

CLIENT MEMORANDUM

President Trump Signs Omnibus Sanctions Bill into Law, Tightening Sanctions Against Russia, but Leaving Open Questions on Implementation

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On August 2, 2017, President Trump signed the “Countering America’s Adversaries Through Sanctions Act” (“the Act”) into law after passing 419 to 3 in the House and 98 to 2 in the Senate. The statute, available [here](#), provides new sanctions for Russia, Iran, and North Korea. Most prominently, the Act expands sanctions on Russia by tightening restrictions for U.S. persons on providing credit and support for unconventional oil projects to listed Russian entities, and provides authority for the President to impose “secondary sanctions” against non-U.S. persons for certain activities involving Russia. The criteria for the secondary sanctions could broadly capture commercial activities with Russian entities, and the Office of Foreign Assets Control (“OFAC”) is likely to provide additional guidance to explain more precisely how it intends to implement the sanctions.

I. Limitations to the Executive’s Authority Over Sanctions Against Russia

The Act limits the President’s authority to ease sanctions against Russia in several ways. Section 216 requires congressional review of three executive actions with respect to Russia: (1) the termination of sanctions; (2) the waiver of the application of sanctions; and (3) any licensing action that would significantly alter U.S. foreign policy with regard to Russia. In addition, Section 222 codifies the sanctions provided for in Executive Orders 13660, 13661, 13662, 13685, 13694, and 13757.

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II. Tightening of the Sectoral Sanctions

The Act tightens the prohibitions for U.S. persons on engaging in certain transactions involving listed Russian entities, known as the sectoral sanctions. Section 223 makes changes to Directives 1, 2, and 4 issued pursuant to E.O. 13662 by:

- Modifying Directive 1 by changing the restrictions on the dealing of new debt from 30 days maturity to 14 days maturity with respect to listed entities operating in the Russian financial services sector;
- Modifying Directive 2 by changing the restrictions on the dealing in new debt from 90 days maturity to 60 days maturity with respect to listed entities operating in the Russian energy sector; and
- Modifying Directive 4 by expanding the prohibition on the exportation or re-exportation, directly or indirectly, by U.S. persons of goods, services, or technology in support of new deepwater, Arctic offshore, or shale projects *outside of Russia* where an entity subject to the Directive has an ownership interest of 33 percent or more.

OFAC is expected to update Directives 1 and 2 within 60 days and Directive 4 within 90 days of the President signing the Act, as required by the law.

III. Secondary Sanctions Authorized Against Non-U.S. Persons for Certain Activities Involving Russia

The Act significantly expands the threat of secondary sanctions against non-U.S. persons for engaging in certain commercial activities in Russia or with Russian persons. These provisions could capture a broad array of commercial activities in and outside of Russia, depending how they are implemented by the administration. Some of the most significant provisions are described below.

A. Transactions with Russian Persons Subject to Sanctions

Section 228 of the Act requires the President to impose sanctions on any foreign person if the President determines that the foreign person facilitates a significant transaction for or on behalf of any person subject to sanctions imposed by the United States with respect to the Russian Federation. This section potentially could be applied to significant transactions for or on behalf of Russian entities subject to the Directives, including Rosneft, Rostec, and Lukoil, as well as the major Russian state-owned financial institutions. Such a broad application of the provision could have a significant effect on European and other firms doing business with Russian entities subject to the sectoral sanctions.

More narrowly, Section 226 of the Act amends the language of Section 5 of the Ukraine Freedom and Support Act of 2014 to require the President to impose sanctions with respect to a foreign financial institution that the President determines knowingly engages in a significant transaction or knowingly facilitates such a transaction with any Russian person on OFAC's Specially Designated National and Blocked Persons List who is designated pursuant to any of the Ukraine-related sanctions, unless the President determines that it is not in the interest of the United States to do so.

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B. Transactions in the Energy Sector

In addition, Section 232 of the Act states that the President may impose sanctions against a person who the President determines knowingly makes an investment that directly and significantly contributes to the enhancement of the ability of Russia to construct energy export pipelines, or a person who sells, leases or provides to Russia goods, services, technology, information, or support, that could directly and significantly facilitate the maintenance or expansion of the construction, modernization, or repair of energy export pipelines by Russia, any of which has a fair market value of \$1,000,000 or more; or that, during a 12-month period, have an aggregate fair market value of \$5,000,000 or more.

C. Transactions in the Defense and Intelligence Sectors

Section 231 states that, 180 days from the signing of the Act, the President shall impose sanctions with respect to a person the President determines knowingly engages in a significant transaction with a person that is part of, or operates for or on behalf of the intelligence or defense sectors of the government of the Russian Federation, including the Main Intelligence Agency of the General Staff of the Armed Forces and the Federal Security Service.

Potential sanctions against entities that meet the criteria for the imposition of secondary sanctions include a blocking of property interests subject to U.S. jurisdiction, restrictions on the issuance of export licenses, the exclusion of corporate officers from the United States, and restrictions on loans and certain other banking transactions involving a U.S. financial institution.

IV. Conclusion

Both U.S. and non-U.S. clients should carefully assess any impact of the new sanctions on their business involving Russia or Russian entities. U.S. clients should update any credit or payment terms with entities subject to Directive 1 or 2, as well as examine any support to nonconventional oil projects outside of Russia in which an entity subject to Directive 4 may have an interest.

Non-U.S. companies should consider whether activities in Russia or involving Russian entities may meet the criteria for sanctions outlined in the Act. Given the potential breadth of the secondary sanctions provisions, OFAC will almost certainly provide additional guidance before taking any steps to implement the sanctions against non-U.S. persons engaged in the covered commercial activities.

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