

US Enacts “Countering America’s Adversaries Through Sanctions Act” Expanding Its Russia, Iran, and North Korea Sanctions Programs

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EU Sanctions Team: [James Killick](#), [Genevra Forwood](#), [Sara Nordin](#), [Charlotte Van Haute](#), [Fabienne Vermeeren](#)

US Sanctions Team: [Richard Burke](#), [Nicole Erb](#), [Claire A. DeLelle](#), [Kristina Zissis](#), [Cristina Brayton-Lewis](#)

On August 2, 2017, the President signed into law the “Countering America’s Adversaries Through Sanctions Act,” providing a number of new sanctions against Russia, Iran, and North Korea.¹ The President also issued a signing statement² setting forth the Administration’s views on the contents and constitutionality of the Act.

The Act includes the following sanctions measures relating to each of the three sanctions programs:

Russia: The Act codifies existing sanctions under the cybersecurity and Ukraine/Russia-related sanctions programs; tightens restrictions under sectoral sanctions by adding new sectors and shortening maturity dates for Directives 1, 2, and 4; adds additional sanctions measures by providing for secondary sanctions for persons determined to be engaging in certain activities relating to the Russian energy, defense, or intelligence sectors and for persons determined to be assisting or providing support for significant activities undermining cybersecurity; and requires the President to block and prohibit all transactions in property and interests in property of persons determined to be engaging in significant activities undermining cybersecurity, Russian Government officials or close associates or relatives of Russian Government officials determined to be engaging in acts of significant corruption, foreign persons determined to be evading sanctions, foreign persons determined to be committing human rights abuses, or foreign persons determined to be providing or engaging in activities related to providing arms to Syria.

Iran: The Act requires the President to block and prohibit all transactions in property and interests in property of persons determined to be providing support to Iran’s ballistic missile program or engaging in activities that materially contribute to Iran’s acquisition of specified arms and related materials or providing technical

¹ See the full text of the Act [here](#).

² See the full text of the official signing statement [here](#). The President also made a statement regarding the Act that largely tracks the contents of the signing statement. See the text of that statement [here](#).

training, financial resources, or other services related to the acquisition or use of such materials; authorizes the President to block and prohibit all transactions in property and interests in property of foreign persons or their agents who are determined to have committed human rights abuses against certain parties; and requires the President to designate the Iranian Revolutionary Guard Corps (“IRGC”) and foreign persons that are officials, agents, and associates of the IRGC as Specially Designated Global Terrorists (“SDGTs”) on the List of Specially Designated Nationals and Blocked Persons (“SDN List”) administered by the US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”).

North Korea: The Act provides for additional sanctions measures to aid in the enforcement of United Nations (“UN”) Security Council Resolutions and to counteract the commission of human rights abuses, particularly those related to forced labor, by requiring the designation of parties determined to be acquiring certain types of ore from North Korea or conducting activities relating to designated aircraft or vessels; authorizing the designation of parties determined to be operating in the transportation, mining, energy, or financial services industries of North Korea or determined to have purchased specified items from, conducted transfers for, or provided certain materials to the North Korean Government; prohibiting US persons from operating correspondent accounts for the benefit of North Korea; requiring the withholding of assistance from foreign governments determined to be providing to or receiving from North Korea defense articles or services; requiring additional restrictions on North Korean vessels and vessels of countries not complying with UN Security Council Resolutions relating to North Korea; prohibiting the import of North Korean goods unless it can be proven by “clear and convincing evidence that [they]...were not produced with convict labor, forced labor, or indentured labor under penal sanctions”; and requiring the President to block and prohibit all transactions in property and interests in property of foreign persons identified as employing North Korean laborers.

For all three programs, the Act expands the scope of activities for which a party could be designated on OFAC’s SDN List. For individuals and entities on the SDN List, all transactions in property and interests in property of these individuals and entities located in the United States or within the possession or control of a US person, wherever located, are considered blocked and may not be dealt in. Any entity in which one or more blocked persons directly or indirectly holds a 50 percent or greater ownership interest in the aggregate is itself considered blocked by operation of law. US persons may not engage in any dealings, directly or indirectly, with blocked persons.

Russia Sanctions

The Act codifies and expands various Russia sanctions and requires Congressional oversight of any efforts by the President to terminate or alter those sanctions.

Codification of Ukraine/Russia-Related Sanctions and Expansion of Sectoral Sanctions

The Act codifies the existing Ukraine/Russia-related sanctions and cybersecurity sanctions³. Codifying these sanctions measures means that they may no longer be lifted or modified pursuant to an Executive Order but, similar to the Cuba sanctions program, would require an Act of Congress in order to be modified or terminated.

³ These are sanctions currently imposed under: Executive Order 13660 (relating to blocking property of certain persons contributing to the situation in Ukraine); Executive Order 13661 (relating to blocking the property of additional persons contributing to the situation in Ukraine); Executive Order 13662 (relating to blocking the property of certain persons contributing to the situation in Ukraine); Executive Order 13685 (relating to blocking the property of certain persons and prohibiting certain transactions with respect to the Crimea region of Ukraine); Executive Order 13694 (relating to blocking the property of certain persons engaging in significant malicious cyber-enabled activities); and Executive Order 13757 (relating to additional steps to address the national emergency with respect to significant malicious cyber-enabled activities).

Changes to Sectoral Sanctions:

The Act expands the scope of the sectoral sanctions which target specified sectors of the Russian economy and tightens the restrictions on certain types of activities related to entities identified on the Sectoral Sanctions Identification List (“SSI List”) pursuant to Directives 1, 2, and 4 of the sectoral sanctions:

Potential Expansion of Sectors Targeted

The Act expands the sectors targeted under Executive Order (“EO”) 13662 to potentially include state-owned entities engaged in the railway or the metals and mining sectors of the Russian economy. The Act provides that the Secretary of the Treasury may determine that such state-owned entities are targeted under the sectoral sanctions. Prior to enactment of the Act, the sectors potentially targeted by EO 13662 included the financial services, energy, metals and mining, engineering, and defense and related materiel sectors of the Russian economy.

Required Revisions to the Sectoral Sanctions Directives

The Act provides that the Secretary of the Treasury will make the following modifications, within the time frame mandated by the Act, to Directives 1, 2, and 4, which OFAC issued under EO 13662:

- The Act requires that **Directive 1** be revised to prohibit United States persons or persons within the United States from dealings in new debt of longer than 14 days maturity (previously it was 30 days maturity) or equity of persons subject to Directive 1. The revision must be made by October 1, 2017 and will be effective 60 days after the Directive is modified.
- The Act requires that **Directive 2** be revised to prohibit United States persons or persons within the United States from dealings in new debt of longer than 60 days maturity (previously it was 90 days maturity) of persons subject to Directive 2. The revision must be made by October 1, 2017 and will be effective 60 days after the Directive is modified.
- The Act requires that **Directive 4** be revised to prohibit United States persons or persons within the United States from, directly or indirectly, providing support for deepwater, Arctic-offshore, or shale projects “that have the potential to produce oil” and “that involve any person determined to be subject to the directive or the property or interests in property of such a person who has a controlling interest or a substantial non-controlling ownership interest defined as not less than a 33 percent interest.” The revision must be made by October 31, 2017 and will be effective 90 days after the Directive is modified. It seems that under the modified language of this section that Directive 4 could now be interpreted to cover not only projects in Russia but also projects outside of Russia.

Mandatory Blocking Sanctions:

The Act requires that, for persons determined to meet the criteria specified below, the President block and prohibit all transactions in property and interests in property of such persons located in the United States or in the possession or control of a US person. Aliens determined to meet the criteria specified below, in addition to having their property and interests in property blocked, would be subject to visa denial and exclusion from the United States. The criteria are as follows:

- Persons determined to have knowingly engaged in significant activities undermining cybersecurity⁴ against any person (including a democratic institution) or government on behalf of the Russian Government, or persons that are owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, such persons;

⁴ “Significant activities undermining cybersecurity” include: (1) significant efforts to deny access to or degrade, disrupt, or destroy an information and communications technology system or network or to exfiltrate, corrupt, destroy, or release information from such a system or network without authorization for purposes of conducting influence operations or causing a significant misappropriation of funds, economic resources, trade secrets, personal identifications, or financial information for commercial or competitive advantage or private financial gain; (2) significant destructive malware attacks; and (3) significant denial of service activities.

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- Officials of the Russian Government or close associates or family members of such officials determined to be responsible for, complicit in, or responsible for ordering, controlling, or otherwise directing, acts of significant corruption⁵ in the Russian Federation or any individual who materially assists or provides support for such activities (previously such sanctions were discretionary);
 - Foreign persons⁶ determined to have knowingly materially violated or attempted to, conspired to, or caused the violation of any covered Executive Order⁷, the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014, or the Ukraine Freedom Support Act of 2014 or determined to have knowingly facilitated a significant transaction for or on behalf of any person subject to US sanctions imposed with respect to the Russian Federation or for or on behalf of a family member of such persons;
 - Foreign persons determined to be involved in the commission of serious human rights abuses “in any territory forcibly occupied or otherwise controlled” by the Russian Government; persons who are owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, such persons; or persons who materially assist or support foreign persons determined to be involved in such activities; and
 - Foreign persons⁸ determined to have knowingly provided Syria significant financial, material, or technological support contributing to the Syrian Government’s acquisition of certain arms and arms-related materiel; successor entities of such persons that are also foreign persons; or persons owned or controlled by, or acting for or on behalf of, such persons.

Waiver: The President may waive the imposition of blocking sanctions on a party if the President deems the waiver to be vital to the interests of US national security and submits a notice or written determination detailing the justification to Congress. Certain provisions of the Act may require that the President provide notices, written determinations, or certifications to Congress in addition to the notice that the waiver is vital to the interests of US national security. Any action waiving sanctions is subject to congressional review as discussed below.

Secondary Sanctions:

Secondary sanctions are imposed upon non-US persons for engaging in certain activities outside of the United States that have been deemed “sanctionable” by the US government. No connection to the United States (*i.e.*, no US nexus) is needed for secondary sanctions to be imposed or enforced.

The Act requires or authorizes the President to impose a specified number of secondary sanctions measures, selected from a menu of potential measures⁹, upon persons who meet the requirements described below.

⁵ “Acts of significant corruption” may include the expropriation of private or public assets for personal gain, corruption related to government contracts or the extraction of natural resources, bribery, or the facilitation or transfer of the proceeds of corruption to foreign jurisdictions.

⁶ This provision of the Act defines a “foreign person” as “any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.”

⁷ “Covered Executive orders” are: EO 13660 (relating to blocking the property of certain persons contributing to the situation in Ukraine); EO 13661 (relating to blocking the property of additional persons contributing to the situation in Ukraine); EO 13662 (relating to blocking the property of certain persons contributing to the situation in Ukraine); EO 13685 (relating to blocking the property of certain persons and prohibiting certain transactions with respect to the Crimea region of Ukraine); EO 13694 (relating to blocking the property of certain persons engaging in significant malicious cyber-enabled activities); and EO 13757 (relating to additional steps to address the national emergency with respect to significant malicious cyber-enabled activities).

⁸ This provision of the Act defines a foreign person as “any citizen or national of a foreign state (including any such individual who is also a citizen or national of the United States), or any entity not organized solely under the laws of the United States or existing solely in the United States, but does not include a foreign state.”

⁹ Potential measures could include: (1) denying US Export-Import Bank financing; (2) denying export licensing; (3) denying loans from US financial institutions totaling more than \$10 million in any 12-month period unless the loans and credit are provided for activities intended to alleviate human suffering; (4) requiring US executive directors to

Mandatory Sanctions: The President is required to impose sanctions upon:

- Persons determined to have knowingly materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services, including financial services, in support of, significant activities undermining cybersecurity on behalf of the Government of the Russian Federation;
- Foreign persons who are determined to have knowingly made significant investments in “special Russian crude oil projects”¹⁰ (previously such sanctions were discretionary);
 - The President is required to impose sanctions on such parties on and after September 1, 2017.
- Persons who are determined to have “knowingly engage[d] in significant transactions” with a person that is part of, or operates for or on behalf of, the defense or intelligence sectors of the Russian Government (including the Main Intelligence Agency of the General Staff of the Armed Forces of the Russian Federation or the Federal Security Service of the Russian Federation);
 - By October 1, 2017, the Act requires that the President issue regulations or other guidance to specify the persons that are part of, or operate for or on behalf of, the defense or intelligence sectors of the Russian Government. On and after January 29, 2018, the Act requires that the President impose sanctions on such parties.
 - The President is authorized to delay imposing these sanctions upon a person by certifying to Congress that the person is substantially reducing the number of transactions they conduct with defense or intelligence individuals. The President is required to renew this certification every 180 days.
- Persons determined to have knowingly made or facilitated an investment of \$10 million or more (or a combination of investments of \$1 million or more that exceed \$10 million in a 12-month period) that directly and significantly contributes to the privatization of Russian state-owned assets that unjustly benefits Russian Government officials, their close associates, or their family members.

Mandatory Restrictions on Correspondent Accounts: The President is required to prohibit the opening of, and prohibit or impose strict conditions on the maintaining, in the United States, of a correspondent account or a payable-through account by a foreign financial institution determined to have:

- knowingly engaged in significant transactions for entities transferring, brokering, manufacturing, or selling defense articles to Syria, or to other countries without the consent of the internationally recognized government of that country, or for entities assisting in such activities;
- knowingly engaged in significant transactions related to significant investments by foreign persons in special Russian crude oil projects;

international financial institutions to oppose any loans which would benefit the sanctioned person; (5) prohibiting the designation of a sanctioned financial institution as a primary dealer in US Government Debt instruments and/or prohibiting the sanctioned financial institution from serving as an agent of the United States or as a repository for US Government funds; (6) denying the sanctioned person US Government procurement contracts; (7) prohibiting foreign exchange transactions in which the sanctioned person has an interest that are subject to US jurisdiction; (8) prohibiting transfers of credit or payments between, by, through, or to financial institutions to the extent that such transfers or payments are subject to US jurisdiction and involve any interest of the sanctioned person; (9) prohibiting any person from conducting transactions involving, dealing in or exercising any rights associated with, or acquiring, holding, withholding, using, transferring, withdrawing, transporting, importing, or exporting any property that is subject to the jurisdiction of the United States and with respect to which the foreign person has any interest, (10) prohibiting US persons from transacting in, providing financing for, or otherwise dealing in equity or certain debt of a sanctioned person; (11) denying a visa to any alien determined to be the corporate officer or principal of, or a shareholder with a controlling interest in, a sanctioned person; and (12) imposing sanctions applicable to individuals on principal executive officers of a foreign entity that is itself subject to sanctions.

¹⁰ A “special Russian crude oil project” means a project intended to extract crude oil from (A) the exclusive economic zone of the Russian Federation in waters more than 500 feet deep; (B) Russian Arctic offshore locations; or (C) shale formations located in the Russian Federation.

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- knowingly engaged in significant transactions involving activities undertaken by Gazprom in relation to withholding gas supplies from specified US allies should sanctions be imposed on Gazprom under the contingent sanctions provision of the Ukraine Freedom Support Act of 2014 related to the withholding of significant natural gas supplies; or
 - facilitated significant financial transactions¹¹ on behalf of any Russian person included on the SDN List pursuant to Ukraine/Russia-related sanctions programs or the Ukraine Freedom Support Act of 2014 (previously such sanctions were discretionary).

Discretionary Sanctions: The President is authorized to impose sanctions on persons determined to have knowingly made an investment in or provided to the Russian Federation goods, services or support reaching a fair market value of \$1 million or more (or aggregating to \$5 million or more in a 12-month period) for the construction, maintenance, or expansion of the construction, modernization, or repair of Russian energy export pipelines.

Waiver: As described below, the President may waive the application of secondary sanctions upon certification to Congress (e.g., whether the waiver is in the interest of US national security).

Requirement for Congressional Review of Executive Actions Relating to Russia Sanctions

The Act prevents the President from terminating or waiving any of the Ukraine/Russia-related sanctions, any sanctions imposed or codified pursuant to the Act, any sanctions imposed pursuant to the Support for the Sovereignty, Integrity, Democracy, and Economic Stability of Ukraine Act of 2014 or the Ukraine Freedom Support Act of 2014; from undertaking a licensing action that “significantly alters US foreign policy” with respect to Russia; or from restoring access to the Russian Government’s compounds in Maryland and New York without congressional review.

Before taking any such action, the President must submit a report to Congress describing whether the action is intended to significantly alter foreign policy with respect to Russia and, if so, the nature of the change he is proposing to make, its policy objectives, and its anticipated effect on US national security interests.

Once the President issues a report, Congress will have 30 calendar days to issue a joint resolution either approving or disapproving of the action. The President may not act without a joint resolution of approval. If Congress enacts a joint resolution of disapproval, the President may veto the disapproval but Congress may override the veto. If Congress overrides the veto, the President is permanently barred from taking the action unless Congress repeals the joint resolution of disapproval.

In his signing statement, President Trump objected to this requirement, stating that due to the inclusion of provisions which “purport to allow Congress to extend the review period through procedures” not satisfying constitutional requirements, the Act “seeks to grant Congress the ability to change the law outside the constitutionally required process.” The President’s Statement went on to state that he will honor the waiting periods in order to ensure that Congress will be able to fully utilize the Act’s review procedures.

Iran Sanctions

The Act imposes additional mandatory sanctions on Iran related to Iran’s ballistic missile program and to the supply of certain weapons and related materials to Iran. The Act also provides for discretionary sanctions for

¹¹ OFAC has issued guidance, in relation to the Iran sanctions program, regarding how it determines whether a transaction or financial service is “significant.” It may consider: (1) the size, number, frequency, and nature of the transaction(s); (2) the level of awareness of management of the transaction(s) and whether or not the transaction(s) are a part of a pattern of conduct; (3) the nexus between the foreign financial institution involved in the transaction(s) and a blocked individual or entity or blocked financial institution; (4) the impact of the transaction(s) on the goals of the sanctions program; (5) whether the transaction(s) involved any deceptive practices; and (6) other factors the OFAC deems relevant on a case-by-case basis.

human rights abuses committed against certain parties. Finally, the Act requires that the IRGC be designated as a Specially Designated Global Terrorist pursuant to the terrorism sanctions program (EO 13224).

Sanctions Measures:

Mandatory Blocking Sanctions: The Act requires the President to block and prohibit all transactions in property and interests in property of persons engaging in the activities described below. In addition, any aliens engaging in such activities will be denied visas and excluded from the United States. The President is required to impose such sanctions on:

- Persons determined to have knowingly engaged in activities or supported activities materially contributing to Iran's ballistic missile program or to any other Iranian program for "developing, deploying, or maintaining systems capable of delivering weapons of mass destruction"; successor entities of such persons; or persons owned or controlled by, or acting for or on behalf of, such persons; and
- Persons determined to have knowingly engaged in activities that materially contribute to the supply, sale, or transfer, directly or indirectly, to or from Iran, or for the use in or benefit of Iran, of certain types of weapons¹² or who provide to Iran technical training, financial resources or services, advice, or other types of assistance related to the use of those weapons¹³.

Discretionary Blocking Sanctions for Human Rights Abusers: The Act authorizes the President to block all transactions in property and interests in property of persons determined to be responsible for extrajudicial killings, torture, or other gross violations of internationally recognized human rights committed against individuals in Iran who seek to expose illegal activity carried out by officials of the Iranian Government or who seek to obtain, exercise, defend, or promote internationally recognized human rights and freedoms (e.g., freedom of religion, freedom of expression, freedom of association and assembly, and the rights to a fair trial and democratic elections). The President may also block all transactions in property and interests in property of persons determined to be acting as an agent of or on behalf of a foreign person performing such activities. The Act requires that the Secretary of State, within 90 days of enactment (*i.e.*, October 31, 2017), and annually thereafter, submit a list to Congress of persons (and any person acting as an agent of or on behalf of a foreign person) determined, based on credible evidence, to be involved in such activities.

Designation of the IRGC as a Specially Designated Global Terrorist: The Act requires that, within 90 days of enactment (*i.e.*, by October 31, 2017), the President designate the IRGC and foreign persons who are officials, agents, or affiliates of the IRGC as Specially Designated Global Terrorists (SDGT). Although the IRGC is already on the SDN List, it is not currently designated under EO 13224 (relating to the blocking of property and prohibiting transactions with persons who commit, threaten to commit, or support terrorism). However, the IRGC-Quds Force is designated under that EO. US persons remain prohibited from transacting or dealing in property or interests in property of the IRGC and from engaging in any transaction seeking to evade or avoid that prohibition. US persons are also prohibited from engaging in any conspiracy to violate the sanctions imposed upon the IRGC.

Exemptions and Waiver: The Act exempts from the application of the Iran-related sanctions described above activities related to:

- authorized United States intelligence actions;
- the admission of persons to the United States if such persons are required to be admitted in order to comply with the Agreement between the United Nations and the United States regarding the

¹² These weapons include: battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles or missile systems, or related materials (including spare parts).

¹³ The President may waive the application of these sanctions with respect to a party if the President certifies to Congress that permitting the activity is in the United States' national security interest; that Iran no longer presents a significant threat to national security; and that the Government of Iran has ceased providing support for acts of international terrorism and no longer meets the requirements for being designated a State Sponsor of Terrorism.

Headquarters of the United Nations, the Vienna Convention on Consular Relations, or other applicable international obligations of the United States; and

- the sale of agricultural commodities, food, medicine, or medical devices to Iran or for the provisions of humanitarian assistance to the people of Iran.

In addition, the Act provides the President with the authority to waive the application of Iran-related sanctions, on a case-by-case basis, and for not more than 180 days, if the President reports to Congress that the waiver of sanctions is necessary to US national security interests. The waiver may be renewed provided that the President submits a report for each renewal every 180 days.

North Korea Sanctions

The Act provides for new mandatory and discretionary sanctions on North Korea that expand the existing sanctions regime established pursuant to the North Korea Sanctions and Policy Enhancement Act of 2016. The Act establishes two categories of sanctions: (i) sanctions to enforce and implement various UN Security Council Resolutions against North Korea; and (ii) sanctions with respect to human rights abuses by North Korea.¹⁴

Sanctions to Enforce and Implement UN Security Council Resolutions Against North Korea:

Expansion of Mandatory Designations: The Act mandates that the President designate any person who the President determines knowingly, directly or indirectly¹⁵:

- purchases certain metals or minerals from North Korea;
- provides North Korea with significant amounts of rocket, aviation, or jet fuel for non-civilian uses;
- provides fuel or services to a vessel or aircraft designated under (or owned by a person designated under) an applicable Executive Order or UN Security Council resolution;
- insures or facilitates registration of a vessel owned by the North Korean Government (unless approved by the UN Security Council); or
- maintains a correspondent account with any North Korean financial institution (unless approved by the UN Security Council).

Expansion of Additional Discretionary Designations: The Act authorizes the President to impose sanctions on any person who the President determines knowingly, directly or indirectly:

- purchases or otherwise acquires from the North Korean Government significant quantities of coal, iron, or iron ore, in excess of the limitations provided in applicable UN Security Council resolutions;
- purchases textiles, food, agricultural products, or fishing rights from the North Korean Government;
- facilitates transfers of funds, property, bulk cash, precious metals, or other items of value on behalf of the North Korean Government;

¹⁴ The North Korea sanctions in the Act relating to various UN Security Council Resolutions may be impacted by the recent adoption of UN Security Council Resolution 2371 on August 5, 2017, which provides for additional restrictions on North Korea. See the full text of the UN Security Council Resolution 2371 (2017) [here](#).

¹⁵ In addition, pursuant to the North Korea Sanctions and Policy Enhancement Act of 2016, these designated persons are subject to enhanced inspection requirements, and potentially denied visas and entry into the United States. US executive agencies are also prohibited from entering into procurement contracts with designated persons.

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- provides oil or gas resources to the North Korean Government or conducts a significant transaction in North Korea's mining, energy, or financial services industries;
 - facilitates online commercial activities of the North Korean Government;
 - facilitates the export of workers from North Korea to generate revenue for the North Korean Government; or
 - facilitates the operation of a North Korean financial institution (except where specifically approved by the UN Security Council).

Designation of Additional Persons: Within 180 days after enactment, the President must determine whether reasonable grounds exist to designate the following entities and individuals: (i) the Korea Shipowners' Protection and Indemnity Association; (ii) Chinpo Shipping Company; (iii) the Central Bank of the Democratic People's Republic of Korea; (iv) Kumgang Economic Development Corporation; (v) Sam Pa (an individual also known as Xu Jinghua); and (vi) the Chamber of Commerce of the Democratic People's Republic of Korea.

Prohibition on Indirect Correspondent Accounts: Under the Act, if a US financial institution has or obtains knowledge that a correspondent account established, maintained, administered, or managed by that institution for a foreign financial institution is being used by the foreign financial institution to provide significant financial services indirectly to certain designated entities¹⁶, the US financial institution must ensure that the correspondent account is no longer used to provide such services. The US financial institution may process transfers of funds to or from North Korea, or for the direct or indirect benefit of those certain designated entities only if the transfer "arises from, and is ordinarily incident and necessary to give effect to," an authorized transaction and does not involve debiting or crediting a North Korean account.

Enforcing Compliance with UN Shipping Sanctions Against North Korea: The Act prohibits ships owned by the North Korean Government or a North Korean person or owned or operated on behalf of any country the President determines is not complying with applicable UN Security Council resolutions from operating in United States waters or landing at any US port. However, ships may be exempt if the Secretary of State determines that exemption is in the interest of US national security or that the ship is owned or operated by, or on behalf of, a country which the Secretary of State determines is closely cooperating with the United States with respect to implementing the applicable UN Security Council resolutions.

Sanctions with Respect to Human Rights Abuses:

Import Prohibition: The Act establishes a rebuttable presumption that goods produced wholly or in part by North Korean nationals are the product of forced labor, and are therefore subject to existing US import prohibitions on goods made with forced labor. Consequently, goods produced by North Korean labor are permitted to enter the United States only if US Customs and Border Protection finds "by clear and convincing evidence" that such goods were not produced by forced, indentured, or convict labor.

Sanctions on Foreign Persons Employing North Korean Labor: The Act requires the President to identify foreign persons who knowingly employ North Korean laborers, and to determine whether such persons meet the criteria for the imposition of sanctions pursuant to the Trafficking Victims Protection Act or the North Korea Sanctions and Policy Enhancement Act of 2016. If the President determines the person meets those criteria, the President is required to block and prohibit transactions in property and interests in property of that person in the United States, coming within the United States, or in the possession or control of a US person. A party may not be designated if the President certifies to Congress that he has received "reliable assurances" that the employment of North Korean laborers does not result in the direct or indirect transfer of value to the North Korean Government; that all wages and benefits are provided directly to the laborers in local currency within

¹⁶ The relevant entities are any person, foreign government, or financial institution designated under Section 104 of the North Korea Sanctions and Policy Enhancement Act.

the jurisdiction in which they reside; and that the laborers' working conditions meet international standards. A recertification must be submitted every 180 days or else the President is required to designate the party.

Regulations necessary for the implementation of these sanctions must be promulgated within 180 days of enactment (*i.e.*, January 29, 2018).

Report on Designation as a State Sponsor of Terrorism:

The Act requires the President to determine, within 90 days after enactment (*i.e.*, October 31, 2017), whether North Korea meets the criteria for designation as a State Sponsor of Terrorism. This designation would subject North Korea to additional sanctions and export control restrictions.

The Presidential Signing Statement:

On August 2, 2017, the President issued an official signing statement ("the Statement") setting forth the Administration's current official position on the Act. The Statement provides that while the President supports "tough measures to punish and deter aggressive destabilizing behavior by Iran, North Korea, and Russia, this legislation is significantly flawed." The President objects to the sections of the Act which create what he views as an unconstitutional restriction by Congress of the President's "constitutional authority to recognize foreign governments" and authority to conduct foreign relations. The Statement also sets forth the President's objection to the ability of Congress to extend the period of congressional review of presidential actions terminating or waiving sanctions imposed pursuant to Russia sanctions, licensing activities that "significantly alters US foreign policy" with respect to Russia, or restoring access to Russian Government compounds in Maryland and New York, stating that it "seeks to grant the Congress the ability to change the law outside the constitutionally required process." However, the President goes on to state that he will honor the waiting periods provided for in the Act and that the Administration will seek to implement the provisions of the Act "in a manner consistent with the President's constitutional authority to conduct foreign relations." The Statement closes with a remark that the Administration expects that Congress will not use the Act to "hinder our important work with European allies to resolve the conflict in Ukraine" or to "hinder our efforts to address any unintended consequences it may have for American business, our friends, or our allies."

Companies doing business or looking to do business in Russia, Crimea, Iran, and North Korea should monitor closely any measures imposed by the United States to ensure compliance. Penalties for noncompliance can be severe.

White & Case LLP
Wetstraat 62 rue de la Loi
1040 Brussels
Belgium

T +32 2 239 26 20

EUsanctions@whitecase.com

White & Case LLP
701 Thirteenth Street, NW
Washington, District of Columbia 20005-3807
United States

T +1 202 626 3600

USsanctions@whitecase.com

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