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Expanded Russia, Iran, and North Korea Sanctions: Top 10 Takeaways

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President Trump signs the "Countering America's Adversaries Through Sanctions Act," which — among other measures — requires Congressional review to ease Russia-related sanctions.

On Wednesday, August 2, 2017, President Trump signed into law the Countering America's Adversaries Through Sanctions Act (the Act). The Act significantly expands and codifies US sanctions targeting Russia, and it adds several measures to the already comprehensive US sanctions on Iran and North Korea. The Act passed both houses of Congress last week, with a vote of 419-3 in the House of Representatives and 98-2 in the Senate.

The Act is particularly significant because it codifies many of the Russia-related sanctions measures introduced by President Obama through executive orders, effectively requiring President Trump to secure Congressional approval before easing the targeted US sanctions relating to Russia. Russian President Vladimir Putin has announced his intention to impose retaliatory sanctions in response to the Act, and the Russian Foreign Ministry reportedly ordered a more than 60% cut in US diplomatic staff and suspended use of two US facilities in Russia.

Here are the top 10 takeaways from the Act:

Russia-Related Sanctions

1. **Codifying and Expanding Existing Sanctions.** The Act codifies the following Executive Orders issued by President Obama: Executive Orders 13660, 13661, 13662, 13685, 13694, and 13757. Among other measures, these Executive Orders imposed a virtual embargo on the Crimea region of Ukraine; imposed sanctions against perpetrators of malicious cyber activity and designated Russian and Ukrainian individuals, including government officials and oligarchs; and provided the underlying authority for Office of Foreign Assets Control (OFAC) Directive 1, Directive 2, Directive 3, and Directive 4.

   The first three OFAC Directives prohibit US persons from extending medium- to long-term credit, or otherwise dealing in "new" debt (and in some cases "new" equity), of designated Russian financial institutions, energy firms, and companies in the defense sector. Directive 4 prohibits US persons from providing goods, software, technology, and services in support of certain non-conventional oil projects in Russia.

The Act expands certain of these Executive Orders and Directives:

- The Act gives the US Treasury Secretary the power to impose sanctions pursuant to Executive Order 13662, including the financing-type sanctions found in the OFAC Directives, against state-owned parties in Russia in the railways, metals, and mining sectors of the Russian economy. Prior to the Act, the targeted sectors were limited to the financial, energy, and defense sectors.

- No later than 60 days after enactment of the Act (or approximately the beginning of October), the US Treasury Secretary must modify Directive 1 to reduce the "new" debt prohibition to **14 days**, down from the current 30 days, and Directive 2 from the current 90 days to **60 days**. These 14-day and 60-day changes will be effective 60 days after the Directives are modified, which provides some time for US parties to adjust to this change. Notably, current OFAC interpretation (see OFAC FAQ # 419) is that extending payment terms of more than 30 days to a Directive 1 target violates the "new debt" prohibition, meaning that payment terms to Directive 1 parties will need to be reduced to no more than two weeks. The same is the case with respect to Directive 2 targets, for which the payment term requirement will be reduced to 60 days.

  - The Act also requires the US Treasury Secretary to, within 180 days of enactment, submit to Congress a report "describing in detail the potential effects of expanding sanctions under Directive 1 ... to include sovereign debt and the full range of derivative products."

- No later than 90 days after the Act's enactment (or approximately the beginning of November), the US Treasury Secretary must modify Directive 4, to prohibit US persons not only from providing goods, services (other than financial services), and technology to projects *in Russia* relating to the exploration or production for oil for deepwater, Arctic offshore, or shale projects, but to such projects anywhere in the world. Notably, the Directive's expansion appears to reach non-conventional exploration and production beyond Russia, applies only to "new" deepwater, Arctic offshore, or shale projects, and only those projects where the Directive 4 target "has a controlling interest or a substantial non-controlling ownership interest in such a project defined as not less than a 33 percent interest."

  - This "new" and "substantial non-controlling ownership interest" language was added by the House to the Senate version, in an attempt to ease concerns raised by US energy firms and European allies regarding the breadth of the provision. This new provision will be effective 90 days after the US Treasury Secretary modifies Directive 4.

2. **Congressional Oversight of the President's Russia-Related Actions**. Notably, the Act gives the US Congress the opportunity during a 30-day review period to disapprove of any effort by the President to reduce, waive, or eliminate US sanctions relating to Russia. Section 216 of the Act gives Congress the power to review (i) any action to terminate the application of the sanctions in the Act, the codified Executive Orders mentioned above, and certain other statutes; (ii) any action to waive the application of sanctions targeted at certain persons, such as parties added to the Specially Designated Nationals and Blocked Persons list (SDN List) or the List of Sectoral Sanctions Identifications parties (SSI List), or (iii) any "licensing action that significantly alters United States' foreign policy with regard to the Russian Federation."

3. **Energy Pipeline Secondary Sanctions.** The Act gives the President the power to impose, but does not require, secondary sanctions on foreign persons that knowingly (i) make an investment of US$1 million or more (or US$5 million or more over a 12-month period) that directly and significantly contributes to enhancing Russia's ability to construct energy export pipelines or (ii) sell, lease, or provide to the Russian Federation, goods, services, technology, information, or support (valued at US$1 million or more, or during a 12-month period with an aggregate value of US$5 million or more) that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipelines.

- The Act appears to require the President to impose any such sanctions "in coordination with allies of the United States." This language was added to the House version of the Act in response to concerns raised by European allies, in light of such projects as the proposed Nord Stream 2 natural gas pipeline from Russia to Germany.

4. **Cybersecurity Sanctions.** On or after 60 days of enactment, the Act requires the President, subject to a national security interest waiver, to impose asset-blocking as well as travel sanctions, including certain secondary sanctions, on any person who knowingly engages in significant activities that undermine the cybersecurity of any person or government, including a democratic institution, on behalf of the Russian government. Any national security interest waiver submitted by the President to avoid the imposition of sanctions must be accompanied by a certification that the Russian government has "made significant efforts to reduce the number and intensity of cyber intrusions conducted by that Government." The Act includes a definition of what constitutes "significant activities undermining cybersecurity," which includes, among other activities, significant destructive malware attacks.

5. **Secondary Sanctions Targeting Certain Activities Relating to Russian Intelligence and Defense Sectors, Sanctions Evaders, and Privatizations.** The Act requires the President to impose secondary sanctions on those (including non-US persons) who he determines:

- Have knowingly engaged in a significant transaction with "a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation." Secondary sanctions are to be imposed 180 days after enactment of the Act. The Act requires the President to issue guidance or regulations no later than 60 days after the date of the Act's enactment to "specify the persons that are part of, or operate for or on behalf of, the defense and intelligence sectors of the Government of the Russian Federation."

- Are responsible for, complicit in, or have supported serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Russian government. The Act also requires sanctions on foreign persons that (i) knowingly have materially violated, attempted to violate, or conspired to violate or caused a violation of US sanctions or the Ukraine Freedom Support Act of 2014, or (ii) "facilitates a significant transaction or transactions, including deceptive or structured transactions" for or on behalf of a person that is a target of US sanctions, or for that person's child, spouse, parent, or sibling.

- With actual knowledge make an investment of US$10 million or more (or any combination of investments not less than US$1 million each, which in the aggregate equals or exceeds US$10 million in a 12-month period), or facilitate such an investment, if the investment "directly and significantly" contributes to the ability of the Russian government to "privatize state-owned assets in a manner that unjustly benefits" Russian government officials or "close associates" or family members of those officials. The Act does not define the terms "investment," "unjustly benefit," and "close associates."

6. **Sanctions Targeting Crude Oil Projects and Corruption.** The Act limits the discretion of the President under the Ukraine Freedom Support Act of 2014 by requiring the President to impose secondary sanctions on a foreign person that knowingly makes a "significant investment" in a "special Russian crude oil project" as well as foreign financial institutions that support such investments. The Ukraine Freedom Support Act does not define the term "significant investment" and defines a "special Russian crude oil project" to be a crude oil extraction project in Russian deepwater (*i.e.*, more than 500 feet deep), Arctic offshore locations, or shale formations. The President can waive the imposition of such secondary sanctions by invoking a national interest waiver.

- The Act also limits the President's discretion under the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, requiring him to impose secondary sanctions against a Russian government official or close associate or family member involved in an act of significant corruption in Ukraine, Russia, or elsewhere.

7. **Sanctions Relating to Support for the Syrian Government.** The President is required to impose asset-blocking and travel sanctions on any person determined by the President to have knowingly exported, transferred, or otherwise provided significant financial, material, or technological support to the Syrian government in acquiring or developing advanced conventional weapons, ballistic, or cruise missile capabilities, as well as biological, chemical, and nuclear weapons and related technologies.

8. **Secondary Sanctions Described.** The so-called "secondary sanctions" described in the Act target the activities of non-US persons. These secondary sanctions can be applied to parties beyond the jurisdiction of the United States, and they effectively take the form of a denial of US benefits, as opposed to monetary penalties available under US "primary" sanctions (which apply to US persons).

- In the context of the Act, the menu of secondary sanctions from which the President can select (generally, he must select up to five) includes the following:

  - Denial of export-import bank financing and assistance
  - Denial of US export licensing
  - Prohibition against US financial institution making loans or providing credits of more than US$10 million in any 12-month period
  - Use of US government power to oppose a loan from a non-US financial institution to the sanctioned party
  - Denial of US Government procurement
  - Prohibition against transactions in foreign exchange that are within US jurisdiction
  - Prohibition against transfers of credit or payments between financial institutions or by, through, or to any financial institution, if within US jurisdiction
  - For foreign financial institutions, (i) loss of designation as a primary dealer in US Government debt instruments by the Board of Governors of the Federal Reserve System and the Federal Reserve Bank of New York and/or (ii) revocation of right to serve as an agent of the US Government or to serve as repository for US Government funds
  - Effect on the property rights of sanctioned persons for property within US jurisdiction (*i.e.*, asset blocking similar to those on OFAC's SDN List)
  - Prohibition against US persons investing in or purchasing significant amounts of equity or debt instruments of the sanctioned persons

- Travel prohibitions directed at corporate officers, principals, or controlling shareholders or principal of, or a shareholder with a controlling interest in the sanctioned person
- Placement of any of these secondary sanctions on the principal executive officer or similar officers of the sanctioned person

Iran

Largely in response to Iran's ballistic missile tests, the Act imposes new sanctions targeting Iran's defense sector and the Islamic Revolutionary Guard Corps (IRGC).

9. **Asset-Freezing and Terrorism-Related Sanctions.** The Act requires the President to impose asset-freezing sanctions (and for non-US persons, a travel ban) against any US or foreign person that knowingly engages "in any activity that materially contributes to the activities of the Government of Iran with respect to its ballistic missile program" or programs to develop, deploy, or maintain weapons of mass destruction. Subject to his exercise of a national security interest waiver, the President must also impose asset-freezing sanctions (and for non-US persons, a travel ban) against any US or foreign person who knowingly contributes to the "supply, sale, or transfer" to Iran of "battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems ... or related materiel, including spare parts."

- The Act also requires the President to impose the same sanctions on those who knowingly provide "technical training, financial resources or services, advice" or other services in supporting the use of the material listed. 90 days after the Act's enactment, the President must impose terrorism-related sanctions pursuant to Executive Order 13224 against the IRGC and its "officials, agents or affiliates." Notably, significant transactions with the IRGC can already subject non-US persons to US secondary sanctions, which survived the implementation of the Nuclear Agreement with Iran in January 2016.

North Korea

Largely in response to North Korea's successful test of an intercontinental ballistic missile on July 4, 2017, the House of Representatives recently introduced certain North Korea-related provisions to the Act. Among other measures, the Act requires the US Secretary of State to provide Congress, within 90 days of enactment, a determination as to whether North Korea should be considered a state sponsor of terrorism.

10. **Additional Designation Authority and Human Rights Provisions.** The Act broadens the list of persons the President must impose asset-blocking measures under the North Korea Sanctions and Policy Enhancement Act of 2016 (NKSPEA). These additional targets include those who knowingly procure certain precious metals from North Korea; sell or transfer rocket, aviation or jet fuel to North Korea; provide fuel or supplies for designated North Korean vessels or aircraft; provide insurance services to vessels owned or controlled by the North Korean government; or maintain a correspondent account with any North Korean financial institution.

- The Act also expands the President's discretionary authority to designate parties under the NKSPEA, including parties who knowingly acquire coal, iron, or iron ore from the North Korean government; purchase significant amounts of textiles from North Korea; or sell or transfer significant amounts of crude oil, condensates, petroleum products, or natural gas resources to the North Korean government, among other activities. Under the human rights-related provisions, the Act prohibits most goods produced by North Korean labor from entering the US and allows for the imposition of sanctions on most parties who knowingly employ North Korean labor.

- These new North Korea sanctions presumptively increase the prospects of designations of parties from China in the coming weeks.

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