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Congress Acts on Russia, Iran, and North Korea Sanctions, Limiting President's Flexibility

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July 31, 2017 – On July 27, 2017, the Senate voted 98-2 to approve the Countering America's Adversaries Through Sanctions Act (H.R. 3364) (the "Act"), which had earlier passed with overwhelming bipartisan support in the House of Representatives. The Act will severely restrict the Administration's flexibility to lift or alter existing sanctions on Russia, while providing a number of new authorities that could expand the reach of U.S. sanctions as they apply to third-country firms engaged in certain activities in or with Russia, Iran, and North Korea.

Russia

The farthest reaching and most high-profile provisions in the Act target Russia. Responding to concerns raised by the Administration, European partners, and the oil and gas industry, the Act makes modest tweaks to a bill that originally passed the Senate in June (the "Senate Bill," which was the subject of our June 19, 2017 [advisory](#)). The primary differences are:

- **Congressional review of licensing actions:** As originally drafted, the Senate Bill subjected any licensing action that "significantly alters United States' foreign policy with regard to the Russian Federation" to congressional review. The Act qualifies that provision by clarifying that "the routine issuance of a license that does not significantly alter United States foreign policy with respect to the Russian Federation" (emphasis added) shall not trigger review. In practice, this means that the Treasury Department's Office of Foreign Assets Control ("OFAC") will, in most circumstances, retain the flexibility to issue specific licenses authorizing discrete transactions otherwise prohibited by Russia sanctions (Section 216).
- **Frontier oil projects subject to Directive 4:** The Senate Bill extended OFAC's Directive 4 prohibition on the provision of goods, services (except financial services), and technology to frontier oil projects anywhere in the world involving subject entities, not just within Russian territory. The Act limits that provision by applying it only to new frontier oil projects in which subject entities have (1) a controlling interest or (2) a substantial non-controlling ownership interest, defined as not less than 33 percent (emphasis added). It is not clear whether

sanctioned Russian interests in such projects will be aggregated for the purposes of clearing the 33 percent threshold. In practice, though, the threshold means that sanctioned Russian oil companies will not be able to block U.S. participation in developing fields simply by acquiring a small interest. EU firms, however, may have a commercial advantage in bidding on such projects given that they will not be directly subject to such measures. OFAC would retain the discretion to grandfather in existing projects that might otherwise be captured by this provision (Section 223).

- **Financing restrictions under Directive 2:** The Act lowers Directive 2 prohibitions on dealing in new debt of subject entities in the Russian energy sector by narrowing the allowable timeframe for loans from 90 to 60 days. The Senate Bill had originally lowered the allowable maturity to 30 days (Section 223).

The Act otherwise retains the main provisions of the Senate Bill, including:

- Codifying the existing sanctions imposed in response to Russia's interventions in Ukraine and the 2016 U.S. election, and subjecting any effort to terminate, waive, or significantly alter those sanctions to Congressional review (Sections 222 and 216).
- Tightening Directive 1 prohibitions on dealing in new debt of subject entities in the Russian financial sector by narrowing the allowable timeframe for loans from 30 to 14 days (Section 223).
- Mandating the imposition of sanctions on individuals and entities determined to have knowingly made a significant investment in certain frontier oil projects in Russia or Russian territorial waters (Section 225).
- Authorizing the imposition of sanctions on individuals and entities determined to have knowingly made (1) an investment that directly and significantly contributes to Russia's ability to construct energy export pipelines; or (2) sells, leases, or provides to Russia, for construction of energy export pipelines, any goods, services, technology, or information with a fair market value of greater than \$1 million, or in the aggregate, greater than \$5 million during any 12 month period (Section 232).
- Authorizing the imposition of sanctions on individuals and entities determined to have, with actual knowledge, made or facilitated an investment of greater than \$10 million, or in the aggregate, individual investments of greater than \$10 million during any 12 month period, if it directly and significantly contributes to Russia's ability to privatize state-owned assets in a manner that unjustly benefits officials or close associates and family thereof (Section 233).
- Providing a wide array of additional authorities to target sanctions evasion and Russian involvement in cyberspace, human rights abuses, and military support to Syria; transactions with the Russian intelligence and defense sectors; as well as additional sanctions on state-owned entities operating in Russia's railway, shipping, or metals and mining sectors (Sections 224, 226, 227, 228, 231, 233, 234).

European partners have voiced concerns with the provisions in the Act authorizing the imposition of sanctions on third-country entities making investments in or providing support to Russia's oil sector and energy export pipelines. If aggressively implemented, the measures would appear to authorize sanctions on European firms involved in, for instance, the Nord Stream 2 pipeline project. Although it is difficult to imagine the United States government creating such a breach with European partners, who have been critical in coordinating Russia sanctions policy, companies will need to weigh the likelihood of such exposure in making business and investment decisions.

Iran

The Act incorporates, unchanged, the Senate Bill's provisions with respect to Iran. See our June 19, 2017 [advisory](#) for further discussion.

North Korea

Finally, the Act authorizes the imposition of sanctions on persons and entities engaged in certain activities with respect to North Korea, including the selling or transferring of significant amounts of certain fuels to North Korea or for the operation or maintenance of designated vessels or aircraft, the insuring and registration of vessels owned by the Government of North Korea, and the maintenance of correspondent accounts with North Korean financial institutions. The Act also builds upon existing United Nations Security Council Resolutions by authorizing sanctions against persons or entities engaged in significant transactions involving certain products of or industries in North Korea. Additionally, the Act prohibits U.S. financial institutions from establishing or maintaining correspondent accounts on behalf of foreign financial institutions if they have reason to know such accounts are being used to provide significant financial services indirectly to certain designated persons, foreign governments, or financial institutions.

The North Korea provisions of the Act build upon recent actions by the Treasury Department, most notably the Financial Crimes Enforcement Network's June 29, 2017 action to impose correspondent account restrictions on China-based Bank of Dandong under Section 311 of the USA PATRIOT Act. The focus will continue to be on third-country entities – especially Chinese and Russian entities – facilitating North Korea's access to hard currency and the international financial system.

The Act now goes to the President's desk. President Trump has indicated that he will sign the bill. The statement that will accompany the President's signature may provide insight into how the Administration plans to (or doesn't plan to) implement the Act.

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