

US CONGRESS COULD ENACT SWEEPING SANCTIONS BILL AGAINST RUSSIA, IRAN, AND NORTH KOREA

On July 25, 2017, the US House of Representatives passed by a vote of 419-3 the "*Countering America's Adversaries Through Sanctions Act*" ("**CAATSA**") (HR 3364). CAATSA now goes to the US Senate, which in June already passed its own version of the bill by a similar margin, 98-2, Senate Resolution 722, *Countering Iran's Destabilizing Activities Act*, for further action. If enacted, CAATSA will codify the current Russia/Ukraine-related sanctions as law rather than executive action, establish a mandatory Congressional review process should the President wish to lift certain Russia/Ukraine-related sanctions, as well as authorize the President to impose new sanctions against Russia, Iran, and North Korea, including "mandatory" sanctions against persons that the President determines, at his discretion, to have engaged in certain sanctionable activity. The mandatory label is somewhat misleading because if the President does not issue a determination against a particular person under the Russia/Ukraine-related sanctions, then CAATSA does not in fact mandate any action against that person.

CAATSA differs slightly from Senate Resolution 722, and includes authority for additional North Korea sanctions. The House bill was negotiated with the Senate prior to its passage, but the Senate may still seek amendment before voting on it. Given the current focus on the health care bill, it remains unclear whether the Senate will act on CAATSA prior to the August recess that will last from July 31 until September 4. Continuing opposition to CAATSA from Europe also may delay its consideration by the Senate. Should the bill pass the Senate prior to the recess, President Trump would seem to invite political embarrassment if he uses his veto power because Congress could easily override the veto based on the overwhelming bipartisan majorities in favor of the bill.

If passed in its current form, CAATSA could affect a wide range of companies working in various industries, such as financial services, insurance, transportation, energy and mining, agriculture, defense and global commodity trading that will need to understand its implications, as well as review any additional

guidance from US government authorities in assessing their business going forward.

RUSSIAN SANCTIONS

Title II of CAATSA is called the "*Countering Russian Influence in Europe and Eurasia Act of 2017*" ("**CRIEEA**"). CRIEEA provides for wide-ranging sanctions on a number of sectors within the Russian economy and also tightens specific components of the existing sanctions regime. While certain new sanctions are mandatory if the President chooses to determine that sanctionable activity has occurred (e.g., relating to cyber crime), others are permissive and do not require sanctions even if the President issues a determination of sanctionable activity (e.g., relating to Russian pipelines). The House made several changes to the Senate version of the bill, many of which were based on strong opposition from European governments and the business community. The House version of the bill expressly provides that the President should "*continue to uphold and seek unity with European and other key partners on sanctions implemented against the Russian Federation.*"

CRIEEA includes the following:

- **Codifying existing sanctions and requiring mandatory congressional review:** the bill codifies into law existing Russia/Ukraine-related sanctions issued under the prior administration pursuant to executive orders 13660, 13661, 13662 and 13685.¹ The bill also restricts the President's ability to provide unilaterally any relief under the Russia/Ukraine-related sanctions without Congressional review. The bill requires that the President send Congress a report explaining the rationale before terminating or suspending any part of Russia/Ukraine-related sanctions or waiving the application of the sanctions to any person designated under them. Congress then has the opportunity effectively to "veto" the proposed sanctions relief should it disagree with the President's rationale for the action.

- **Authorizing the Treasury to impose sectoral sanctions on state-owned entities operating in the "railway or metals and mining sector" of the Russian economy:** section 223 expands the scope of persons that could be designated under Executive Order 13662 to any state-owned entities operating in these sectors, but it is permissive in nature. The Office of Foreign Assets Control ("**OFAC**") previously has used authority granted under this Executive Order to impose sectoral sanctions on the Russian energy companies and banks.

- **Modifying the sectoral sanctions Directives:** OFAC has imposed current sectoral sanctions under the authority of four Directives. Directives 1-3 prohibit US person or the US financial system involvement in activities related to new equity or new debt of longer than 30 or 90 days (depending on the Directive) of designated persons. Directive 4 imposes a prohibition on US persons to provide, export or re-export goods, services (except for financial services) or technology in support of deepwater, Arctic offshore or shale oil projects in the territory of Russia or off its coast ("**strategic Russian crude oil project**"), if such projects involve Directive 4 sanctions targets. CRIEEA would reduce the permissible credit period for transactions involving US persons or the US financial system to 14 days under Directive 1 and 60 days under

¹ CRIEEA also codifies two executive orders, 13694 and 13757, related to malicious cyber-enabled activities.

Directive 2 (a change from the previous 30 days stated in the Senate version of the bill). In addition, Directive 4 would now impose the same prohibition on US person involvement in any new strategic Russian crude oil projects worldwide if the project also involves a Directive 4 sanctions target or any person in which such entity owns a 33% interest or more.

- **Amending the scope of the Ukraine Freedom and Support Act ("UFSA") sanctionable activity:** the UFSA was passed in 2014 and authorized the President to impose various sanctions from a menu of nine sanctions options² (blocking being the most severe) if the President, at his discretion, determines that a person has engaged in certain types of sanctionable activity. With the exception of one Russian entity that the President was required to designate, President Obama did not otherwise use such authority. CRIIEA modifies UFSA by requiring the President to impose a number of such sanctions if he determines that a person knowingly, after enactment of CAATSA, has: a) made a significant investment in a strategic Russian crude oil project; b) engaged in significant transactions that help provide arms to Syria; or c) engaged in significant transactions with persons listed on the Specially Designated Nationals ("**SDNs**") list. Under CRIIEA, however, the President may decide not to impose the sanctions even against persons determined by him to have engaged in the sanctionable activity if he also determines that it is not in the national interest of the United States to do so.

- **Permitting sanctions designations relating to pipeline projects:** the bill, as amended by the House, authorizes (but does not require) the President, "*in coordination with allies of the United States,*" to impose certain sanctions from the menu of 12 options against persons that the President determines to have, post CAATSA, invested or supported the maintenance or expansion of the construction, modernization, or repair of Russian energy pipelines. After the Senate passed its version of the bill in June without the ally coordination language, both Germany and Austria expressed strong opposition to this section, and many other political entities, including the European Commission, voiced notable concern. This change by the House would likely allow for US cooperation with European nations in the Nord Stream 2 pipeline project previously threatened under the Senate version of the bill.

- **Mandating corruption sanctions:** the bill requires the President to impose sanctions on any Russian government officials or their close associates or family members if the President determines that, post CAATSA, they are responsible for, or complicit in, an act of significant corruption in Russia or elsewhere.

- **Expanding sanctionable activity in other respects:** the bill requires the President to impose a variety of sanctions, including blocking sanctions, if the President determines a person, post CAATSA, has: a) facilitated

² The sanctions options available under the UFSA, among others, include restrictions on assistance from the US Export-Import bank to, prohibitions on arms or dual use exports to, prohibition on investment in equity or debt of, or restrictions on granting access to the US financial system by such sanctioned persons, or imposition of blocking sanctions on their property. CRIIEA expanded the menu of sanctions available under some of its provisions to 12 to include (i) prohibition on US financial institutions to provide loans of more than \$10 million to sanctioned persons and authorization for US representatives to oppose loans to such persons by international financial institutions; (ii) prohibition for sanctioned persons which are banks to serve as primary dealers in the US government debt or depositories of US government funds; and (iii) prohibition on transactions involving a sanctioned person and a US foreign exchange.

certain deceptive or structured transactions on behalf of sanctioned persons or their family members; b) committed serious human rights violations; c) engaged in transactions with the Russian intelligence or defense sectors, as defined in additional guidance to be provided by the President within 60 days of the bill's enactment; or d) provided material support in arms or other defense materiel to the Syrian Government. In addition, the President may also impose blocking or other sanctions if the President determines a person knowingly engages in activity undermining cybersecurity or provides material support, goods or services (including financial services) for such activity.

- **Including participation in certain privatization of state-owned assets as sanctionable activity:** the bill also requires the President to impose a number of 12 sanctions options if he determines that persons, post CAATSA, have, with actual knowledge, invested \$10,000,000 (or facilitated such an investment) in activity related to unjust privatization of state-owned assets by Russian government officials.

IRAN SANCTIONS

Title I of CAATSA is called "*Countering Iran's Destabilizing Activities Act of 2017*" ("**CIDAA**"). This title of the House bill, identical to the Senate version, includes a number of sanctions measures that are largely redundant with current law and generally gives the President the discretion to determine whether any sanctionable activity has occurred.

The bill's supporters assert that it does not violate the Joint Comprehensive Plan of Action ("**JCPOA**") because it operates outside the scope of the JCPOA's requirements to refrain from implementing new nuclear-related sanctions, a position disputed by Iranian officials. In addition, the bill authorizes the President to waive the imposition of sanctions requirements if the waiver is in the vital national security interests of the United States.

The bill includes the following:

- **Terrorism-related sanctions against the IRGC:** the bill requires the President to impose on the Iranian Revolutionary Guards Corps, which is already a blocked person, the same blocking sanctions applicable to designated terrorist organizations.
- **Ballistic missile program and arms embargo sanctions:** the bill requires the President to impose sanctions against persons if the President determines that they have knowingly materially contributed to: 1) Iran's ballistic missile or weapons of mass destruction programs, or 2) transactions concerning specified military equipment or related technical or financial assistance.
- **Sanctions against human rights violators:** the bill authorizes the President to impose, in his discretion, sanctions against persons if the State Department identifies them as responsible for certain human rights violations against individuals in Iran.
- **Reporting requirements:** the bill requires the Secretaries of State, Defense and the Treasury, as well as the Director of National Intelligence, to provide a comprehensive strategy for deterring destabilizing Iranian activity. It also requires the President to prepare periodic reports concerning: 1) Iran's ballistic missile program, 2) the US-EU sanctions coordination, 3) US citizens

detained by Iran, and 4) any use by the President of the waiver authority provided for in this Title.

NORTH KOREA SANCTIONS

CAATSA's Title III is called the "*Korean Interdiction and Modernization of Sanctions Act*" ("**KIMSA**"). KIMSA amends certain provisions of the North Korea Sanctions and Policy Enhancement Act of 2016 and imposes a range of new secondary sanctions against persons if the President determines that they have engaged in sanctionable activities related to North Korea. It includes, among other provisions, the following:

- **Expansion of mandatory secondary sanctions:** the bill requires the President to impose sanctions on persons he determines to have engaged in the acquisition from North Korea of significant amounts of gold, silver, and other listed metals; the provision of rocket or jet fuel to North Korea; and the provision of goods or services to North Korean vessels sanctioned by the UN or US. The new sanctions also seek to prevent the maintenance of a correspondent account with any North Korean financial institution, except for cases specifically approved by the UN.
- **Expansion of discretionary secondary sanctions:** the bill authorizes the President to sanction dealings in certain North Korean exports (metals, textiles, food or agricultural products, among other listed goods) or transfers to North Korea of such items as bulk cash, precious metals, or crude oil.
- **Prohibition on indirect correspondent accounts:** the bill prohibits US financial institutions from knowingly permitting a foreign financial institution to use its correspondent account to provide significant financial services indirectly to North Korea or any person or financial institution designated for engaging in sanctionable activities proscribed under the North Korea Sanctions and Policy Enhancement Act of 2016, as expanded by KIMSA.
- **Forced labor:** the bill prohibits goods produced by North Korean forced labor from entering the United States and requires the President to sanction those involved in the export or use of forced labor.

CONCLUSION

Although CAATSA has strong, bi-partisan congressional support, the Senate still has to pass it and either the President has to sign it, or Congress override his veto, before it would become law. The summary above is based on the current text of the bill as passed by the House. If the Senate decides to modify the bill, the two chambers of Congress would then need to reconcile the conflicting texts, although already there had been much negotiation with the Senate before the House passed its bill. CAATSA, if it becomes law in substantially the current form, would solidify the Russia/Ukraine-related sanctions and authorize the President, essentially in his discretion, to impose new sanctions against Russia, Iran, and North Korea. Companies should consider their current business and associated risks of exposure to sanctionable activities as well as their commercial exposure to companies that may be targeted by the new sanctions authority.

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