Congress Overwhelmingly Passes New Sanctions Against Iran, Russia, and North Korea

On July 27, 2017, Congress overwhelmingly passed the Countering America's Adversaries Through Sanctions Act, imposing additional sanctions on Iran, Russia, and North Korea. This bill was passed by veto-proof majorities in both houses, and the comprehensive sanctions legislation is now before President Trump. Reports indicate that President Trump plans to sign the bill, although he has not yet done so or definitively stated his intentions. This bill is the first major sanctions legislation passed by the current Congress and the first major sanctions overhaul since the Joint Comprehensive Plan of Action (JCPOA) with Iran. The legislation contains significant – and some controversial – changes to U.S. sanctions policy, especially with respect to Russia. One feature is expanded secondary sanctions that the U.S. government can impose against non-U.S. persons for conducting business with certain sanctioned persons or industries in Iran, Russia, and North Korea. Secondary sanctions have historically proven to be geopolitically controversial, and the bill has already garnered protest from EU and Russian political leaders. Congress also codified existing sanctions on Russia and made several new Russian sanctions mandatory, removing the President's discretion to unilaterally impose, rescind, or waive them. This legislation shows broad bipartisan support for an active sanctions policy, and puts political pressure on President Trump, who had sought to improve relations with Russia.

The bill is a combination of three separate sanctions bills – the Countering Iran's Destabilizing Activities Act of 2017, the Countering Russian Influence in Europe and Eurasia Act of 2017, and the Korean Interdiction and Modernization of Sanctions Act. On July 25, 2017, the House of Representatives passed the bill 419-3, and two days later, the Senate passed the bill 98-2. We summarize below the important provisions of the new rules and key takeaways from these policy developments.

Iran

The Trump administration and Congress have sought new avenues to sanction Iran for its hostile actions, particularly its ballistic missile program, while remaining compliant with the Joint Comprehensive Plan of Action (JCPOA) (see our previous alert). The current bill targets Iran's military and ballistic missile program, those responsible for human rights abuses in Iran, and the Islamic Revolutionary Guard Corps (IRGC).

The bill requires the President to impose sanctions on U.S. and non-U.S. individuals or entities who engage in certain activities related to Iran. Affected persons will be blocked (or designated as a Specially

Designated National (SDN)), and if the person is a non-U.S. person, the U.S. will issue a visa ban relating to that person.

- **Supporters of Iran's Ballistic Missile Program**. This includes individuals or entities that materially contribute to Iran's ballistic missile program or any other Iranian program related to weapons of mass destruction, as well as those who knowingly provide or attempt to provide support to such individuals or entities. These sanctions extend to successor entities, subsidiaries, beneficial owners, and agents of such individuals or entities.

- **Suppliers of Weapons or Military Items to Iran**. This includes those who materially contribute to the supply, sale, or transfer of certain weapons or military items to Iran, as well as those who knowingly provide training, financial resources, or other service or assistance related to the provision of weapons or military arms to Iran.

The bill also imposes sanctions on the IRGC under Executive Order 13224 (the EO applicable to sponsors of terrorism). This measure is largely symbolic, as the IRGC has already been designated as an SDN. Unlike the original Senate version of these sanctions, the bill does not designate the IRGC as a Foreign Terrorist Organization (FTO). Additionally, the bill authorizes, but does not require, the President to impose sanctions on those responsible for human rights violations in Iran.

Finally, the bill codifies the designation of SDNs designated under two previous Executive Orders relating to Iran. This assertion of authority by Congress effectively lessens the power of the President to delist these individuals and entities from the SDN list. The bill provides a waiver process for delisting, but requires the President to report to Congress that such waiver is "vital to the national security interests of the United States."

Russia

The bill provides for a sweeping expansion of current sanctions against Russia, including expansion of sectoral sanctions and additional secondary sanctions that affect non-U.S. entities doing business with Russia. The bill also codifies existing sanctions and requires the President to submit to congressional review any action that would weaken sanctions on Russia.

Sectoral Sanctions

The bill modifies and strengthens sectoral sanctions targeting certain sectors of the Russian economy and authorizes OFAC to issue additional sectoral sanctions in the future against the Russian railway, metals, and mining sectors.

Directive 1 of the Sectoral Sanctions Identification (SSI) list, applicable to the Russian financial sector, currently prohibits dealing in debt of listed entities with a maturity of longer than 30 days. The bill would reduce this period to only 14 days. Similarly, Directive 2, which applies to the Russian energy industry, currently prohibits dealing in debt of listed entities with a maturity of longer than 90 days. The bill would reduce this period to 60 days.

Directive 4, which targets the Russian oil industry, currently prohibits U.S. persons from providing goods, services, or technology in support of exploration or production for deepwater, Arctic offshore, or shale projects that have the potential to produce oil within Russian waters or territory. The bill greatly expands

Directive 4 to apply to new deepwater, Arctic offshore, or shale projects anywhere in the world if a listed individual or entity has a controlling interest or a 33% or greater interest in the project.

Secondary Sanctions

Many of the additional sanctions in the bill apply extraterritorially, and could have significant impact abroad. The sanctions promise to be controversial, particularly those that relate to the development of Russian energy export pipelines, such as the Nord Stream 2 pipeline that involves several European companies. EU officials have already made public statements against the proposed sanctions. They warned the United States that they have paths to oppose secondary sanctions that harm EU interests, including a potential WTO complaint and use of the EU blocking statute that prohibits compliance with extraterritorial sanctions.

The secondary sanctions are similar in structure to existing Iran sanctions and offer a menu of available sanctions, with the President having the discretion to choose which five (or more) sanctions to impose. The sanctions available to the President include:

- Revocation of U.S. Export-Import Bank privileges;
- Ineligibility for U.S. export licenses;
- Loss of access to loans from U.S. financial institutions totaling more than $10 million in a 12-month period;
- Using U.S. votes and influence to oppose loans from international financial institutions;
- Prohibition from being designated a primary dealer in U.S. government debt instruments or a repository of U.S. government funds;
- Debarment from being a U.S. government contractor;
- Prohibition on foreign exchange transactions;
- Blocking from U.S. financial markets;
- Blocking the property and interests in property (designation as an SDN);
- Bans on U.S. persons from investing in equity or debt;
- Exclusion of corporate officers from the United States; and
- Sanctions on principal executive officers.

The new secondary sanctions in the bill include both mandatory and discretionary sanctions. Those with a more significant geopolitical impact are reserved to the President's discretion, while the more symbolic sanctions are required. A summary of the new and revised secondary sanctions provisions is listed below:

- **Russian Energy Export Pipelines**. The bill allows for sanctions against individuals or entities who knowingly make an investment in or offer support for Russian energy export pipelines of a fair market value of $1 million or more, or an aggregate fair market value of $5 million or more over a 12-month period. This provision notes that the President may impose sanctions only "in coordination with allies of the United States," language likely designed to assure U.S. allies who will benefit greatly from the Nord Stream 2 pipeline.

- **Russian Defense and Intelligence Sectors**. The bill requires the President to impose sanctions against individuals or entities who engage in a significant transaction with the Russian defense or intelligence sectors or their personnel.

- **Cybersecurity Actors**. The bill requires the President to impose sanctions against persons who knowingly engage in significant activities undermining cybersecurity on behalf of the Russian government or those who own or control such persons.

- **Foreign Sanctions Evaders**. The bill requires the President to impose sanctions on a foreign person that the President determines knowingly materially violates U.S. sanctions against Russia or facilitates transactions that violate U.S. sanctions against Russia.

- **Human Rights Abusers and Syria**. The bill requires the President to impose sanctions on foreign persons that: (1) are responsible for serious human rights abuses in Russian territory, materially assist such conduct, or are owned or controlled by such persons and (2) have knowingly provided significant financial, material, or technological support that contribute materially to the Syrian government's ability to develop its military capability or weapons of mass destruction.

The bill also revises existing discretionary sanctions and makes them mandatory:

- **Special Russian Crude Oil Projects**. The bill requires the President to sanction persons that knowingly make a significant investment in a special Russian crude oil project.

- **Foreign Financial Institutions**. The bill requires the President to sanction foreign financial institutions that knowingly engage in significant transactions (1) involving the transfer of defense articles into Syria, Ukraine, Georgia, or Moldova, (2) involving Gazprom, if Gazprom is withholding natural gas from NATO member countries, Ukraine, Georgia, or Moldova, or (3) involving a significant investment in a special Russian crude oil project. The sanctions also apply to foreign financial institutions that facilitate a significant financial transaction on behalf of Russian SDNs.

- **Corrupt Officials**. The bill requires the President to sanction Russian governmental officials and their associates and family members that are responsible for significant corruption in Russia or worldwide.

These discretionary sanctions were part of the first comprehensive Russia-related sanctions bill signed into law, the Ukraine Freedom Support Act of 2014, on which we previously reported.

Codification of Sanctions

The bill takes significant steps to vest power relating to Russian sanctions with Congress and not the President. It codifies all existing executive orders currently in place that establish authority for sanctions on Russia. The bill also creates a congressional review mechanism, like the one established for Iran when the JCPOA was being debated, that allows Congress to disapprove of Presidential attempts to terminate Russian sanctions or issue broad licenses circumventing Russian sanctions. The President retains the power to waive sanctions in limited geopolitical circumstances, such as Russia's compliance with the Minsk agreement.

North Korea

The bill contains significantly expanded secondary sanctions relating to North Korea. The United States previously maintained a comprehensive trade embargo on North Korea that prohibited nearly all transactions and investment in or with North Korea. The bill augments the trade embargo with additional secondary sanctions aimed at curbing Russian and Chinese cooperation with the North Korean regime.

Like the Iran and Russia sanctions, the bill contains both mandatory and discretionary sanctions provisions. The mandatory provisions require the President to block the property and interest in property of persons who provide support for or do business with a wide variety of North Korean industries, including the defense and military sector, the raw metals sector, the fuel industry, sanctioned aircraft and vessels, and correspondent banking accounts, or who employ North Korean laborers.

The bill also authorizes blocking for those persons who support or do business with the North Korean oil and gas industries, textiles industry, raw materials industry, agricultural industry, gambling industry, financial services industry (including transfers of cash, precious metals, or gemstones), transportation industry, mining or energy industry, and the exportation of North Korean workers.

Additionally, the bill implements shipping restrictions in compliance with United Nations sanctions on North Korea. This includes a ban from U.S. ports and U.S. waters of North Korean vessels or vessels owned or operated by a North Korean person and ships that call at North Korean ports. The bill also provides for extension of this authority to ban vessels owned or operated by any country that the President has identified as not complying with United Nations sanctions on North Korea.

Key Takeaways

This bill, if signed into law, would represent the first sweeping change to U.S. sanctions of the Trump administration, and the first major change in U.S. sanctions since the implementation of the JCPOA. It would further tighten the ability of U.S. persons to do business with Russia, and its secondary sanctions are certain to complicate cross-border transactions by many foreign companies involving Russia. While the Iran sanctions do not pose a specific risk for U.S. companies with subsidiaries currently doing business in Iran pursuant to General License H, this bill reminds companies that the attitude throughout the U.S. government towards Iran remains hostile. U.S. and non-U.S. companies should remain vigilant and informed regarding sanctions developments, and conduct adequate due diligence before conducting any transactions involving Russia, Iran, or North Korea.

If you have any questions regarding the Iran, North Korea, or Russians sanctions programs or how they may affect your business, please reach out to the contacts listed below.

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