

Newsletter

Liability for compliance with anti-Russian sanctions

April 8th, 2022

Dear Ladies and Gentlemen,

A **bill** criminalizing the abuse of authority committed for the purpose of compliance with anti-Russian sanctions was submitted to the Russian State Duma (the lower chamber of Parliament) on April 7, 2022 (hereinafter the "**Bill**").

The bill proposes amendments to the existing Para. 2 of Article 201 of the Criminal Code of the Russian Federation "Abuse of Authority" by adding an aggravating factor for such abuse when it is committed for the purpose of compliance with the decisions or actions of foreign states, unions of states, or international organizations on the introduction of restrictive measures against Russia.

The current wording of the Bill refers to the sanctions imposed against the Russian Federation. Even though it is unclear from this wording whether the Bill also covers compliance with sanctions imposed against Russian individuals or legal entities, we expect that such an interpretation will prevail.

Thus, the Bill does not create any new special patterns of a crime, and consequently all existing clarifications regarding the offense can be applied to it. Please note that the Bill may be further amended and modified during its consideration in the Russian State Duma. Please note that Russian business associations have sent objections to this Bill to the Russian Parliament.

In this newsletter, we will provide you with an analysis of the key provisions of the Bill:

1. Who can be held criminally liable for "abuse of authority"?

According to Para. 11 of **Resolution No. 21 of the Plenary Session of the Supreme Court of the Russia Federation dated June 29, 2021** (hereinafter the "**Resolution**") this offense applies to people who perform managerial functions at:

- (A) A commercial or other organization whose main purpose is to generate profit
- (B) A non-profit organization which is not a state or local government body, state or municipal institution, state corporation or state-owned company

In accordance with the Notes to Article 201, criminal liability may be imposed on a person who performs the functions of the sole executive body (e.g. general director), board members, their representatives, as well as individuals who perform administrative duties at the company.

2. What is an "abuse of authority"?

Criminal liability shall apply to the abovementioned persons who perform managerial functions at such organizations to the detriment of these organizations' lawful interests or for the purpose of deriving benefits and advantages for themselves or for other persons or inflicting harm on other persons, if such a deed entails substantial harm to the rights and lawful interests of individuals or organizations or the legally protected interests of society or the state.

According to Para. 2 of the Resolution, "abuse of authority" means committing acts which, despite being directly related to the exercising of one's job rights and duties, were not related to the company's needs

and run objectively counter to the legitimate interests of the company, as well as the aims and objectives for which a person had been assigned the respective rights and duties.

Notably, an action may be considered as an “abuse of authority” only if it is committed against the interests of a company, where the respective executive has authority. However, a criminal case may be initiated regardless of the will of the company (its stakeholders) in the event of harm to the interests of other organizations, as well as the interests of citizens, society or the state.

3. What kind of liability does the Bill propose?

3.1. The Bill provides for the following penalties for individuals (please note that there is no concept of corporate criminal liability in Russia) for an abuse of authority committed for the purpose of compliance with anti-Russian sanctions:

- (A) A fine of up to RUB 1,000,000.00 (approximately USD 12,620.00/EUR 11,600.00) or five years’ worth of the convicted person’s income, or
- (B) Forced labor ¹ for up to five years with the deprivation of the right to hold certain company positions for up to three years, or
- (C) Imprisonment for up to 10 years with the deprivation of the right to hold certain company positions for up to three years

3.2. It should be noted that we have never encountered cases of prosecution based on Article 201 of the Criminal Code “Abuse of Authority” for the liquidation/abandonment of a company due to withdrawal from the market or in the context of the refusal to perform certain obligations.

However, considering the existing context, law enforcement practices may change rapidly.

4. Will the amendments have a retroactive effect?

In its current version, the law is not retroactive. A person cannot be held liable if the relevant decisions or actions are made (taken) prior to its adoption.

At the same time, the enforcement of such decisions and/or the application of sanctions clauses following the adoption of the Bill could include criminal liability.

Please note that there are no universal solutions for minimizing risks in the current circumstances. We will be happy to advise you on your specific request.

We hope that the information provided herein will be useful for you. If any of your colleagues would also like to receive our newsletters, please send them the link to complete a [Subscription Form](#). If you would like to learn more about our [Dispute Resolution Practice](#), [White Collar Crime, Compliance and Investigations Practice](#) and [Economic Sanctions and Compliance Practice](#), please let us know in reply to this email. We will be glad to provide you with our materials.

Note: Please be aware that all information provided in this letter was based on information obtained from open sources. Neither ALRUD Law Firm, nor the authors of this letter bear any liability for the consequences of any decisions made in reliance upon this information.

¹ Forced labor consists of forcing a convicted person to work in places determined by the institutions and bodies of the penal system, where deductions are made from the convicted person’s wages and paid to the state budget.

If you have any questions,
please do not hesitate to contact
ALRUD partners.



Sergey Petrachkov

Partner
Dispute Resolution,
Restructuring and Insolvency

E: spetrachkov@alrud.com



Magomed Gasanov

Partner
Dispute Resolution,
Restructuring and Insolvency,
Economic Sanctions and Compliance,
White Collar Crime, Compliance and
Investigations

E: mgasanov@alrud.com



Dmitry Kuptsov

Partner
Dispute Resolution,
Restructuring and Insolvency

E: dkuptsov@alrud.com

Sincerely,
ALRUD Law Firm