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Briefing

# Russia, Iran, and North Korea: Practical Implications of the New US Sanctions Law

Earlier this week, on August 2, 2017, the Countering America's Adversaries Through Sanctions Act (**CAATSA** or **the Act**) was signed into law by President Trump. The Act tightens existing sectoral sanctions on Russia, restricts the President's ability to lift certain sanctions targeting Russia, creates new secondary sanctions that may impact non-US companies that support or invest in certain pipeline projects and introduces new designation-based sanctions programs. The Act also contains new sanctions against Iran and North Korea, many of which overlap with existing programs. We summarize in this alert the major changes to US sanctions and highlight the potential impact of the expanded sanctions regimes.

## 1. RUSSIA

### Enhanced sectoral sanctions will prohibit more activities with listed persons.

The US sectoral sanctions, which were first introduced in 2014, impose restrictions on certain US dealings with Russian entities included on the Sectoral Sanctions Identifications List (**SSIL**). The sectoral sanctions currently target the financial services, energy, and defense sectors through a series of Directives.

Directives 1, 2 and 3 (which soon will be but have not yet been modified pursuant to CAATSA) currently prohibit transactions involving US persons or the United States that are related to the issuance by SSIL entities of new debt and, in some cases equity, that exceeds 30 or 90 days' maturity. Directive 4 prohibits the provision, export or re-export, directly or indirectly, of goods, services (except financial services) or technology in support of exploration or production for deepwater, Arctic offshore or shale projects that have the potential to produce oil in Russia to designated entities and their subsidiaries.

The Act mandates modifications to the Directives, which must be implemented by the Secretary of the Treasury within 60 days (for Directives 1 and 2) or 90 days (Directive 4) of enactment of the Act. The enhancements to the Directives that will come into effect as a result of the Act once the Office of Foreign Assets Control of the US Department of the Treasury (**OFAC**) issues regulations are as follows:

- **Financial services sector:** Directive 1 will be modified to prohibit dealings in new debt of longer than **14 days** maturity (instead of 30 days) or new equity of persons designated under Directive 1.
- **Energy sector:** Directive 2 will be modified to prohibit dealings in new debt of longer than **60 days** maturity (instead of 90 days) of persons designated under Directive 2.
- **Defense sector:** No change to Directive 3 is contemplated in the Act.
- **Certain deepwater, Arctic offshore, or shale projects that have the potential to produce oil:** Directive 4 will be modified to apply to projects beyond Russia and its maritime areas. The restrictions under this Directive will now also apply to "new" projects within and outside Russia that (i) have the potential to produce oil and (ii) involve any person designated under Directive 4 or any property or interests in property in which such a person has an interest of at least 33%.
- **Metals and mining and railway sectors:** Current sectoral sanctions include the metals and mining and engineering sectors as potential targets, but no Directive has been issued targeting these sectors. The Act authorizes the Secretary of the Treasury to impose sanctions on state-owned companies operating in the metals and mining sectors and adds the railway sector to the non-exhaustive list of sectors that can be targeted. (The shipping sector was targeted in an early draft of the legislation, but does not appear in the Act.)

These enhancements may have an impact on existing commercial arrangements, to the extent that debt terms have been set to the current 30 or 90 days, as well as on energy projects with entities subject to Directive 4 that have been permitted but soon will be restricted under the enhanced sectoral sanctions.

### Congress can keep Russia sanctions in place, but the President and his administration still control the implementation and interpretation of the sanctions.

A cornerstone of the Act is the limitation it places on the President's ability to waive or terminate the Russia sanctions. In order to waive or terminate the sanctions (including removal from the SSIL), the President must now provide a report to Congress describing the proposed action and certifying that the Russian government has ceased relevant acts in relation to Ukraine and cyberattacks against the US government and US persons and entities. Congress will then have 30 days to hold hearings and consider a resolution to approve or deny the President's request. Prior to this, the President had the ability to lift the sanctions with an executive order. This change may greatly hinder any efforts to modify or lift the Russia sanctions framework.

But while the President may no longer unilaterally lift the Russia sanctions program, it is still possible that his administration could issue regulations and guidance that significantly curtail the scope and coverage of the Act. As has been widely reported, the President has opposed the Act and cast doubt in his signing statements to Congress and to the press on the prudence and constitutionality on certain aspects of the Act's provisions. Particularly in light of these comments, as well as the overall political context, it remains to be seen how the Trump administration will interpret and apply the enhanced provisions it is tasked with implementing.

### Secondary sanctions aimed at major pipeline projects and related activities.

Another key development is the creation of a "secondary sanctions" regime for significant investments in or activities related to Russia's energy export pipelines. The Act authorizes the President to impose penalties on Russian or non-Russian entities that provide significant support to certain pipeline-related activities, even if there is no US nexus. More specifically, the President may impose sanctions on persons determined to have (1) made investments that significantly contribute to Russia's ability to construct energy export pipelines; or (2) provided Russia with goods, services, technology or support for the construction of Russian energy export pipelines, in both cases, where the investment or support are valued at least US\$1 million (or US\$5 million over 12 months). Although the bill states that the President must impose any such sanctions "in coordination with allies of the United States," it is unclear what this will mean in practice, and the EU has already expressed concerns about the effects of this provision on the energy independence of EU member states, discussed further below.

The practical impact of these sanctions might not be known until the administration begins to interpret or implement the sanctions, or until the President decides to use his discretion to designate parties under these sanctions. The mere threat of becoming sanctioned, however, could in the meantime have a commercial impact on companies with activities related to Russian energy export pipelines.

The menu of secondary sanctions penalties that may be imposed by the administration is broad and includes blocking, a prohibition on US banking transactions, a prohibition on US foreign exchange transactions, a prohibition on US persons investing in or purchasing debt or equity interests of the sanctioned person and exclusion from the US of any non-US person corporate officer, principal or controlling shareholder of the sanctioned person. Additionally, any of the sanctions in the list of potential secondary sanctions penalties can be imposed on the principal executive officers of the sanctioned entity.

### Potential challenges to European energy independence and the risk of EU countermeasures.

The EU has expressed concerns that the Act could impact Europe's energy independence. While some of the concerns voiced by EU representatives appear to have been taken into account by Congress during the legislative process, the final version of the Act nevertheless provides for the imposition of sanctions on any person or entity – including any European company – that undertakes certain activities related to the development, maintenance, modernization or repair of energy export pipelines by Russia.

Depending on the specific manner in which the Act is implemented, such restrictions could negatively affect infrastructure or projects for transporting energy resources to Europe, such as, for example, the maintenance and upgrade of pipelines in Russia that feed the gas transit system to the EU. The new US measures could also potentially have an impact on projects central to the EU's diversification objectives, such as the Baltic Liquefied Natural Gas project.

Several representatives of the EU and certain member states such as Germany, Austria and France have called for EU and US unity on economic sanctions and close coordination to ensure the full implementation of the Minsk Agreements to resolve the crisis in Ukraine. Over recent weeks the EU has raised these concerns via diplomatic channels, and EU representatives have stressed that they "stand ready to act appropriately within a matter of days," including, possibly, by responding with retaliatory measures. Speaking after the Act was signed into law, Jean-Claude Juncker, the President of the European Commission, warned that the EU would take counter measures if the US sanctions harmed European companies involved in oil and gas projects with Russia.

Historically, certain unilateral US sanctions have been the subject of EU blocking statutes, which make it illegal for EU companies to comply with the sanctions. Other measures reportedly being considered by the EU include making a complaint to the World Trade Organization with a view to frustrating the purpose of the Act.

However, not all EU member states oppose the new US sanctions. For example, Lithuania's President, Dalia Grybauskaitė, is reported as having welcomed the challenge to Russia's energy power in the region. Similarly, the Polish foreign ministry has publicly lauded the Act.

The EU position and response (if any) may well turn on how the President's administration implements the new measures and the degree to which European actors are impeded by new sanctions.

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## New Russia sanctions programs are designed to pressure the President to act on significant political issues.

The Act also creates a number of new designation-based sanctions programs on Russia. Although the Act states that the creation of the sanctions programs is mandatory, the President has discretion as to how, and to what extent, the sanctions programs will be implemented. We note that the first three sanctions programs listed below target not only the specified Russian activities, but also appear to target any persons engaged in “significant” related activities. Key mandatory sanctions include:

- **Defense or intelligence:** The President is required to impose sanctions on persons he determines to have engaged in significant transactions with the Russian defense or intelligence sectors.
- **Foreign sanctions evaders:** The Act expands the current foreign sanctions evaders program, which currently applies only to Iran and Syria sanctions, to include those that evade the Russia sanctions or facilitate a significant transaction for or on behalf of persons targeted under the Russia sanctions.
- **Investment in or facilitation of privatization of state-owned assets:** The President is required to penalize persons he determines to have knowingly made or facilitated certain investments that significantly contribute to Russia’s ability to privatize state-owned assets in a manner that unjustly benefits Russian government officials or their close associates or families.
- **Cybersecurity:** Persons can already be designated as blocked persons for engaging in certain cyber-enabled activities from outside the United States that contribute to a significant threat to national security, foreign policy, economic health or the financial stability of the United States, and some Russian individuals and entities have already been designated under these sanctions. The Act requires the President to impose blocking sanctions and, in the case of a non-US person, exclusion from the United States, on persons determined to have engaged in significant activities undermining cybersecurity on behalf of the Russian government.
- **Human rights abuses:** The President is required to block or exclude from the United States persons he determines are responsible for or complicit in the commission of serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Russian government, as well as people assisting or providing support for such persons.
- **Arms and related transfers of material to Syria:** The President is required to block or exclude from the United States persons he determines to have knowingly provided Syria significant financial, material, or technological support that contributes to the Syrian government’s ability to develop or acquire, among other things, certain weapons or defense resources.

Although the practical impact of these additional blocking sanctions will need to be assessed once the administration implements them, even in the short term, the sanctions will likely create a chilling effect on the activities that could lead to a sanctions designation. These new programs may also result in an increase in the number of sanctioned Russian entities and individuals, depending on how the President’s administration interprets the Act.

### 2. IRAN

#### The changes to the Iran sanctions may have limited practical impact.

The Act creates additional sanctions that overlap, to some extent, with current sanctions on Iran. The sanctions set out in the Act relate to Iran’s ballistic missile program, certain human rights abuses and the Iranian Revolutionary Guard Corps (IRGC). The President is required to impose blocking sanctions on entities, and US visa denials for individuals, that are determined to contribute materially to Iran’s ballistic missile or weapons of mass destruction programs, or provide certain arms to Iran. The President is also required to designate the IRGC and its officials, agents and affiliates under the terrorism sanctions; however, the IRGC is already designated under several other sanctions programs, so the practical impact of this requirement is unclear.

The Act exempts from these sanctions any transactions for the sale of agricultural commodities, food, medicine or medical devices to Iran, as well as the provision and financing of humanitarian assistance.

### 3. NORTH KOREA

#### New sanctions on North Korea could lead to more North Korean blocked persons.

The new sanctions on North Korea require the President to impose blocking sanctions on persons determined to knowingly acquire certain precious metals and minerals from North Korea; provide significant amounts of fuel or supplies to operate or maintain a designated vessel or a vessel owned or controlled by a designated person; facilitate certain types of transactions with the North Korean government; or conduct a significant transaction in North Korea’s transportation, mining, energy or financial services industries.

The Act also prohibits vessels owned or operated by the North Korean government or a North Korean person, or vessels of any country identified by the President as having failed to comply with certain UN resolutions on North Korea, from entering US waters or transferring cargo in a port or place under US jurisdiction.

The impact of these sanctions will depend on whether, and to what extent, the President makes designations under the new sanctions program.

Our Global Sanctions and Trade team will continue to monitor sanctions on Russia, Iran and North Korea and will provide additional updates on any significant further developments, including regulations and guidance that are issued under the Act.

Please contact any member of our [Global Sanctions and Trade](#) team if you have any questions or would like to discuss any of these points.



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