

## International Trade Alert

August 4, 2017

### New Law Imposes Expansive New Sanctions on Russia, Iran and North Korea While Limiting the President's Ability to Ease Russia Sanctions

On August 2, 2017, President Trump signed into law the [Countering America's Adversaries Through Sanctions Act of 2017](#) (Pub. Law. No. 115-44, H.R. 3364) (the "Act"), which significantly expands economic sanctions against Russia, Iran and North Korea. The Act received overwhelming bipartisan support from both houses of Congress, having passed the U.S. House of Representatives by a margin of 419-3 and the Senate by a margin of 98-2.

The Act provides for significant changes to current U.S. sanctions imposed on Russia, Iran and North Korea, including secondary sanctions targeting non-U.S. companies that engage in proscribed business with the three countries. These include:

- **Russia:** The Act expands the current Russia sanctions program to impose significant new sanctions targeting the Russian energy sector; certain entities operating in the defense or intelligence sectors of Russia; privatization of state-owned assets; and activities related to corruption, Syria, sanctions evasion and human rights abuses. These sanctions mark the first time that the United States has imposed unilateral sanctions against Russia without coordinating with the EU, increasing general uncertainty regarding the potential course of future trans-Atlantic cooperation on sanctions and security policy concerns associated with Russia. Of particular significance, the Act:
  - substantially expands the scope of existing U.S. Directive 4 sectoral sanctions under Executive Order (EO) No. 13662 ("EO 13662") to further target the Russian energy sector by prohibiting U.S. persons from providing goods, technology and services (except financial services) to new deepwater, Arctic offshore or shale oil projects worldwide in which certain sanctions-targeted Russian energy companies have a controlling interest or ownership interest of 33 percent or more
  - provides discretionary authority to the President to impose extraterritorial sanctions on non-U.S. companies and individuals who knowingly make significant investments or provide certain high-valued goods, technology, information or support for the construction of Russian energy export pipelines
  - imposes mandatory extraterritorial sanctions against non-U.S. persons who knowingly make "significant investments" in Russian deepwater, Arctic offshore or shale oil projects, or engage in "significant transactions" with targeted Russian defense or intelligence entities

- tightens current sectoral sanctions targeting certain Russian financial and energy companies by substantially shortening the maximum maturity window on new debt that U.S. persons can deal in with such sanctioned companies.

In addition, the Act requires congressional review of any action by the President to terminate or waive the application of Russia-, Ukraine- and Crimea-related sanctions, including the delisting of entities designated under these authorities.

- **Iran:** While the Act preserves, and does not impact, current nuclear-related sanctions relief under the Joint Comprehensive Plan of Action (JCPOA), it provides the administration with new authority to impose extraterritorial sanctions on persons who engage in targeted activities regarding Iran beyond the nuclear sector. Specifically, the Act authorizes the imposition of sanctions on persons knowingly involved in any activity that materially contributes to the government of Iran's ballistic missile program. Notably, these sanctions extend to persons who are owned or controlled by, own or control, are successor entities to, or act for or on behalf of, persons whom the President determines to be materially contributing to Iran's ballistic missile program, as well as anyone who knowingly provides financial, material or technological support to such sanctioned persons. In addition, the Act imposes additional sanctions on Iran's Islamic Revolutionary Guard Corps (IRGC) for terrorism-related reasons.
- **North Korea:** The Act includes measures to deny North Korea direct or indirect access to the U.S. financial system by (i) authorizing the imposition of sanctions on persons who knowingly maintain a correspondent account with any North Korean financial institution, and (ii) prohibiting U.S. financial institutions from establishing or maintaining correspondent accounts with non-U.S. financial institutions that use such accounts to provide significant financial services to certain designated persons, foreign governments or foreign financial institutions that have been found to enable the North Korean regime. The Act also authorizes the imposition of sanctions on the governments of other countries and non-U.S. persons who engage in an expanded list of activities that are inconsistent with U.S. foreign policy interests in North Korea or that violate United Nations Security Council sanctions against North Korea.

## Russia Sanctions

Noteworthy changes to the Russia sanctions program include:

### Codification of Existing Russia Sanctions

Section 222 of the Act codifies into statutory law sanctions provided for under six EOs issued by President Obama: EOs 13660, 13661 and 13662 (asset freezes, travel bans and sectoral sanctions related to Ukraine and Russia); 13685 (comprehensive sanctions against Crimea); and 13694 and 13757 (asset freezes and travel bans related to malicious cyber-enabled activities), "including with respect to all persons sanctioned under such Executive Orders" as of August 1, 2017.

## Congressional Review of Executive Actions to Ease Russia Sanctions

Section 216 of the Act requires the President to report to Congress any action to terminate sanctions imposed pursuant to the codified EOs or the Act, as well as previously enacted Ukraine-related sanctions legislation; waive sanctions against persons targeted under these authorities; or license activity<sup>1</sup> that “significantly alters U.S. foreign policy with regard to the Russian Federation” (collectively referred to as “proposed sanctions relief”).

Upon submission of the proposed sanctions relief to Congress, Section 216 requires the President to refrain from taking such action for 30 days (60 days if it occurs near the August recess) to allow Congress to review it. Through this review, Congress can prohibit the proposed sanctions relief through the passage of a joint resolution of disapproval, which may be proposed by the majority or minority leader of the House of Representatives or the majority or minority leader (or a designee of the majority or minority leader) of the Senate. If Congress does not pass such a joint resolution (whether because it does not garner a majority of support in both houses of Congress or because either house of Congress fails to act in a timely manner), the President may proceed with the proposed sanctions relief. In the event that the President vetoes a joint resolution of disapproval passed by both houses of Congress, there would be a 10-day freeze on the implementation of the proposed sanctions relief in order for both houses of Congress to potentially override the veto by a 2/3 vote.

## Expansion of Russian Sectoral Sanctions

The Act also makes several modifications to strengthen Russian sectoral sanctions authorized under EO 13662, which currently restrict certain transactions by U.S. persons involving the financial services, defense and energy sectors of the Russian economy:

- **Expansion of Directive 4 to Cover Certain Deepwater, Arctic Offshore and Shale Projects Worldwide:** Currently, Directive 4 of EO 13662 restricts U.S. persons from providing, exporting or re-exporting 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 and that involve certain sanctioned energy companies subject to Directive 4. Section 223 of the Act expands Directive 4 to apply to certain new deepwater, Arctic offshore or shale projects **worldwide** that involve such sanctioned entities. Specifically, by October 31, 2017 (90 days after enactment), the Secretary of the Treasury must modify Directive 4 to prohibit U.S. persons from providing, exporting or re-exporting goods, services (except for financial services) or technology in support of exploration or production for **new** deepwater, Arctic offshore or shale projects (i) that have the potential to produce oil and (ii) that involve a person subject to Directive 4 that “has a controlling interest or a substantial non-controlling ownership interest in such a project” of 33 percent or more.<sup>2</sup> These new restrictions will come into effect 90 days after the Secretary of the Treasury modifies Directive 4.

## Open Questions

Importantly, the Act does not define what constitutes a “new” deepwater, Arctic offshore or shale project. We expect that the benchmark to determine whether a deepwater, Arctic offshore or shale project constitutes a “new” project would be the date that the modified version of Directive 4 comes into effect. However, we do not know the criteria that the U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) will use to determine whether a deepwater, Arctic offshore or shale project is “new.” For example, it is an open question if a project in which drilling has not begun, but seismic testing has begun, would constitute a “new” project potentially covered by these restrictions or a pre-existing project that is not subject to these restrictions.

Furthermore, the Act does not specifically define “controlling interest.” During a colloquy on the floor of the U.S. House of Representatives, Rules Committee Chairman Pete Sessions stated that, for purposes of clarification and legislative intent, “controlling interest” means “the power to direct, determine, or resolve fundamental, operational, and financial decisions of an oil project through the ownership of a majority of the voting interests of the oil project,” a statement with which Foreign Affairs Committee Chairman Ed Royce agreed.<sup>3</sup> It is not currently clear whether OFAC will provide further guidance to confirm this interpretation.

- **Discretionary Authority to Target State-Owned Entities Operating in Russia’s Railway and Metals and Mining Sectors:** Section 223(a) of the Act provides the Treasury Department with discretionary authority to impose sectoral sanctions on state-owned entities operating in the railway or metals and mining sectors of the Russian economy, pursuant to EO 13662. Currently, only certain entities in the financial, energy and defense sectors are subject to current U.S. sectoral sanctions under EO 13662.
- **Reduced Maturity Windows for New Debt Issued by Certain Targeted Financial and Energy Companies:** Section 223 of the Act tightens existing sanctions under Directives 1 and 2 of EO 13662, which currently prohibit U.S. persons from dealing in new debt with a maturity of more than 30 days or 90 days, respectively, issued by certain entities in the Russian financial and energy sectors.<sup>4</sup> By October 1, 2017 (60 days from enactment), the Secretary of the Treasury must modify Directives 1 and 2 to reduce the permissible maturity window for debt issued by financial entities subject to Directive 1<sup>5</sup> from 30 days to 14 days and the permissible maturity window for debt issued by energy companies designated under Directive 2 from 90 days to 60 days. These changes will take effect 60 days after the date that the Secretary of the Treasury modifies Directives 1 and 2.

## Other Measures Targeting the Energy Sector

The Act includes other provisions that target the Russian energy sector, including the following:

- **Discretionary Secondary Sanctions Related to Development of Russian Energy Export Pipelines:** Effective immediately, Section 232 of the Act permits, but does not require, the President to impose sanctions on persons who knowingly (i) make an investment that “directly and significantly contributes to the enhancement of the ability of the Russian Federation to construct energy export pipelines” or (ii) sell, lease or provide to Russia, for the construction of Russian energy export pipelines, goods, services, technology, information or support that “could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy pipelines,” provided that such goods, services, technology or information have a fair market value of \$1 million or more or an aggregate fair market value of \$5 million or more during a 12-month period. The Act specifies that the President should impose such sanctions “in coordination with allies of the United States.” This clause was added to address concerns expressed by EU member states that these sanctions could potentially target European companies involved in constructing pipelines, such as the Nord Stream 2 pipeline, that would carry Russian natural gas to Germany or other U.S. allies in Europe.
- **Mandatory Secondary Sanctions for Significant Investments in Russian Deepwater, Arctic Offshore or Shale Projects:** Section 225 of the Act requires the President to impose sanctions on “foreign persons” who knowingly, on or after September 1, 2017, make a “significant investment” in Russian deepwater, Arctic offshore or shale projects, unless the President makes a determination that it is not in the national interest to do so. Previously, such sanctions were discretionary. The Act does not define the term “significant investment,” and, thus, it would likely be a matter for OFAC to interpret the thresholds and types of investments that constitute “significant investments.”

## Other Significant Sanctions Measures

The Act also provides for an expansion of existing sanctions or creation of new sanctions to target the Russian defense and intelligence sectors, activities related to corruption, human rights abuses, cybersecurity concerns and Syria-related activities:

- **Mandatory Secondary Sanctions Related to Significant Transactions with Targeted Defense and Intelligence Entities:** Effective January 29, 2018 (180 days after enactment), Section 231 of the Act requires the President to impose sanctions on persons who knowingly engage in “significant transactions” with certain specified persons who are “part of or operate for or on behalf of” the defense or intelligence sectors of the Russian government, including the Main Intelligence Agency of the General Staff of the Armed Forces or the Federal Security Service of the Russian Federation. The Act requires the President to specify entities subject to this restriction by October 1, 2017. Reflecting concerns raised by U.S. and EU businesses, the President may delay by up to 180 days the imposition of sanctions against persons who have

engaged in significant transactions with targeted Russian defense and intelligence entities if the President certifies to Congress that such persons are “substantially reducing the number of significant transactions” with such entities. Nevertheless, this provision will require companies to screen potential business engagements for such listed entities to avoid potential sanctions risk exposure.

- **Mandatory Secondary Sanctions on Foreign Persons Engaged in Sanctions Evasion, Corruption or Human Rights Abuses:** Effective immediately, Section 228 of the Act mandates new sanctions, subject to certain waiver authority, on foreign persons who knowingly work to evade sanctions against Russia; are responsible or complicit in human rights abuses in Russia; or have materially assisted or provided financial, material or technological support for persons engaged in human rights abuses in Russia or in any territory “forcibly occupied or otherwise controlled” by Russia, which would be deemed to include Crimea and possibly Eastern Ukraine.
- **Mandatory Secondary Sanctions Related to Privatization of State-Owned Assets:** Effective immediately, Section 233 of the Act requires the President to impose sanctions on any person who, with actual knowledge, makes an investment of \$10 million or more (or a combination of investments of \$1 million or more totaling \$10 million or more in a year), or facilitates such an investment, that “directly and significantly contribute to the ability” of Russia to privatize state-owned assets in a “manner that unjustly benefits” officials of the Russian government or “close associates” or family members of those officials. These sanctions are broadly written and will require companies to exercise increased due diligence for deals involving privatization of Russian assets in order to avoid potential sanctions risk exposure.
- **Syria-Related Activities:** Effective immediately, Section 234 of the Act requires the President to impose sanctions on any foreign person who knowingly exports, transfers or otherwise provides to Syria financial, material or technological support that contributes to the Syrian government’s ability to acquire chemical, biological or nuclear weapons, as well as “destabilizing numbers and types of advanced conventional weapons.”
- **Foreign Financial Institutions:** Section 226 of the Act requires the President to impose sanctions on foreign financial institutions, subject to certain waiver authority, that knowingly facilitate significant transactions involving “significant investment” in Russian deepwater, Arctic offshore or shale projects; engage in significant transactions involving the production, transfer or brokering of defense articles into Syria;<sup>6</sup> or facilitate a significant financial transaction on behalf of any Russian person designated on the list of Specially Designated Nationals and Blocked Persons (“SDN List”) pursuant to EOs related to the crisis in Ukraine. These sanctions were previously discretionary.
- **Significant Corruption:** Effective immediately, Section 227 of the Act requires the President to impose sanctions on any official of the Russian government, or a close associate or family member of such an official, whom the President determines is responsible for, complicit in or

otherwise involved in acts of “significant corruption” in Russia or elsewhere, and on anyone who assists or otherwise supports those acts.<sup>7</sup>

### Reporting Requirements

In addition to the above measures, the Act also requires the Secretary of the Treasury to issue by January 29, 2018, reports on a number of topics related to U.S. foreign policy and national security in connection with Russia.<sup>8</sup> Notable topics described in these reports include:

- “Senior foreign political figures and oligarchs in the Russian Federation,” including “(i) an identification of the most significant senior foreign political figures and oligarchs in the Russian Federation, as determined by their closeness to the Russian regime and their network; (ii) an assessment of the relationship between these identified individuals and President Vladimir Putin or other members of the Russian ruling elite; (iii) an identification of any indices of corruption with respect to those individuals; (iv) the estimated net worth and known sources of income of those individuals and their family members (including spouses, children, parents and siblings), including assets, investments, other business interests and relevant beneficial ownership information; and (v) an identification of the non-Russian business affiliations of those individuals”
- Russian parastatal entities, including their leadership structures, beneficial ownership and scope of non-Russian business affiliations
- exposure of “key economic sectors” of the United States (e.g., banking, securities, insurance and real estate) to Russian politically exposed persons and parastatal entities
- likely effects of expanding debt and equity restrictions on Russian parastatal entities or adding Russian parastatal entities to the SDN List
- the potential impact of imposing secondary sanctions with respect to Russian oligarchs, Russian state-owned enterprises and Russian parastatal entities
- the potential effects of expanding sanctions under Directive 1 of EO 13662 to include Russian sovereign debt and the full range of derivative products.<sup>9</sup>

### Iran Sanctions

Key changes to the Iran sanctions program include:

#### New Sanctions

Although pre-existing presidential authority under the International Emergency Economic Powers Act (IEEPA) already provides a basis for such action by executive order, the Act provides additional statutory authority for the executive branch to impose sanctions on U.S. and non-U.S. persons to further U.S. security and foreign policy objectives in Iran in the following three core areas:



- **Ballistic Missile Program:** Section 104 of the Act authorizes the President to block the property of, and deny U.S. visas to, any person, on or after the date of the enactment of the Act (August 2, 2017), who knowingly engages in any activity that materially contributes to the government of Iran's ballistic missile program or any other program for developing, deploying or maintaining delivery systems for weapons of mass destruction. The sanctions extend to persons who are owned or controlled by, own or control, are successor entities to, or act for or on behalf of, persons whom the President determines to be materially contributing to Iran's ballistic missile program, as well as anyone who knowingly provides financial, material or technological support to such sanctioned persons.
- **Support for Terrorism:** Section 105 of the Act makes an express finding that the IRGC and the IRGC Quds Force (IRGC-QF) (both of which are already subject to U.S. sanctions), provide material, logistical assistance, training and financial support to militants and terrorist operatives throughout the Middle East and South Asia. Based on this finding, the Act authorizes the President to impose additional sanctions on the IRGC (including foreign persons who are IRGC officials, agents or affiliates) 90 days after the date of the enactment of this Act pursuant to EO 13224, which authorizes sanctions against persons who commit, threaten to commit or support terrorism.
- **Human Rights Abuses:** Section 106 of the Act authorizes the President to block the property of persons responsible for gross human rights abuses (such as extrajudicial killings, torture or other gross violations of internationally recognized human rights) against individuals in Iran who seek to obtain, exercise, defend or promote human rights, or expose illegal activity carried out by Iranian officials. Individuals who will be subject to sanctions for human rights abuses will be identified in a report that will be issued by the State Department not later than 90 days after the date of enactment of the Act and annually thereafter.

Section 108 of the Act instructs the Treasury Department to review the SDN listing to determine whether persons currently designated on that list pursuant to existing EOs also merit designation on the basis of new sanctions authorized under the Act with respect to support for Iran's ballistic missile program and support for terrorism. Furthermore, the Act codifies the SDN List of persons designated pursuant to EO 13224 (Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism) and EO 13382 (Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters). The President may remove such persons from the SDN List only if he "determines and reports to the appropriate congressional committee that it is vital to the national security interests of the United States to waive such sanctions."

#### Enforcement of Arms Embargoes

Section 107 of the Act also authorizes the President to block the property of, and deny U.S. visas to, any person who knowingly supplies, sells or transfers convention arms to Iran (e.g., battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or



missile systems) or knowingly provides technical training, financial resources or services, or advice related to the supply, sale, transfer, manufacture, maintenance or use of such arms.

### Regional Strategy on Iran

Through Section 103 of the Act, the U.S. Congress calls for a new regional strategy to counter threats posed by Iran in the Middle East and North Africa. As part of this strategy, Congress requires that the Secretary of State, the Secretary of Defense, the Secretary of the Treasury and the Director of National Intelligence shall jointly develop and submit to Congress, not later than 180 days after the date of the enactment of the Act, and every two years thereafter, a strategy for deterring conventional and asymmetric Iranian activities and threats that directly threaten the United States and key allies in the Middle East, North Africa and beyond.

The Act provides for this strategy to address a number of concerns, including U.S. objectives to counter Iran's destabilizing activities; Iran's capabilities with respect to conventional armed forces and chemical and biological weapons; and Iran's support of extremist groups, such as Hizballah and Hamas.

### Reporting Requirements

Lastly, Sections 109 and 110 of the Act impose two new reporting obligations on the President. The first is a requirement for submission of a biannual report to Congress detailing coordination on Iran-related sanctions between the United States and the European Union, including an explanation of any discrepancies in the sanctions programs. The second is a biannual report on U.S. citizens detained in Iran, including information on Iranian officials involved in any of those detentions.

### North Korea Sanctions

Key changes to the North Korea sanctions program include:

#### Expansion of Mandatory Sanctions

The Act expands sanctions to limit the ability for the North Korean government to access money and materials to support its weapons program. To do so, the Act provides in Section 311(a) that the President must impose sanctions on persons who knowingly engage in the following activities:

- maintain a correspondent account with any North Korean financial institution, except as specifically approved by the United Nations Security Council
- purchase or acquire significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc or rare earth minerals from North Korea
- provide certain significant amounts of rocket, aviation or jet fuel to North Korea (except for use by a civilian passenger aircraft outside North Korea, exclusively for consumption during its flight to North Korea or its return flight)

- provide significant amounts of fuel or supplies for North Korean vessels or aircraft designated under an applicable EO or United Nations Security Council resolution or that is owned or controlled by a person designated under an applicable EO or applicable United Nations Security Council resolution
- provide insurance or reinsurance to vessels owned or controlled by the government of North Korea, except as specifically approved by the United Nations Security Council.

#### Expansion of Discretionary Sanctions

Section 311(b) of the Act identifies additional activities that are subject to potential discretionary sanctions that take effect on the date of the enactment of the Act and apply to targeted activity engaged in, on or after the enactment date. Specifically, the Act provides that the President may impose sanctions on persons who knowingly engage in the following activities:

- purchase or acquire coal, iron or iron ore from the government of North Korea in excess of the limitations provided in applicable United Nations Security Council resolutions
- purchase or acquire significant amounts of textiles from the government of North Korea
- facilitate a significant transfer of funds or property of the government of North Korea that materially contributes to any violation of applicable United Nations Security Council resolutions
- facilitate a significant transfer to or from the government of North Korea of bulk cash, precious metals, gemstones or other stones of value not described above
- directly or indirectly sell, transfer or otherwise provide significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum byproducts, liquefied natural gas or other natural gas resources to the government of North Korea (except for heavy fuel oil, gasoline or diesel fuel for humanitarian use)
- engage in, facilitate or are responsible for the online commercial activities of the government of North Korea, including online gambling
- directly or indirectly purchase or otherwise acquire fishing rights from the government of North Korea
- directly or indirectly purchase or otherwise acquire significant types or amounts of food or agricultural products from the government of North Korea
- directly or indirectly engage in, facilitate or are responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the government of North Korea or by the Workers' Party of Korea
- conduct a significant transaction or transactions in North Korea's transportation, mining, energy or financial services industries
- facilitate the operation of any branch, subsidiary or office of a North Korean financial institution.

## Restrictions on Indirect Correspondent Banking

Section 312 of the Act seeks to cut off North Korea's indirect access to the U.S. financial system—which it continues to access through concealment and correspondent banking relationships. To do this, the Act prohibits U.S. financial institutions, subject to limited exceptions, from maintaining correspondent accounts with a non-U.S. financial institution, if it has reason to know that the correspondent account established by the non-U.S. financial institution is used to provide significant financial services to any of the foreign governments, companies and banks that have been found to enable the regime.

## Sanctions on Noncompliant Countries

The Act also authorizes the imposition of sanctions on foreign countries and persons from foreign countries that do not comply with U.S. foreign policies with respect to North Korea. Specifically:

- **Defense Articles and Defense Services:** Section 313 of the Act requires the Secretary of State to issue a report annually for five years that identifies foreign countries that fail to comply with U.S. restrictions on the trafficking of defense articles and defense services to North Korea. The Act further amends an existing law that prohibits noncompliant countries from receiving certain forms of U.S. aid.
- **Restrictions on Shipping:** Section 315 of the Act requires the Secretary of State to submit a written report to Congress of vessels owned by North Korea or countries that refuse to comply with United Nations resolutions against North Korea. Pursuant to this report, such vessels are barred from operating in American waters or docking at U.S. ports. The sanctions contain important exceptions for vessels determined by the Secretary of State to be owned or operated on behalf of a country that is closely cooperating with the United States on implementing United Nations resolutions on North Korea, or vessels for which the prohibition would run counter to U.S. national security interests.

## Report on North Korea State Sponsor of Terror Designation

Lastly, Section 324 of the Act requires the State Department to issue a report to Congress within 90 days of the Act making a determination as to whether the government of North Korea should be redesignated as a state sponsor of terrorism.

## Potential Impact of the New Law

### Changes to Russia Sanctions

The Act provides sweeping new sanctions on Russia that will significantly increase the need for both U.S. and non-U.S. companies to ensure that their business activities do not expose them to sanctions enforcement risks. Adding to the complexity of corresponding diligence and compliance demands, key terms in the Act are undefined, leaving uncertainty regarding whether certain kinds of transactions involving the energy sector, Russian defense and intelligence entities, or privatization of state-owned

assets will subject companies to sanctions exposure. It remains to be seen how OFAC will approach such issues in the weeks ahead and to what extent the implementing regulations, modifications of directives and other published guidance provided, as mandated by the Act, will clarify such questions. Given the new changes to the Russia sanctions program under the Act and broader uncertainty regarding U.S.-Russia relations, U.S. and non-U.S. businesses engaging in business with Russia should be mindful of additional regulations and changes to the sanctions regime that will come into effect in the months ahead, and the effects that these changes will have on their diligence and compliance practices.

Adding to the additional uncertainty that the new sanctions law creates, it is unclear how Russia and the European Union might respond to further U.S. sanctions actions under these measures. So far, Russian reaction has been largely limited to expulsion of U.S. diplomatic personnel from the country. In Europe, an EU Commission statement released on July 26, 2017, before certain changes were made to respond to stated EU concerns regarding energy export pipeline sanctions, warned that “the U.S. bill could have unintended unilateral effects that impact the EU’s energy security interests” and that, “if our [EU] concerns are not taken into account sufficiently, we stand ready to act appropriately within a matter of days,” suggesting potential countermeasures to block the extraterritorial effect of U.S. sanctions. However, on August 2, 2017, EU Commission President Jean-Claude Juncker provided a milder response, highlighting new provisions added to the law that required the President to consult with EU allies when determining to impose sanctions related to energy export pipelines. In a statement, Juncker said, “European interests can thus be taken into account in the implementation of any sanctions. If not, the President of the European Commission reserves the right to take adequate measures.” Thus, at this time, it seems unlikely that the EU is considering implementing a legislative response, but this could change, depending on how implementation of the Act affects EU companies. In any event, the new Russia sanctions contained in the Act mark the first time that the United States has imposed unilateral sanctions against Russia without coordinating with the EU, creating uncertainty regarding future transatlantic cooperation on sanctions and related security policies regarding Russia.

With respect to Russia, the government has responded by expelling 755 U.S. diplomats and staff from Russia. On July 30, Russian Deputy Foreign Minister Sergei Ryabkov further suggested that Russia could impose additional measures, stating, “if the U.S. side decides to move further toward further deterioration, [then] we will answer, we will respond in kind.” However, it is unclear whether Russia would implement additional trade or economic countermeasures that target U.S. companies.

#### Iran Sanctions Measures

The Act does not have a direct impact on the current Iran sanctions framework under the JCPOA. It effectively leaves in place the sanctions relief provided under the JCPOA while authorizing new sanctions in areas that do not involve matters of nuclear proliferation. Practically speaking, companies can expect the imposition of new SDN List designations on parties that engage in conduct prohibited by the Act, requiring heightened due diligence on transactions in the region to eliminate risk of links to newly designated parties and any entities that they own or control.

Some of the parties subject to designation under grounds specified in the Act are already designated on the SDN List under existing executive orders on Iran. For example, the IRGC and IRGC-QF are currently designated on the SDN List based on the IRGC's alleged involvement in weapons of mass destruction proliferation and human rights abuses in Iran and Syria, and the IRGC-QF's alleged support of terrorist operatives and militants throughout the Middle East and South Asia. However, designation under multiple sanctions programs, or for multiple sanctions concerns, is significant, since it may impact licensing policies and licensing exemptions available for transactions concerning designated parties, and it also heightens the legal burden of proof for such parties to seek removal from the SDN List.

In terms of the long-term impact on the Iran sanctions program, it is noteworthy that the Act was carefully crafted to avoid conflict with U.S. commitments under the JCPOA. In the early stages of the Act's consideration in Congress, several policy-makers raised concerns that expansion of sanctions could serve to undermine the JCPOA and would be negatively perceived by U.S. allies. The final legislation enacted by Congress also includes reporting requirements that effectively call for the executive branch to explain alignment of its existing sanctions against Iran with measures of the European Union regarding Iran in conjunction with JCPOA implementation.

Separately, however, it remains to be seen whether the Trump administration will reverse course and terminate U.S. participation in the JCPOA in the months ahead. On July 17, 2017, the State Department renewed the waivers of nuclear-related sanctions against Iran in accordance with the JCPOA and certified to Congress for a second time since the Trump administration took office in January that Iran was in compliance with the terms of the JCPOA. However, this action was paired with hostile statements by President Trump and other indications that his administration is considering possible opportunities to terminate U.S. participation in the JCPOA. The Trump administration is currently engaged in an interagency review of the Iran deal, which could determine whether the United States will sustain its commitments under the deal. However, the timing of this review is uncertain, and it is unclear when the interagency review may be completed.

Recent reports in the [New York Times](#) and [Bloomberg](#), among other publications, reflect statements of President Trump expressing great discomfort regarding the recent renewal of waivers and certification. The President reportedly came close to ordering Secretary of State Tillerson not to do so just as he was preparing to inform Congress of the actions on July 17. These reports further indicate that the President spent 55 minutes in a meeting with Tillerson, Secretary of Defense James Mattis, National Security Advisor H.R. McMaster and Chairman of the Joint Chiefs of Staff Joseph Dunford, arguing that he did not want to renew the waivers and certification, but he eventually reluctantly agreed to do so at their urging.

In accordance with the JCPOA, the Secretary of State is required to notify Congress every 90 days whether Iran is living up its obligations under the JCPOA. It is uncertain whether the administration will recertify Iranian compliance in September/October. In more recent comments in a July 25 [Wall Street Journal interview](#), President Trump stated “[p]ersonally, I have great respect for my people, but if it was up to me, I would have had them noncompliant 180 days ago . . . [w]e’ll talk about the subject in 90 days but

I would be surprised if they were in compliance.” President Trump also stated that, in his view, Iran would not be found to be compliant “the next time.” These comments echo President Trump’s previous expressions of skepticism and hostility toward Iran during last year’s election campaign, including statements that he would “tear up” the JCPOA if elected. Accordingly, this leaves open to real question whether the Trump administration will ultimately keep the JCPOA in place or terminate U.S. participation in the arrangement. If the United States unilaterally withdraws from the JCPOA and reinstates currently suspended U.S. extraterritorial nuclear-related sanctions, such actions would likely have significant disruptive consequences for European and other non-U.S. companies currently engaged in activities involving Iran consistent with the JCPOA and prompt a backlash from the United States’ European allies.

#### North Korea Sanctions

The Act’s North Korea sanctions measures provide an additional tool to the administration’s continued effort to put pressure on the North Korean regime regarding its nuclear weapons program. These sanctions also signal strong bipartisan resolve in the U.S. Congress that North Korea’s latest missile tests merit a forceful response from Congress. These sanctions measures follow on from, and codify certain provisions in, legislation passed by the House in April and May, that respectively proposed to redesignate North Korea as a state sponsor of terrorism (HR 479) and that increase the President’s authority to impose sanctions on persons who violate the United Nations Security Council resolutions regarding North Korea (HR 1644).

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As the latest round of OFAC sanctions designations under the North Korea sanctions program indicate, these expanded sanctions measures aim to impede illicit financing and use of the U.S. financial system for the benefit of the North Korean regime. The Act also indicates that the United States is willing to cut off certain trade with, and otherwise penalize, foreign countries and foreign persons that engage in certain transactions that benefit the North Korean economy or the government of North Korea, or otherwise enable North Korea’s nuclear weapon and ballistic missile development program. This includes China (which apparently accounts for 90 percent of economic activity with North Korea) and Russia.

The administration has repeatedly expressed its view that China has a unique ability to influence the North Korean regime in a way that no other country can, due to China’s significant economic activity with North Korea. While the U.S. government is clearly relying on China to play a significant role in putting pressure on North Korea, Secretary of State Tillerson clarified in an [August 1 State Department Press](#)

**Briefing** that “North Korea does not define the relationship with China,” and the United States’ relationship with China is much broader. However, it is foreseeable that these latest North Korea sanctions measures may create some tension and test the relationship between the United States and China.



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<sup>1</sup> The Act states that a submission of a report is not required “with respect to the routine issuance of licenses that do not significantly alter U.S. foreign policy with regard to the Russian Federation.” However, the Act does not provide further guidance regarding what types of licenses qualify under this exception. Sec. 216(a)(6).

<sup>2</sup> Sec. 223(d).

<sup>3</sup> 163 Cong. Rec. H6217, 6265 (daily ed. July 25, 2017).

<sup>4</sup> Sec. 223(b) & (c).

<sup>5</sup> Pursuant to current sanctions restrictions, U.S. persons continue to be prohibited from engaging in new equity issued by companies subject to Directive 1.

<sup>6</sup> Sec. 226. These sanctions originated in the Ukraine Freedom Support Act of 2014, Pub. L. No. 113-272, 128 Stat. 2952, § 5(a) (codified at 22 U.S.C. §§ 8921-30).

<sup>7</sup> Sec. 227. As determined by the President, “significant corruption” may include “expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of proceeds of corruption to foreign jurisdictions.” Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, Pub. L. No. 113-95, 128 Stat. 1088, § 9 (a)(1).

<sup>8</sup> E.g., Secs. 241 & 242.

<sup>9</sup> Sec 242.