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Cross-Border Regulatory and National Security Client Alert: President Signs Legislation Directing Imposition of New Sanctions Against Iran, North Korea and Russia

On August 2, 2017, the President of the United States (the “President”) signed the Countering America’s Adversaries Through Sanctions Act, H.R. 3364 (the “CAATSA”), which directs the imposition of new sanctions against Iran, North Korea and Russia and establishes certain procedural controls to restrict the President’s authority to terminate or waive, or grant licenses under, sanctions against Russia. The CAATSA received overwhelming bipartisan support, passing almost unanimously in both chambers of the U.S. Congress, such that its enactment into law was not seriously in doubt.

In a statement released contemporaneously with signature of the legislation, the President expressed support for the CAATSA’s “tough measures to punish and deter bad behavior” by the regimes of Iran and North Korea and clear message that “America will not tolerate interference in [its] democratic process . . . and will side with [its] allies and friends against Russian subversion and destabilization.” In the same statement, however, the President also expressed concern that the CAATSA, by limiting the President’s flexibility with respect to the implementation of sanctions against Russia, “encroaches on Executive power” and “makes it harder . . . to strike good deals for the American people.”

The particular sanctions prescribed under the CAATSA are diverse and vary in applicability based on the associated ground for imposition of sanctions. The categories of such sanctions include, among others: (a) blocking (*i.e.*, designation resulting in freezing of, and proscription of dealings involving, all property and interests in property of a designated person); (b) exclusion (*i.e.*, designation directing denial of a visa to, and exclusion from the United States of, a designated person); and (c) secondary (*i.e.*, sanctions targeting the activities of non-U.S. persons, generally by

directing the imposition of specific penalties on any non-U.S. person engaged in ‘sanctionable’ conduct).

The menu of secondary sanctions penalties under the CAATSA includes: (1) the denial of U.S. Export-Import Bank assistance for the sanctioned person; (2) the denial of licenses for the export of goods or technology subject to U.S. export controls laws or regulations to the sanctioned person; (3) the proscription of credit from U.S. financial institutions for the sanctioned person; and (4) the proscription of investment in equity or debt of the sanctioned person.

Set forth below is a summary of some of the CAATSA’s most significant features.

Sanctions Against Iran

With respect to Iran, the CAATSA:

- Directs the President to impose blocking and exclusion sanctions against any person that: (i) engages in activity contributing to Iran’s ballistic missile program or any other program for weapons of mass destruction; or (ii) engages in activity involving the supply to, from or for the benefit of Iran of battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, attack helicopters, warships, missiles, missile systems or related materiel;
- Directs the President to impose blocking sanctions with respect to the Islamic Revolutionary Guard Corps (“IRGC”) and foreign persons that are officials, agents or affiliates of the IRGC; and
- Authorizes the President to impose blocking sanctions against any person that is responsible for, or acts as an agent for a person that is responsible for, extrajudicial killings, torture or other violations of internationally recognized human rights committed against individuals in Iran.

Sanctions Against North Korea

With respect to North Korea, the CAATSA:

- Expands requirements for the mandatory imposition of sanctions, and adds additional categories for the discretionary imposition of sanctions, including relating to the acquisition of rare Earth minerals from North Korea, the transfer to North Korea of rocket, aviation or jet fuel, the insurance or registration of a vessel owned or controlled by North Korea, the maintenance of a correspondent account with any North Korean financial institution and activities in violation of applicable United Nations Security Council resolutions;
- Requires the President to impose blocking sanctions on any foreign person employing certain North Korean labor, such as forced labor,

convict labor or indentured labor, and prohibits any goods produced by such labor from entry at any port of the United States; and

- Directs the U.S. Department of State to evaluate whether North Korea meets the criteria for designation as a state sponsor of terrorism.

Sanctions Against Russia

With respect to Russia, the CAATSA:

- Codifies Executive Orders (13660, 13661, 13662, 13685, 13694 and 13757) relating to Russia's annexation of Crimea, the situation in Ukraine and Russian malicious cyber-enabled activities, and requires the President to submit to Congress a notice to support termination of, or a written determination and certification to support waiver of, the application of certain sanctions under such Executive Orders;
- Requires the President to submit for congressional review a report detailing any proposed actions: (i) to terminate or waive the application of existing sanctions against Russia or sanctions prescribed under the CAATSA against Russia; or (ii) to grant a license that significantly alters U.S. foreign policy regarding Russia; and prevents the President from taking action if any such congressional review results in enactment by Congress of a joint resolution of disapproval for the relevant action;
- Amends Directive 1 of the Sectoral Sanctions Identifications list (the "SSI List") to reduce the debt maturity threshold thereunder from 30 to 14 days (*i.e.*, so that Directive 1 prohibits the conduct by U.S. persons or persons within the U.S. of all transactions in, provision of financing for and other dealings in new debt of longer than 14 days maturity or new equity of persons determined to be subject to such Directive, their property or their interests in property);
- Amends Directive 2 of the SSI List to reduce the debt maturity threshold thereunder from 90 to 60 days (*i.e.*, so that Directive 2 prohibits the conduct by U.S. persons or persons within the U.S. of all transactions in, provision of financing for and other dealings in new debt of longer than 60 days maturity of persons determined to be subject to such Directive, their property or their interests in property);
- Amends Directive 4 of the SSI List to prohibit U.S. persons or persons within the U.S. from providing, exporting or re-exporting, directly or indirectly, goods, services (except for financial services) or technology in support of exploration or production for new deepwater, Arctic offshore or shale projects: (i) that have the potential to produce oil; and (ii) that involve any person determined to be subject to such Directive or the property or interests in property of such a person who has a controlling interest or a substantial non-controlling ownership interest in such a project of not less than 33%;
- Directs the President to impose blocking and exclusion sanctions against any person that: (i) engages in activities undermining

cybersecurity against any person or government on behalf of Russia; or (ii) exports, transfers or provides to Syria significant financial, material or technological support that contributes to Syria's ability to acquire or develop weapons or other military capabilities;

- Establishes a secondary sanctions program targeting activities of non-U.S. persons involving Russia, including by: (i) authorizing the President to impose secondary sanctions against any non-U.S. person that makes an investment or provides to Russia certain goods, services, technology, information or support for the construction of Russian energy pipelines; and (ii) requiring the President to impose secondary sanctions against any non-U.S. person: (A) involved in activities undermining cybersecurity against any person or government on behalf of Russia; (B) conducting a transaction involving a person that is a part of, or operates for or on behalf of, the defense or intelligence sectors of Russia; or (C) making or facilitating a significant investment that contributes to the ability of Russia to privatize state-owned assets in a manner that unjustly benefits Russian government officials or their associates or family members;
- Amends existing legislation: (i) to require the President to impose certain previously discretionary sanctions relating to special Russian crude oil projects, Russian and other foreign financial institutions and significant corruption in Russia; (ii) to add requirements for the imposition of blocking sanctions against sanctions evaders; and (iii) to add requirements for the imposition of blocking and exclusion sanctions against any person that supports or is responsible for or complicit in the commission of human rights abuses in any territory forcibly occupied or otherwise controlled by Russia; and
- Appropriates US\$250 million for the Countering Russian Influence Fund for fiscal years 2018 and 2019.

This Client Alert is not comprehensive as to the full scope of the CAATSA or any other U.S. sanctions laws or regulations relating to Iran, North Korea or Russia but is only a summary of certain key elements of the CAATSA.

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