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Takeaways From New Sanctions On Iran, Russia, North Korea

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Law360, New York (August 9, 2017, 5:12 PM EDT) -- On Aug. 2, 2017, U.S. President Donald Trump signed a wide-ranging piece of legislation, the Countering America's Adversaries Through Sanctions Act, which expands existing sanctions and imposes new ones on Russia, Iran and North Korea. The law had been overwhelmingly approved by both the House of Representatives and the Senate in recent days, and President Trump signed it despite his disagreement with many of its aspects. Given the breadth of the legislation, companies should closely examine its provisions for possible impacts on their business.

Russia

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The law's most controversial measures — and those to which the Trump administration objected most strenuously — concern sanctions on Russia. In addition to affirmatively imposing new sanctions regarding Russia, the law also limits the president's ability to remove or modify existing sanctions. It codifies the executive orders that have been issued regarding Russian hacking and those surrounding Russia's activities in Crimea. It also requires the president, before terminating or waiving Russian sanctions, to submit a report to relevant congressional committees. Before the president could take the action, Congress would have 30 days to review it. During this time, Congress could pass a resolution of disapproval, which would prohibit the president from lifting or modifying sanctions — a provision which will significantly tie his hands. Indeed, President Trump specifically pointed to these sections in calling the legislation "significantly flawed" in a signing statement.[1]

The legislation takes several steps to strengthen existing sectoral sanctions on Russia and to limit Western investment in Russia. Specifically, it modifies Executive Order 13662 ("EO 13662") to allow — though not require — the secretary of the Treasury to block the U.S. property of state-owned entities operating in the railway, metal or mining sectors of the Russian economy. It also tightens timing provisions in the directives issued pursuant to that executive order to allow fewer transactions by U.S. persons with Russian entities. For example, the maximum time of maturity for transactions and dealings in new debt that may be conducted by U.S. persons with sanctioned entities in the financial services sector (those listed pursuant to Directive 1 under EO 13662) is shortened to 14 days. Similarly, the maximum time of maturity for similar transactions by U.S. persons with sanctioned entities in the energy sector (those listed pursuant to Directive 2 of EO 13662) is shortened to 60 days. With respect to Directive 4, which pertains to advanced energy projects, the law entirely prevents U.S. persons from providing, exporting or re-exporting goods, services or technology in support of deepwater, Arctic offshore, or shale projects that have the potential to produce oil and in which Russian entities have at least a 33 percent interest. These provisions were particularly controversial in early versions of the law, and the 33 percent figure represents a compromise that was reached in response to pressure from Western energy companies against a proposed complete ban on their involvement in such projects. The law also modifies the Ukraine Freedom Support Act of 2014 to make sanctions on persons who make significant investments in Russian crude oil projects mandatory; the president must choose three sanctions from a menu of nine options.

The law also requires sanctioning persons determined to have engaged knowingly in significant transactions with the Russian government's defense or intelligence sectors; the president must choose five sanctions from a menu of 12 options. It provides the president with discretion to impose sanctions on both U.S. and non-U.S. persons who knowingly make investments or provide services, information, technology or support worth $1 million or more (or $5 million or more in a 12-month period) for the construction of Russian energy export pipelines. This provision of the law was particularly controversial among European allies, which objected to the penalties it might impose on pipelines that bring Russian gas supplies to the European Union, including the Nord Stream 2 pipeline. Indeed, the law's language was modified from earlier versions to specify that the president may impose these sanctions "in coordination with allies."

The law also imposes sanctions, including possibly specially designated national (SDN) designations, on persons who engage in Russian government-sponsored hacking, as well as financial institutions that facilitate certain Russian defense- and energy-related transactions or transactions for SDNs. It also requires that Russian individuals responsible for corruption and foreign sanctions evaders be designated as SDNs.

Additionally, the law requires SDN designations of foreign persons responsible for human rights abuses in Russian territory, as well as on those who support these persons. It requires sanctions on all persons who make investments of more than $10 million to privatize Russian state-owned assets; the president must choose five sanctions from a menu of 12 options. Foreign persons who transfer arms to Syria or provide Syria with significant financial, material or technological support must be designated as SDNs.

Iran

The law's sanctions on Iran center on the country's ballistic missile program. The legislation has no effect on the suspension of nuclear-related sanctions under the Joint Comprehensive Plan of Action. In fact, the Trump administration certified that Iran was complying with that agreement just a few weeks ago.

Specifically, the law requires the president to designate as SDNs foreign persons determined knowingly to have engaged in activities that materially contribute to the Iranian government's ballistic missile program as well as those who knowingly provide support to these persons.

The law adds to the penalties already faced by the Iranian Revolutionary Guard Corps and sanctions persons responsible for human rights abuses in Iran. It requires SDN designations of persons who knowingly engage in activity that contributes to arms transfers to or from Iran.

North Korea

Finally, the law imposes sanctions on North Korea. These sanctions are designed to further isolate North Korea, especially following the country's recent missile tests. The law provides for various sanctions to be imposed on persons who import or export defense articles to or from North Korea as well as those who acquire certain precious metals from North Korea, transfer significant amounts of jet or rocket fuel, provide fuel or supplies for designated vessels or aircraft, maintain insurance or registration for North Korean government-owned vessels, or maintain correspondent accounts with North Korean financial institutions.

It provides for similar, but not mandatory, penalties on persons who knowingly acquire significant amounts of coal or iron from the government of North Korea as well as those who transfer cash, metals or gemstones to the government; provide or transfer oil or gas products; facilitate the government's online commercial activities; acquire significant amounts of North Korean food or agricultural products; knowingly conduct significant transactions in North Korea's transportation, mining, energy or financial services industries; or facilitate the operation of North Korean financial institutions.

The law also prevents the United States from providing assistance to foreign governments that provide or receive defense articles from the government of North Korea. It would also prohibit vessels owned or operated on behalf of North Korean persons from entering the United States or transferring cargo in the United States. Additionally, the law sanctions foreign persons employing North Korean laborers.

Three days after President Trump signed the Countering America's Adversaries Through Sanctions Act, and with new reports of North Korea's capacity to miniaturize nuclear weapons, the UN Security Council unanimously voted to impose new global sanctions on North Korea in response to its testing of intercontinental ballistic missiles, including ones that could reach the United States. The new UN sanctions target North Korea's major exports by imposing a ban on all exports from North Korea of coal, iron and iron ore, lead and lead ore, and seafood. The sanctions also target North Korea's arms smuggling, joint ventures with foreign companies, banks and other sources of revenue. These include new sanctions on institutions and entities that support North Korea's nuclear and missile programs, including the Foreign Trade Bank, the country's main foreign-exchange bank. The UN sanctions also ban new joint ventures or cooperative entities with North Korean entities or individuals as well as additional investments in existing joint ventures.

Recommendations for Companies

The new legislation is the amalgam of a number of sanctions laws that Congress was considering. It touches on a great number of industries, affirmatively imposing penalties on some while providing the administration with substantial leeway in sanctioning others. Even if companies do not primarily operate in the sectors that the law specifically targets, they would do well to examine the law's provisions to ensure that they are compliant. Furthermore, as the new UN sanctions against North Korea illustrate, companies must also be alert to new sanctions from non-U.S. sources that may expand the current international sanctions regime against Russia, Iran or North Korea.

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[1] https://www.whitehouse.gov/the-press-office/2017/08/02/statement-president-donald-j-trump-signing-hr-3364.
