

KIRKLAND ALERT

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President Trump Signs Sanctions Bill Targeting Russia, North Korea and Iran

On August 2, 2017, President Trump signed into law the “Countering America’s Adversaries Through Sanctions Act,”¹ which imposes new sanctions on Russia, North Korea and Iran and highlights the continuing challenges that companies face in complying with the constantly evolving sanctions landscape. In signing it, President Trump affirmed that he favored tough measures on Russia, North Korea and Iran. However, he indicated that the Act was “significantly flawed,”² expressing concerns that it (1) hurts the interests of the U.S.’s European allies; (2) “makes it harder for the United States to strike good deals for the American people;” and (3) and will drive China, Russia and North Korea closer together.³ President Trump also described certain of the Act’s provisions as “clearly unconstitutional.”⁴ Under the Act, Congress has the power to review any changes to Russia sanctions policy that the president proposes and to block them from taking effect, a significant constriction on the president’s authority.

Strong bipartisan support for increased sanctions against Russia has existed for months, stemming in part from concerns in Congress over reports of Russian meddling in the 2016 presidential election. The inclusion of sanctions on North Korea was noteworthy, as previously the Senate had passed a version of the sanctions legislation only addressing Russia and Iran. Recently, U.S. Secretary of State Rex Tillerson accused Russia and China of enabling North Korea’s nuclear weapons and ballistic missile development program.⁵ The overwhelming support for the Act likely demonstrates a movement towards increased sanctions towards these countries. For example, in a July 27, 2017, statement, Senate Foreign Relations Committee Chairman Bob Corker (R-TN) stated “[w]ith near unanimous support in both chambers of Congress, this legislation sends a strong signal to Iran, Russia and North Korea that our country will stand firm and united in the face of their destabilizing behavior.”⁶

We have summarized below the key takeaways from the Act:

Russia

The Act provides for sanctions related to the following activities: (1) cyber security, (2) crude oil projects, (3) financial institutions, (4) corruption, (5) human rights abuses, (6) evasion of sanctions, (7) transactions with Russian defense or intelligence sectors, (8) export pipelines, (9) privatization of state-owned assets by government officials, and (10) arms transfers to Syria. Under the Act, sanctions that were imposed primarily by executive orders under the Obama administration would require an act of Congress to be changed or removed. As a result, sanctions will not be able to be adapted as swiftly in response to evolving geopolitical developments.

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Under the new legislation, the president is required to submit for congressional review certain proposed actions to terminate or waive Russian sanctions. The Trump administration can apply for waivers if it certifies that certain conditions have been met. Such conditions include Russian progress on implementing the peace deal in the Ukraine known as the Minsk agreement and “significant” Russian efforts to “reduce the number and intensity of [its] cyber intrusions.”

The Trump administration obtained some changes to the legislation since its first passage by the House and Senate, including those sought by energy companies. For example, U.S. businesses can work with Russian entities on certain deepwater, shale and Arctic offshore projects so long as they do not involve a sanctioned individual or entity having an ownership stake of 33 percent or greater. Interestingly, this is a stricter threshold than many current sanctions that subject an entity to sanctions if 50 percent or more owned by a sanctioned party.

North Korea

New sanctions on North Korea primarily target (1) banks, (2) metals and mineral companies, (3) North Korean cargo and shipping, and (4) forced labor. U.S. financial institutions are prohibited from establishing or maintaining correspondent accounts used by foreign financial institutions to provide indirect financial services to North Korea. Foreign governments that provide or receive defense articles or services from North Korea are prohibited from receiving certain types of U.S. foreign assistance.

The Act also mandates reports to Congress on weapons program cooperation between North Korea and Iran and requires that the State Department submit a determination within 90 days regarding whether North Korea should be designated a state sponsor of terrorism. In addition, it provides the president with increased authority to impose sanctions on persons in violation of certain United Nations Security Council resolutions regarding North Korea.

Iran

New sanctions on Iran primarily target (1) Iran’s ballistic missile development program, (2) state sponsorship of terrorism, and (3) alleged human rights abuses. In addition, the Act codifies sanctions against certain individuals that were previously imposed administratively for “material contributions” to the activities identified above, and sanctioned persons engaged in certain weapons transfers with Iran or who have provided related technical or financial aid. Many observers have raised the possibility that Iran could view the new sanctions as a breach of the Iran nuclear deal, the Joint Comprehensive Plan of Action (“JCPOA”), jeopardizing the agreement’s aim of reducing Iran’s nuclear weapons capabilities.

“With near unanimous support in both chambers of Congress, this legislation sends a strong signal to Iran, Russia and North Korea that our country will stand firm and united in the face of their destabilizing behavior.”
— Sen. Bob Corker (R-TN)

Key Takeaways:

1. The political ballast in Congress has shifted towards more sanctions. Given the statements of Secretary Tillerson and other key figures, increased sanctions towards Russia, North Korea and potentially China may be likely in the future.
2. To the extent the executive branch's authority and discretion over sanctions implementation becomes more limited, these tools of statecraft may become less adaptable to meeting fluid U.S. national security requirements.
3. With respect to Russia, having to check for sanctioned parties owning even a minority interest in entities will require additional diligence on beneficial ownership further complicating compliance requirements.
4. With respect to Russia and Iran in particular, the EU and other regimes may have or impose conflicting legal requirements, including measures in retaliation for the proposed sanctions legislation, which may require companies to navigate conflicting compliance obligations.

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- 1 *Countering America's Adversaries Through Sanctions Act*, H.R.3364, 115th Cong. (2017), <https://www.congress.gov/bill/115th-congress/house-bill/3364/text?q=%7B%22search%22%3A%5B%22sanctions%22%5D%7D&r=2>.
 - 2 *Statement by President Donald J. Trump on Signing of H.R. 3364*, The White House (Aug. 2, 2017), <https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-hr-3364>.

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- 3 *Statement by President Donald J. Trump on Signing the “Countering America’s Adversaries Through Sanctions Act,”* The White House (Aug. 2, 2017), <https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-countering-americas>.
- 4 *Statement by President Donald J. Trump on Signing of H.R. 3364,* The White House (Aug. 2, 2017), <https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-hr-3364>.
- 5 *On the Latest DPRK Provocation,* U.S. Department of State (July 28, 2017), <https://www.state.gov/secretary/remarks/2017/07/272936.htm>.
- 6 *Corker Applauds Passage of Iran, Russia, North Korea Sanctions,* Corker.Senate.Gov (July 27, 2017), <https://www.corker.senate.gov/public/index.cfm/news-list?ID=C9D3AC92-876A-4B4C-91E5-9108EB0B7635>.

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