

Press release

## Dentons and Legal Insight hold workshop

### “US Sanctions, Export Controls and Foreign Investment in the USA”

Moscow, October 9, 2019 – Dentons law firm and Legal Insight magazine held a meeting for heads of legal departments with American experts on sanctions, export controls and investment in the United States, Dentons partners **Michael Zolands** and **Jason Silverman**. Michael and Jason talked about:

- Sanctions programs against Venezuela, Iran and Cuba which affect the business of Russian companies, trends in the application of sanctions against Russia and US bills;
- Export controls in the United States, including for goods that use American components, technologies, equipment, or software, even if they are not manufactured in the United States;
- The new rules for approving investment in strategic sectors of the US economy, noting that these rules are applicable even if you indirectly invest in US assets through shares in companies registered in another country.

#### Sanctions

For nine months of 2019, OFAC (The Office of Foreign Assets Control, an agency of the US Treasury Department) exacted fines of US\$1.3 billion under 21 sanctions cases. “OFAC interprets US jurisdiction widely, and refusing to cooperate with them will be more expensive,” says Michael Zolands. A case in point is the British Arab Commercial Bank, which in September 2019 reached an agreement with OFAC to reduce the fine for violation of the sanctions regime from US\$229 million to US\$4 million. “Sanctions will not go anywhere in the near future, and an effective system of sanctions compliance is the key to business success. In May 2019, OFAC first published recommendations for evaluating such a system, and its existence in the company and compliance with OFAC recommendations would be a mitigating circumstance if OFAC initiates an investigation into your company,” commented Zolands.

#### US export controls

The key takeaway point from the export control session is that even if you do not use goods manufactured in the United States, you risk violating US export control requirements, which may result in a fine, restrictions on the sale of goods in or purchase of goods from the United States, the arrest of management or owners of the company in the United States. Answering questions from attendees, Jason Silverman examined the situation where a Russian manufacturer uses components which may come directly or indirectly from the US and sells its products abroad. How can the company find out whether the goods it is using or producing fall under US export control, and what are the restrictions on selling such products abroad? How should data be documented in case of verification? All this should be reflected in the company's trade compliance system.

#### Investment in strategic sectors of the US economy

Looking at the features and innovations in the procedure for obtaining approvals for investment in strategic sectors of the US economy, Jason Silverman noted that CFIUS (The Committee on Foreign Investment in the United States) is a collegial body composed of representatives of 13 government agencies, including the Treasury and the Department of Defense, whose task is to protect national security. Firstly, this means that informal consultations with CFIUS are not possible, because it is impossible to get around all constituent representatives, and decisions are made only by consensus. Second, national security is interpreted very broadly and, as it became clear from a recently blocked transaction on the investment of a Chinese company in the Grindr dating site, includes the security of

data on US citizens. The session was held in an interactive mode: the speakers answered participants' questions and, as a result, it became obvious that even if you are a minority shareholder in an American startup with no voting rights on the board of directors or you buy a share in a German company that owns a small stake in an American company or an asset in the United States, you may need to get a permit for a transaction. Silverman spoke of how to determine whether it is necessary to submit an application for approval of the transaction, how long it will take, and warned that the questions in the questionnaire also ask about business in sanctioned jurisdictions, i.e. are used as part of a tracking mechanism for potential violators.

Dentons Russia Managing Partner **Alexei Zakharko** said "The US sanctions are so extensive that they have to be considered in almost all Russian investment projects involving foreign investors, even if the investors aren't US persons. Parties are now attempting to hedge against future enhanced sanctions in advance. Sanctions lawyers' important task today is to devise mechanisms for parties to exit projects as painlessly as possible in case the sanctions context gets worse, or to redesign projects taking into account acceptable levels of risk for the parties."

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\* The American Lawyer 2018 – Ranking of 100 international law firms by number of lawyers (Global 100).