On August 2, 2017, President Donald Trump signed into law one of the most wide-ranging sanctions measures of the last five years. The Countering America's Adversaries Through Sanctions Act ("CAATSA" or the "Act"), expands and enhances three separate sanctions programs targeting Iran, Russia and North Korea, and substantially curtails presidential authority to waive or modify sanctions against Russia without congressional oversight and approval. CAATSA was enacted with overwhelming support in the US Congress, clearing the US House of Representatives on a 419 -3 vote, and the US Senate on a 98-2 vote. Many provisions of CAATSA are effective immediately. Others require implementing regulations and guidance from the US Treasury Department's Office of Foreign Assets Control ("OFAC") over the next 60 days. Thus, CAATSA creates a near-term series of compliance obligations for both US and non-US companies with respect to their commercial operations and transactions.

Key takeaways

While the CAATSA sanctions provisions are more fully detailed below, and there remains regulatory groundwork to be done to clarify the precise scope of many of the new sanctions, it is clear at the outset that the universe of sanctions targets has been expanded—particularly in respect of Russia. These new sanctions impact not only US businesses (and US citizens and permanent residents employed by foreign companies), but also impose enhanced "secondary" sanctions that target foreign businesses directly—particularly with respect to the sanctions against Russia and North Korea. In a departure from most other sanctions programs, these new authorities substantially limit the discretion of the president to terminate, waive or modify their application—a meaningful change in the way that US sanctions policy has evolved over the past several decades.

Key aspects of the new sanctions

**Iran**

CAATSA expands US sanctions targeting Iran's ballistic missile program, weapons proliferation activities, and human rights abuses; enhances the legal basis for existing sanctions targeting Iran's Islamic Revolutionary Guard Corps (IRGC); and requires certain periodic reviews and reports that lay the groundwork for further sanctions in the future. CAATSA also limits the ability of the president to waive or suspend the application of certain sanctions. These measures underscore the critical importance of identifying and addressing US sanctions with respect to any commercial interaction involving Iran.

**Russia**

CAATSA significantly expands the scope and applicability of US sanctions to additional sectors of the Russian economy, including the financial services, debt capital markets, energy, transportation, telecommunications,
information technology, defense and aerospace. As such, US persons\(^2\) contemplating or engaging in transactions in these sectors, or with counterparties in these sectors, will need to navigate a significantly more restrictive sanctions landscape. Further, several of the new sanctions authorized under the Act have extra-territorial reach, as they target foreign persons involved in certain transactions involving Russia. For instance, CAATSA authorizes OFAC to impose sanctions on a foreign person as a "sanctions evader" for materially violating or causing a violation of US sanctions against Russia, or for facilitating certain transactions for a sanctioned person or a close relative. OFAC can also sanction persons for investing in or privatizing Russian state-owned assets in a way that "unjustly benefits" Russian officials or their close associates and family members. Finally, many of the "may impose" sanctions from the 2014 Ukraine Freedom Support Act, which President Obama indicated at the time he did not intend to impose, have been amended to "shall impose" sanctions. How OFAC will interpret its mandate under this new statutory authority remains to be seen, but it warrants significant attention and caution.

Accordingly, both US and non-US persons, including foreign financial institutions, should consider reviewing planned and existing activities and investments in sectors of the Russian economy that are targeted by the new sanctions, and those involving Russian state-owned enterprises and other assets. The Act will alter the status quo as to existing sectoral sanctions by changing the permissible debt tenor under Directives 1 and 2, as well as the scope of the prohibitions on providing goods or services related to oil exploration and production under Directive 4. Persons engaged in ongoing activities relating to those directives should consider assessing what impact the changes may have on that activity.

**North Korea**

Similar to the Russia sanctions, the North Korea sanctions also have extra-territorial reach involving several different industries such as precious metals, aviation, textile, energy and agriculture. Accordingly, US and non-US companies transacting in any of the affected sectors are now within the purview of secondary sanctions against North Korea and face additional due diligence obligations.

**Sectors affected**

The new sanctions are likely to have the most significant impacts on the following sectors:

**Energy**

CAATSA imposes new restrictions on investments involving Russian oil companies in projects globally, and new diligence requirements with respect to sale and purchase of oil and petrochemical products of North Korean origin.

**Insurance**

The new sanctions require substantially enhanced diligence with respect to specific ports and vessels that will likely impact contracts of insurance in a wide range of applications.

**Financial institutions**

New sanctions on Russia target debt and equity investments in more than 200 Russian entities and expand the universe of targeted oil and gas projects subject to investment restriction, while the North Korea sanctions impose enhanced diligence requirements for correspondent banking relationships.

**Manufacturing**

Export restrictions on US technology for projects that involve Russian oil companies are enhanced and expanded
What comes next?

Within the next 60 days, OFAC is required to issues implementing regulations with respect to many of the new sanctions authorities. In addition, over the next six months the Trump administration is required to issues a series of reports to Congress on additional sanctions targets; explain the basis for imposing or refraining from imposing additional sanctions measures; and issue findings on the scope and extent of sanctions enforcement by other countries—particularly China and the European Union. In connection with these efforts, additional designation of sanctions targets by OFAC is likely.

If OFAC's actions following the administration's changes to Cuba policy are any indication, it may issue FAQs or limited guidance concerning the scope and timing of the changes to the sanctions programs in relatively short order.

Sanctions summaries

Iran

Title I of CAATSA provides for several new and enhanced sanctions on Iran, and mandates that the US Executive Branch produce several new reports regarding US government strategy to address Iran. Some of the key Iran-related measures include the following.

Ballistic missiles

CAATSA requires the president to impose blocking sanctions and a US visa ban on any person (US or non-US) that the president determines to be knowingly engaged "in any activity that materially contributes to Iran's ballistic missile program or other Iranian weapons of mass destruction program, along with any other persons found to have provided material support to these sanctioned entities." Here, "knowingly" means both actual knowledge and constructive ("should have known") knowledge. Consistent with other US sanctions programs, this designation authority also covers a wide range of related parties, not just the person engaged in the ballistic missile activities (e.g., successor entities, affiliates, persons acting in concert, persons acting for or on behalf, persons providing material support, etc.)

Another basis for IRGC sanctions

CAATSA establishes an additional US legal basis for sanctions targeting Iran's Islamic Revolutionary Guard Corps (IRGC): its support for terrorism. CAATSA also includes a congressional finding to clarify that it is the entirety of the IRGC, not just its Quds Force, which is responsible for Iran's "destabilizing activities, support for acts of international terrorism, and ballistic missile program." These measures do not, however, make a material change in the IRGC's sanctions status; rather, they just add more statutory support for the sanctions.

Human rights abuses

CAATSA authorizes the president to impose sanctions on US and non-US persons who the Department of State determines are responsible for certain human rights violations in Iran, such as torture or extra-judicial killings of Iranian individuals seeking to expose illegal activity by Iranian government officials, or to exercise or promote human rights. This authority supplements existing US authorities targeting Iran's human rights abuses, such as Executive Order 13606, (the GHRAVITY E.O.).

Arms embargo
CAATSA reinforces the power of the president to impose blocking sanctions on any person (US or non-US) who the president determines "knowingly engages in any activity that materially contributes" to the sale or transfer to or from Iran of specified arms including "battle tanks, armored combat vehicles, large caliber artillery systems, combat aircraft, [and] attack helicopters" as well as persons found to have knowingly provided any services or assistance related to the sale, transfer, manufacture, maintenance or use of the such arms and related material.

**Review of mandatory sanctions designations**

CAATSA directs the president to review, every five years, all persons designated on the List of Specially Designated Nationals (the "SDN List") in connection with Iran to assess the conduct of such persons as it relates to activities of the Iranian government with respect to its ballistic missile program, or support by the Iranian government for acts of international terrorism, in order to evaluate whether additional sanctions or penalties should apply to such persons.

**Report on discrepancies between US and EU sanctions**

CAATSA creates a new obligation for the president to submit periodic reports to Congress describing and explaining any discrepancies between US and European Union sanctions against persons for activity related to weapons proliferation in Iran, support for acts of international terrorism by Iran or human rights abuses in Iran.

**Russia**

Title II of CAATSA greatly expands the scope of the Russia/Ukraine sanctions program to target integral sectors of the Russian economy, including transportation, finance, and energy. The Act also establishes an additional set of sanctions measures, including banking and export restrictions that affect both US and non-US persons. Further, the Act reduces the discretion of the executive branch in choosing whether to implement certain sanctions, and curtails the power of the president to terminate, waive or amend certain sanctions unilaterally.

**Codification of Obama administration executive orders**

CAATSA codifies Executive Orders 13660, 13661, 13662, 13685, 13694 and 13757, all previously issued under the Obama administration. These executive orders form the basis of most the US Russia/Ukraine sanctions program administered by the Office of Foreign Assets Control (OFAC), as they contain designation authorities for certain Ukraine- and cybersecurity related conduct; authorize sectoral sanctions against financial, defense and energy sectors of the Russian economy; and prohibit most transactions involving Crimea. As a result of the codification of these executive orders, the sanctions contained therein cannot be revoked, waived or modified by subsequent presidential executive orders and may only be changed through congressional action.

As a general matter, US persons are prohibited from transacting with, and must block the assets of, individuals and entities designated on the SDN List. There are currently 303 entities designated on the SDN List and 278 entities designated on the Sectoral Sanctions Identification (SSI) List under Executive Orders 13660, 13661, 13662, 13685, 13694 and 13757, although under OFAC guidance sanctions also apply to any entities owned 50 percent or greater in the aggregate by designated persons.

**Creation of new sanctions authorities**

CAATSA establishes 11 new types of sanctions measures as described below. The president is directed to impose at least five of the new measures against persons determined to have:

- Participated in significant transactions with the Russian intelligence or defense sectors
- Participated in certain investments in or privatization of Russian state-owned assets, where those transactions
As well, CAA TSA the Act authorizes (but does not require) the president, after consultation with US allies, to impose at least five of the new measures against persons involved in certain material transactions involving the development of energy export pipelines in Russia.

The 11 new types of sanctions measures are:

1. Prohibition on Export-Import Bank assistance for exports to sanctioned persons
2. Denial of export privileges and licenses for sanctioned persons
3. Prohibition on US financial institutions from providing loans totaling more than US$10 million in any 12-month period to sanctioned persons
4. Restrictions on loans to sanctioned persons from international financial institutions where the US is a party
5. Prohibition on designation as primary dealer and on service as a repository of government funds if the sanctioned person is a financial institution
6. Restrictions on contracting with the US government for the provision of goods and services
7. Prohibition on transactions in foreign exchange that are subject to the jurisdiction of the United States in which the sanctioned person has any interest
8. Prohibition on banking transactions for sanctioned persons
9. Prohibition on acquiring property or dealing with property within the jurisdiction of the United States
10. Ban of investment in equity or debt of sanctioned persons
11. Denial of entry into the US of any person determined to be a corporate officer of, principal of or shareholder with a controlling interest in a sanctioned person

In addition, CAATSA authorizes the president to impose any of the 11 sanctions measures against the principal executive officers of a sanctioned person, or against persons performing similar functions and with similar authorities as officers.

**Modification of sectoral sanctions**

CAATSA also modifies the implementation of Executive Order 13662, which directed sanctions on entities operating in the financial services, energy, metals, mining, engineering and defense sectors of the Russian economy. OFAC has implemented these sectoral sanctions under four directives, each targeting a different sector or type of activity. In their current form, the directives impose restrictions on US persons dealing in new debt and equity of SSI-designated entities (Directives 1, 2 and 3) and on exporting goods, services or technology in support of certain oil exploration or production projects that involve SSI-designated entities (Directive 4).

- **New sanctions authority against Russia’s state-owned rail sector**: CAATSA lays the groundwork for new sanctions against Russian state-owned entities operating in the railway sector, as it grants OFAC the authority to sanction such entities, as well as US or non-US persons found to have materially assisted them. It remains to be seen how OFAC will elect to exercise this new sanctions authority—whether in a manner consistent with existing directives that restrict the ability of US persons to engage in specified transactions with designated entities, or in more or less restrictive ways.

- **Reduced permissible debt tenor under Directives 1 and 2**: CAATSA requires OFAC, within 60 days of the Act going into effect, to shorten the permissible maturity period of restricted new debt for entities designated under Directive 1 (Russian state-controlled financial institutions) from 30 to 14 days and from 90 to 60 days for entities

• Materially assisted or provided support for activities that undermine cybersecurity on behalf of Russia (moreover, persons knowingly engaged in such activities are to be added to the SDN List)
designated under Directive 2 (Russian state-controlled energy firms).

- **Expanded sanctions on projects related to oil exploration and production**: CAATSA requires OFAC, within 90 days of the Act going into effect, to revise the restrictions on the provision of goods or services related to oil exploration and production in Directive 4, to now also apply to any new deep-water, Arctic offshore or shale projects that have the potential to produce oil anywhere in the world in which a designated entity has a controlling interest or a substantial non-controlling ownership interest. At present, the restrictions in Directive 4 apply only to such projects within Russia that involve designated entities, but with the changes will now also apply to projects in which designated Russian entities have a 33 percent or greater interest, regardless of whether the project is located in Russia. The addition of a "33 percent rule" is notable in that it introduces a definition of a "substantial non-controlling ownership interest." Like the existing OFAC "50 percent rule" this 33 percent rule will now pose an additional set of counterparty due diligence challenges for US businesses working in this sector.

**Secondary sanctions for foreign sanctions evaders and human rights abuses**

CAATSA provides a new basis for the president to impose blocking sanctions and a ban on entry into the US for foreign persons found to have committed material violations of existing Russian sanctions, or the facilitation of significant transactions by sanctioned persons or entities, or their close family members, and provided material assistance to a foreign person identified as being responsible for human rights abuses.

**Prohibited conduct related to the transfer of arms to Syria**

CAATSA requires the president to enact blocking sanctions and a US visa ban against foreign persons the president ascertains to have engaged in certain activities relating to the export of munitions and other defense material to Syria, including their successors and subsidiaries. These secondary sanctions imposed against foreign persons for the export or transfer of arms to Syria are a result of US concern about Russian involvement in Syria.

**Modification of optional sanctions to mandatory sanctions**

CAATSA directs the president to impose sanctions by modifying the relevant statutory language from "may impose" to "shall impose" for the following types of conduct: certain activities relating to the export of munitions and other defense material to Syria; and facilitation by foreign financial institutions of certain defense and energy-related transactions and transactions on behalf of sanctioned persons or entities or their close family members.

Although Congress may have intended the change in language to instruct the president to impose mandatory sanctions, statutory directions that include "can," "may" and "shall" have not always been interpreted by previous presidents in the same way. As such, there is a certain amount of discretion exercised by presidents when deciding to take action under such congressional direction. Accordingly, it is not yet clear whether President Trump will take action to enact sanctions against entities for the export of munitions and other defense material to Syria, or facilitation of defense and energy-related transactions on behalf of sanctioned persons and their close family members.

**North Korea**

Although not as far reaching as the changes made to the Russia sanctions program, Title III of CAATSA expands the North Korea sanctions to target activities involving several sectors of the North Korean economy, and align US sanctions with those imposed by the United Nations.

**Mandatory sanctions targeting the North Korean precious metals, aviation and finance**
CAA TSA provides the president the authority to designate persons who the president determines knowingly trade in precious or rare earth metals from North Korea, including gold, titanium ore, vanadium ore, copper, silver, nickel, zinc or rare earth minerals; knowingly sell or transfer aviation or other fuels for aircraft or other vessels designated under UN or US sanctions; and knowingly open correspondent accounts for North Korean financial institutions.

**Discretionary sanctions**

CAA TSA also authorizes the president to impose discretionary sanctions against persons determined to have engaged in the following types of activities related to North Korea and the government of North Korea: acquiring coal, iron or iron ore from North Korea in excess of the limitations provided in the applicable United Nations Security Council Resolutions; acquiring textiles from North Korea; selling crude oil, petrochemical products or natural gas to North Korea; supporting the online commercial activities of the North Korean government, including online gambling sites; purchasing agricultural products from North Korea; and supporting or facilitating the migration of North Korean workers where the workers would generate revenue for the North Korean government.

In addition, the Act also sanctions individuals or entities that facilitate human rights abuses by the government of North Korea, including the use of forced labor and slavery overseas of North Koreans.

Both the mandatory and discretionary designations will result in the US imposing blocking and travel sanctions against designated persons and prohibiting US persons from transacting with the designated entities.

**Conclusion**

As noted, many of the most potentially significant changes to these existing sanctions programs are not self-executing. Rather, they will require OFAC and the Bureau of Industry and Security (BIS) to issue new implementing regulations. In short, CAATSA marks the beginning of what is likely to be at least two months of significant change in the Iran, Russia and North Korea sanctions programs. Dentons continues to closely monitor the implementation of these new sanctions.

1. The president issued a “signing statement” calling into question certain aspects of the Act, but it does not appear to indicate an intent to enforce the law in a way that would fundamentally deviate from what the legislation seeks to accomplish.

2. The term “US person” means “any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.” 31 C.F.R. §589.312.

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