Hughes Hubbard & Reed

Sanctions Tightening: Cuba, Russia and Iran

Client Advisories

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June 19, 2017 – The Administration and Congress took action on two fronts last week to stiffen sanctions against Cuba, Russia and Iran. While the specific policies and areas of emphasis might change, the steps highlight a bipartisan interest in continuing to use sanctions as a primary tool of foreign policy in the early days of the Trump Administration.

1. Cuba Policy

On June 16, 2017, President Trump announced new restrictions on commerce with and travel to Cuba. Under the newly announced Presidential Policy Directive (PPD), the Departments of Treasury and Commerce are instructed to begin drafting new regulations within 30 days to implement the changes. The PPD amounts to a partial rollback of President Obama's steps to relax U.S. sanctions with respect to Cuba.

- **Restriction against Transactions with Cuban Military.** Of most relevance to U.S. businesses assessing commercial opportunities in Cuba, the PPD calls for a broad new prohibition on transactions with entities owned by or affiliated with the Cuban military, intelligence, or security services. Because the Cuban military is estimated to directly or indirectly control up to 60% of the island's economy, such a prohibition has far-reaching implications for American companies weighing the potential cost/benefit of doing otherwise authorized business in Cuba. In conjunction with the regulatory changes issued by the Treasury Department's Office of Foreign Assets Control (OFAC), the U.S. State Department is expected to publish a list of entities with which direct transactions will generally be prohibited. The full impact of this measure will likely depend on whether U.S. persons are able to rely upon the list as authoritative.
- **Travel Restrictions.** The rollback is meant to cut back on the individual people-to-people exchanges that had been authorized pursuant to the Obama-era changes. Travel under any of the other categories previously authorized by OFAC will remain unaffected, including travel that is directly incident to professional research and professional meetings. However, under the plan, U.S. persons visiting Cuba may be subject to new record-keeping requirements, and such records could face potential audit to ensure that visits to Cuba fall

within an authorized travel category, such as those for journalistic, religious, and humanitarian activities. Americans visiting Cuba will also generally be prohibited from spending money in state-run hotels and restaurants. Flights and cruises between the two countries will be allowed to continue.

The changes announced in the PPD formally reverse very few of the Obama-era initiatives. However, by imposing new conditions and limitations on previously authorized travel and trade, they increase the risk for U.S. individuals and entities. The legal reach of the new policy will be defined later, when the Treasury and Commerce departments publish their new regulations. The practical reach, however, may be significant, as the PDD reverses the tide of liberalizations and increases compliance costs. In addition, a Cuban response could further chill the previously warming relationships.

2. Iran-Russia Bill

On June 15, 2017, the U.S. Senate voted 98-2 to pass Iran sanctions legislation that the Senate amended to include broad new Russia sanctions measures. The Russia sanctions are the most noteworthy part of the legislation. The bill, S722, "Countering Iran's Destabilizing Activities Act of 2017," now goes to the House of Representatives.

Russia Sanctions Provisions

Stealing the spotlight from Iran, Senate leaders added a broad package of Russia sanctions as an amendment to the bill. The Russia measures added to the Iran bill are broad. They would codify existing sanctions imposed in response to Russia's interventions in Ukraine and the 2016 U.S. election; and provide a wide array of additional authorities to target sanctions evasion and Russian involvement in cyberspace, human rights abuses, and military support to Syria. The bill would also authorize new measures against state-owned entities operating in Russia's railway, shipping, or metals and mining sectors, as well as entities involved in Russia's development of frontier oil resources, energy infrastructure, and the privatization of its state-owned assets.

Many of the authorities in the bill are styled as "mandatory" and direct the President to impose sanctions on individuals and entities determined to meet the specified criteria. However, because the President would retain the discretion to make such determinations, the real impact of those new authorities will depend on how aggressively they are utilized and implemented by the executive branch. In at least two respects, however, the bill proposes to bind the Administration's hands:

- **Financial and Energy Sectors.** The bill directs OFAC to tighten Directive 1 (financial sector) and Directive 2 (energy sector) prohibitions on dealing in new debt of subject entities by narrowing the allowable timeframe for loans from 30 to 14 days and from 90 to 30 days, respectively. The bill also directs an extension of the Directive 4 prohibition on the provision of goods, services (except financial services), and technology to subject entities involved in frontier oil projects anywhere in the world, not just within Russian territory.
- **Congressional Review of Sanctions Changes.** The bill provides for Congressional review of any effort to terminate, waive, or license certain transactions that reduce the sanctions imposed on Russia. This provision is widely thought to reflect Congress's skepticism of the Trump Administration's posture towards Russia. It also reflects bipartisan frustration regarding successive administrations' use of waiver and licensing authorities to ease or lift sanctions prescribed by Congress.

Iran Sanctions Provisions

The bill would authorize new sanctions against individuals and entities involved in Iran's ballistic missiles program, as well as those transferring or facilitating the transfer of arms and related materiel into Iran. The bill also requires that the Islamic Revolutionary Guard Corps (IRGC) be designated under Executive Order (E.O.) 13224, related to persons who commit or threaten to commit terrorism. (The IRGC is already designated under three other E.O.s.)

The bill, as drafted, does nothing to upset the literal terms of the Joint Comprehensive Plan of Action (JCPOA) relating to Iran's nuclear program. However, it does provide the Administration with new authorities to target Iran beyond the nuclear realm by authorizing sanctions against people involved in Iran's ballistic missile program and anyone who does business with them. Whether and how the Administration uses such authorities, and in response to what provocations, may signal whether the JCPOA – and the limited sanctions relief it offers – can endure as a political agreement.

Although the bill still needs to pass the House, it has strong momentum and reflects Congress's growing assertiveness in crafting sanctions policy.

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