

Brief Update of US and EU Sanctions for US and non-US persons

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Introduction

Recent months have seen developments in US trade sanctions against Russia, North Korea and Iran that have substantially strengthened and extended measures in respect of trade and financial transactions for US and non-US institutions.

Those dealing directly with individuals, firms or the regimes of the three countries - as well as those with a connection however tangential - should be aware of the specific developments and their reach, whether or not they are based in the US.

The EU has also amended and extended sanctions in respect of Ukraine and extended sanctions against North Korea

Recent developments in US Sanctions include:

Russian Sanctions

1. Restriction on the US President's authority to relax sanctions.
2. Codification of existing Russian sanctions.
3. Tightening of existing sectoral sanctions:
 - *On 29 September 2017, OFAC amended and reissued Directive 1 (financial sector sanctions) and Directive 2 (energy sector sanctions) of Executive Order 13662 implementing US sectoral sanctions targeting Russia pursuant to the Countering America's Adversaries Through Sanctions Act.*

Accordingly as at 28 November 2017 -

- a. the maturity of prohibited "new debt" under Directive 1 will be reduced to 14 days (from 30 days); and
- b. the maturity of prohibited "new debt" under Directive 2 will be reduced to 60 days (from 90 days).

- OFAC is expected to amend and reissue Directive 4 no later than October 31, 2017

4. Imposition of Additional/New Secondary Sanctions, including:

Secondary Sanctions that Apply to Non-US Persons

- Enforcing of mandatory sanctions on non-US persons knowingly making 'significant investments' in special Russian crude oil projects.
- Enforcing mandatory correspondent banking restrictions on non-US financial institutions that knowingly engage in significant transactions involving activities related to the sale of defense articles to Syria or special Russian crude oil projects or knowingly facilitate significant transactions with SDNs.
- Enforcing mandatory sanctions on Russian government officials and their close associates and family members for acts of "significant corruption" in Russia or elsewhere.
- Mandatory sanctions on non-US persons that export or transfer to Syria significant financial, material, or technological support that contributes materially to the Syrian government's ability to acquire weapons and other defense.
- Mandatory sanctions for non-US persons involved in serious human rights abuses in any territory forcibly occupied or otherwise controlled by the Russian government.

Secondary Sanctions that Apply to US and Non-US Persons

(Note - some of these may application to activities by US persons that are not necessarily prohibited under US law).

- The imposition of sanctions freezing the property of non-US persons who facilitate significant transactions (related to currency reporting) for or on behalf of people subject to the Russia-related sanctions or their families.
- Enforcing of mandatory sanctions with respect to any person that knowingly engages in activities that undermine cybersecurity "against any person, including a democratic institution, or government" on behalf of the Russian government.
- Enforcing mandatory sanctions on parties knowingly engaging in significant transactions

with the intelligence or defense sectors of the Russian government, including persons acting for 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.

- Mandatory sanctions related to investments in, or facilitation of investments in, the privatization of Russia's state-owned assets for \$10m or more (or any combination of investments of not less than \$1m each, which in the aggregate equals or exceeds \$10m in any 12-month period), if the investment contributes to Russia's ability to privatize state-owned assets in a manner that unjustly benefits Russian government officials or their close associates or family members
- Discretionary sanctions related to Russian energy export pipelines, targeting parties that (i) knowingly make an investment that directly and significantly contributes to the enhancement of the ability of Russia to construct energy export pipelines, or (ii) sell, lease, or provide 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 pipelines, and where the investment or transaction has a fair market value of \$1,000,000 or more, or that, during a 12-month period, has an aggregate fair market value of \$5,000,000 or more.

North Korea sanctions

In brief, on 21 September 2017, the US extended its sanctions against North Korea extraterritorially to include certain activities of non-US persons relating to transport, financial institutions and trade.

Of significance is, any person who violates the September 20 Executive Order, whose funds are under the control of a US person will have their account blocked.

Sanctions may also be imposed on any non-US financial institution that, on or after 21 September 2017 knowingly conducts or facilitates:

- Any significant transaction on behalf of persons blocked under certain Executive Orders relating to North Korea or the proliferation of weapons of mass destruction relating to North Korea; or,
- Any significant transaction in connection with trade in North Korea.

Any funds originating from, destined for, or passing through a bank account that the US determines is owned or controlled by a North Korean person, or has been used to transfer funds in which a North Korean person has an interest, that come within the US or possession of a US person will be blocked. US persons may not directly or indirectly transfer, pay, export, withdraw or otherwise deal in such funds.

US persons are also prohibited from approving, financing, facilitating or guaranteeing any dealings by a non-US person in funds linked to North Korean accounts.

Iran - related Sanctions

There are now mandatory blocking sanctions on any person that knowingly contributes to Iran's ballistic missile program, who are officials, agents or affiliates of the Islamic Revolutionary Guard Corps, or who knowingly supply or support the supply of arms, combat vehicles, etc., to Iran or provide related technical training or services to Iran.

The full list of developments and changes to the existing sanctions regimes is extensive and significantly broadens their scope - anyone with a connection to Iran should seek advice as soon as possible as to whether any of the recent changes have an implication for them.

Recent developments in EU Sanctions include:

Ukraine Sanctions

In September 2017, the EU introduced Council Implementing Regulation (EU) 2017/1549 and Council Decision (CFSP) 2017/1561, which amend the sanctions in respect of actions undermining or threatening the territorial integrity, sovereignty and independence of Ukraine (Regulation (EU) No 269/2014).

The changes include the following:

- Removal of the listings of four individuals and three entities;
- Addition of one entity to the list; and
- Amending of the listings of various other entities and individuals.

The sanctions were also extended for 6 months until 15 March 2018.

North Korea - related Sanctions

The EU has now adopted Council Regulation (EU) 2017/1548 and Council Decision (CFSP) 2017/1562 extending sanctions against North Korea.

The new legislation amends Regulation (EU) 2017/1509 to impose a total ban on coal iron, iron ore, seafood, lead and lead ore, as well as introducing sanctions to target North Korea's arms smuggling and ability to access finance from abroad.

The sanctions prohibit EU member states from allowing North Korean nationals to work in their territories and prevent investment from North Korea (via joint ventures and cooperative entities).

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