level of coordination among Western countries and their allies has increased the need for firms that can handle not only U.S. sanctions, but those from other countries as well, in particular the United Kingdom and European Union.

Scott M. Flicker, a partner at Paul Hastings LLP and leader of the firm's global trade controls practice, said there aren't that many firms that can handle the work. He thinks there are fewer than 20.

"Fewer firms, more work — means a huge explosion in demand for those firms who do it," Flicker said.

Crowell & Moring LLP has also seen a boost to its sanctions-related business since February.

"This has been the busiest time I've seen in the six years I've been in private practice," said partner Carlton Greene, who spent 15 years working in government, including nine at the Treasury Department. "I think the breadth and speed of those sanctions is really causing a lot of people to come in. And that makes sense, given that Russia is the world's 10th largest economy."

Attorneys at the firm have been billing over 200 hours for sanctions assistance to clients, he said.

Abram J. Ellis, a partner at Simpson Thacher & Bartlett LLP, said since the crisis in Ukraine erupted the firm has experienced a significant increase in business.

"Our attorneys have been exceptionally busy working on economic sanctions matters," he said.

The firm declined to comment on the revenue flow from its sanctions work.

Several major U.S. firms, including Arnold & Porter, Hogan Lovells and White & Case LLP declined to comment on their sanctions-related business.

A Global Cycle of Instability and Demand

The evolving geopolitical landscape has long fueled law firm business.

Wars in Iraq and Afghanistan fueled defense industry exports for years, which in turn gave lawyers a lot of work to do in International Traffic in Arms Regulations, or ITAR.

Changes in foreign policy such as the opening up — and then winding down — of relationships with Cuba, the trade war with China, and sanctions on Iran, North Korea and Myanmar have all meant that for firms active in sanctions and trade control, business has been good. The sanctions regime that unfurled since February on Russia only gave it its latest boost, attorneys say.

"There's always something going on in the world," said Oleynik of Holland & Knight.

Nabeel Yousef, a partner at Freshfields Bruckhaus Deringer LLP's Washington, D.C., office, said the cyclical nature of sanctions has started to feel familiar.

"Every two to three years, we kind of have this cycle where there's a crisis, and we don't sleep for a couple weeks or a couple of months, and then it starts to die down," he said. "The difference now, as opposed to previous sanctions events, is that the intensity and the duration feels much more significant."

Unlike the sanctions previously imposed on countries around the world, those on Russia are having a massive collateral impact on the world's economy. That is because Russia's economy, one of the world's largest, has since the fall of the Soviet Union been deeply integrated into the West in terms of money and energy flow.

"The Russian economy is so consequential that there are very few major corporations that haven't been implicated in some way, shape or form with respect to dealings with Russia," said Adam M. Smith, a partner in the Washington, D.C., office of Gibson Dunn & Crutcher LLP. Smith served as an adviser to the director of OFAC, then to President Barack Obama.

Smith said the sanctions regime on Russia has created significantly more demand on a global basis in an area where attorneys already bill over 2,400 hours per year.

"More and more lawyers in this space are incredibly busy," he said. "I wouldn't want to call it a boon because that's sort of a positive connotation. Right now, what's behind the sanctions, of course, is quite tragic."

While in the case of Iran or Cuba companies only had to deal with U.S. sanctions, the sanctions regime on Russia involves multiple jurisdictions and a more complex set of restrictions on trade.

Most of the work Gibson Dunn is doing in the area is helping clients navigate the new restrictions, assisting companies that are trying to leave Russia and avoid blowback from Russian authorities, and helping businesses understand "what they can and can't do."

Under the new sanctions, it is now prohibited for U.S. people or entities to be involved in providing new investment in Russia, but there is limited guidance as to what that means.

Things get even trickier: Under the U.S. system, a company that is owned 50% or more by a sanctioned entity is also viewed as sanctioned by U.S. law. But the same is not necessarily true in the United Kingdom, or the European Union, Smith said.

Gibson Dunn attorneys now routinely assist clients with those questions.

"We get a lot of different questions from parties on how to view companies that have sanctioned parties in their ownership chain, and how to view that from the Washington perspective, or Brussels perspective, and the London perspective, which can have different answers," Smith said.

Although it is not often taught thoroughly in law schools, junior lawyers in particular are increasingly interested in getting their feet wet in sanctions law, attracted by its dynamism, according to several attorneys who work in this field.

Seasoned attorneys, meanwhile, are often "commandeered" into such work by their clients, many of whom never before had to worry about sanctions, but must now confront them as part of their business, Smith said.

"It's sort of a broad-based growth of this area, which is cross-cutting many different operations of the firm and many different specializations," he said.

Higher demands in sanctions and export control practices, catalyzed by the events in Ukraine, has spurred hiring — Gibson Dunn just hired two sanctions attorneys for its offices in Hong Kong and Singapore — but also training of lawyers already on board, particularly in the United States and Europe.

Demand Is Up in Asia, Too

The Russia sanctions are unprecedented in part because of the large number of countries that imposed them.

Alexander Dmitrenko, a partner at Ashurst's Tokyo office who specializes in sanctions and has for years advised companies with investments in Russia, said the demand for sanction services has been "phenomenal."

"People came to me very quickly. I had to turn away some mandates just because I couldn't possibly add them on top of such overwhelming demand flow," he said. "The last three months have been, I would say, excruciatingly busy for me."

Dmitrenko, who previously worked as head of sanctions for Asia at Freshfields and is qualified as a New

York attorney — he's a graduate of New York University School of Law — said the month of March, when new sanctions were issued almost daily, was particularly hectic.

"I was in high demand, which is nice for my practice; obviously. It's not always nice for my clients, because sometimes they have to make tough choices," he said. "They may have made major investments into the Russian economy, which are long-term, only to see those investments nearly evaporate in value."

Ashurst has expanded its sanctions team in the United Kingdom and in Europe, and it's now actively looking to hire attorneys for its Asia practice.

Some large companies seeking to suspend or terminate operations in Russia have delayed their exits from that market because of the pushback from Russian authorities. Dmitrenko's expertise is particularly valuable, he said, because he has a Russian law degree and is of Ukrainian heritage.

Chinese companies are also mindful of exposure to secondary U.S. sanctions, namely penalties the government imposes on countries that deal with sanctioned entities, Dmitrenko said.

During a recent virtual presentation in Hong Kong, he asked the audience if they believed U.S. sanctions would need to be followed, even if they have a direct negative impact on their business with Russia. About 98% of them responded they would likely end their trade relationships, he said.

Demand for sanctions expertise has also sprouted in Singapore, a country that has never before joined global sanction regimes but has imposed penalties on Russia, in part as a message meant to deter China's expansionism in the Pacific region.

Eduardo Ramos-Gómez, a partner at Duane Morris LLP's office in Singapore, said sanctions practice is making its first appearance in the island state.

"We have never been concerned with sanctions," he said. "We have been working on it. We have been reviewing and analyzing. Cynically, I will tell you [it] has been good for business."

Will the Demand Keep Up?

Jen Fernandez, a partner at Sidley Austin LLP, said that when the sanctions hit, corporate clients with operations and employees in Russia needed immediate assistance.

"Especially initially, there was a huge amount of work that was very time-sensitive," Fernandez said.

So far, the workload has continued to be heavy because the sanctions have kept changing. But it remains to be seen whether the uptick in sanctions-related business will be sustained in the future, she said.

Many companies are seeking to suspend or abandon their operations in Russia, not just because sanctions are becoming increasingly complex and difficult to comply with, but also because of logistical issues and reputational risk.

"If we basically scared everyone off of Russia," Fernandez said, "then even though these are long-term rules, there isn't sort of long-term significant business."

Domestic politics also cast a shadow on sanctions. President Joe Biden's Cabinet has used a very different approach from the previous two administrations, attorneys say.

"A change of administration is an overwhelming factor in the sanctions regime," John Smith of Morrison Foerster said.

Historically, sanctions have been quickly imposed, but take a lot longer to get lifted. In many instances, they have remained in place for years or even decades.

One reason is that sanctions take time to have an effect on their targets. Domestic politics can also make it hard to lift sanctions, because presidents are wary of looking weak if they do it, and Congress can sometimes tie their hands by passing laws that keep sanctions in place.

Overall, firms seem ready to bet that sanctions work will keep them busy in the long run.

Greene of Crowell & Moring said, "The firm supports the practice, and understands that it's an area that's going to continue to grow."

Imposing and promulgating sanctions is only a first step. Next comes enforcement, with U.S. and foreign regulators issuing queries, subpoenas and potential enforcement actions — all of which require legal handling and sophisticated advice for clients.

"There will be this enforcement part as well that will keep people on their toes and compel people to really be careful about compliance," Adam Smith of Gibson Dunn said. "We are in the first couple of innings of what will likely be an extra innings game."

--Editing by Robert Rudinger.