

May 8, 2024

Congress Expands U.S. Sanctions in National Security Omnibus Bill

On April 24, 2024, President Biden signed into law a national security and foreign aid omnibus bill, H.R. 815 (the “Act”).¹ While public attention focused on the significant foreign aid to Israel, Ukraine, and Taiwan, and the provision relating to the forced divestment of TikTok, the Act also includes significant provisions relating to U.S. sanctions. Most notably, the Act doubles the statute of limitations for criminal and civil violations of U.S. sanctions, establishes authorities for confiscating and transferring Russian sovereign assets to Ukraine and provides the President with both new mandatory and permissive sanctions authorities involving various regions, including Iran, China, and Russia, and regarding terrorism financing, malicious cyber activities and trafficking fentanyl and captagon.

In this Client Alert, we summarize those significant developments.

Extending the Statute of Limitations for Sanctions Violations to 10 Years

As we discussed in our previous Client Alert,² the Act extends the statute of limitations for civil and criminal sanctions violations from five to 10 years. The 10-year statute of limitations will apply to all violations on a go-forward basis, as well as to any prior violations that had not been time-barred under the five-year statute of limitations by the date of enactment (April 22, 2024).³ Under well-settled principles, the new statute of limitations would not apply to revive sanctions violations that were already time-barred.

Doubling the statute of limitations could increase the scope of liability and therefore the extent of penalties for companies that face criminal or civil sanctions enforcement. Companies engaging in M&A activity or in other types of transactions may want to expand the scope of their due diligence to account for the longer limitations period. These companies may also consider whether to extend the lookback period for sanctions representations and warranties. Banks and other lenders may also consider taking a similar approach.

Mandatory Sanctions Provisions

Several provisions of the Act require the President to impose sanctions on foreign persons that the President determines have engaged in specified acts. Some of these provisions impose sanctions on foreign persons that engage in transactions with sanctioned parties.

As we have noted in connection with prior mandatory sanctions legislation, in practice these types of provisions are not truly “mandatory”—they require the President to impose sanctions against individuals and entities *after* he determines that they have

¹ H.R. 815, 118th Cong. (2d Sess. 2024), available [here](#).

² See Paul, Weiss, *Congress Raises Statute of Limitations for U.S. Sanctions Violations to 10 Years* (Apr. 26, 2024), available [here](#).

³ See generally *Stogner v. California*, 539 U.S. 607 (2003); see also *Landgraf v. USI Film Products*, 511 U.S. 244 (1994).

engaged in certain activities, thus allowing the President to theoretically refrain from implementing these sanctions by withholding certain determinations.⁴

We expect that OFAC will issue guidance in the coming months on how it will approach these provisions.

Chinese Financial Institutions⁵

- Prior to the new legislation, Section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 required the imposition of blocking sanctions on foreign financial institutions that the President determines have “knowingly conducted or facilitated any significant financial transaction with the Central Bank of Iran or another Iranian financial institution [designated by the Secretary of the Treasury].” The Act amends the Iran-China Act to expand the definition of “significant financial transaction” to include any transaction (1) “by a Chinese financial institution (without regard to size, number, frequency, or nature of the transaction) involving the purchase of petroleum or petroleum products from Iran”; and (2) “by a foreign financial institution (without regard to the size, number, frequency, or nature of the transaction) involving the purchase of Iranian unmanned aerial vehicles (UAVs), UAV parts, or related systems.” This expanded definition aims to cast a wider net on banking services supporting the purchase of Iranian petroleum, petroleum products, UAVs, UAV parts, and UAV systems.
- Not later than 180 days after the date of enactment, the President is required to determine whether any Chinese financial institution or other financial institution has engaged in a significant financial transaction (in each case as newly defined), and transmit such determination to the proper congressional committees.

Iran⁶

- *Transactions or Dealings Involving Oil.* The Act authorizes (and in some instances requires) the President to impose additional sanctions or visa restrictions on foreign persons involved in transactions related to Iranian petroleum products. This includes owners or operators of foreign ports that allow vessels on OFAC’s list of specially designated nationals and blocked persons (“SDN List”) to dock; those engaging in significant transactions involving Iranian petroleum products; and individuals owning or operating vessels conducting ship-to-ship transfers of such products. Additionally, these sanctions extend to refinery owners processing Iranian petroleum, covered family members of foreign persons,⁷ and entities under foreign persons’ ownership or control.
- *Participation or Support in Missile and Drone Program.* The Act requires the President to impose sanctions and visa restrictions on any foreign person that the President determines has “knowingly” engaged in, provided support to (financially, materially, or technologically), or participated in Iran’s missile and drone program. The sanctions also apply to adult family members of such foreign persons.
- *Iranian Government Officials.* The Act states that the President is required to determine by July 23, 2024 whether (1) the Supreme Leader of Iran, President of Iran, and other individuals and entities should be subject to sanctions for complicity in human rights abuses or the support of terrorism and (2) “any official of any entity owned or controlled by the Supreme Leader of Iran or the Office of the Supreme Leader of Iran” should be sanctioned under existing authorities. The Act also gives Congress the authority to refer names to the President of individuals who it believes meet the criteria for sanctions

⁴ Paul, Weiss, *U.S. Sanctions Relating to Russia and Ukraine: Navigating the Current Landscape* (Dec. 20, 2017), available [here](#).

⁵ See 22 U.S.C. § 8513a(d), available [here](#); see Iran-China Energy Sanctions Act of 2023 (the “Iran-China Act”), Act, at 265

⁶ See Stop Harboring Iranian Petroleum Act (the “SHIP Act”), Act, at 161; see also Fight and Combat Rampant Iranian Missile Exports Act (the “Fight CRIME Act”), Act, at 179; see also Mahsa Amini Human Rights and Security Accountability Act (the “MAHSA Act”), Act, at 195.

⁷ The term “covered family member,” with respect to a foreign person who is an individual, means “a spouse, adult child, parent or sibling of the person who engages in the sanctionable activity [] or who demonstrably benefits from such activity.”

under one or more of these programs and authorities. In turn, the Act provides that, within 60 days, the President must determine if the person meets such criteria.

Terrorism-Related Sanctions⁸

- *Hamas*. The Act requires the President to impose blocking sanctions on each foreign person that the President determines “knowingly” (1) “assists in supporting or providing significant financial, material, or technological support for, or goods or other services to enable, acts of terrorism; or (2) engages, directly or indirectly, in a significant transaction with—(a) “a senior member of Hamas, Palestinian Islamic Jihad” or other terrorist organizations, or (b) “a senior member of a foreign terrorist organization” that provides support to Hamas, Palestinian Islamic Jihad, or other terrorist organizations.

Drug Trafficking-Related Sanctions⁹

- The Act requires the President to impose blocking sanctions and visa restrictions on any foreign person the President determines “is knowingly involved in the significant trafficking of fentanyl, fentanyl precursors, or other related opioids, including such trafficking by a national crime organization” or “otherwise is knowingly involved in significant activities of a transnational criminal organization” relating to such activities. Similarly, the Act requires the President to impose blocking sanctions and visa restrictions on foreign persons the President determines “materially contributed” to the “international proliferation of captagon.”¹⁰

Violence Against U.S. Officials¹¹

- The Act provides that within 180 days of enactment, the President is required to impose blocking sanctions and visa restrictions on foreign persons the President determines has “ordered, directed, or taken material steps to carry out any use of violence or has attempted or threatened to use violence against any current or former official of the Government of the United States.”

In addition to these mandatory provisions, the Act also requires the President to impose blocking sanctions and visa restrictions on “any foreign person that the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State determine” is “responsible for, complicit in, or has engaged knowingly in, significant cyber-enabled activities” that pose a “significant threat to the national security, foreign policy, or economic health or financial stability of the United States,” as well as any such person that materially assists, sponsors, or provides support for malicious cyber activities, is the target of blocking sanctions or is “owned or controlled by, or has acted or purported to act for or on behalf of [] any person” who is subject to blocking sanctions for engaging in such activity.¹²

⁸ See Hamas and Other Palestinian Terrorist Groups International Financing Prevention Act (the “HAMAS Act”), Act, at 206; see also Strengthening Tools to Counter the Use of Human Shields Act (the “Shields Act”) (modifying 50 U.S.C. 1701), Act, at 226.

⁹ See FEND Off Fentanyl Act (the “Fentanyl Act”), Act, at 87; see also Illicit Captagon Trafficking Suppression Act of 2023 (the “Captagon Act”), Act, at 238.

¹⁰ Captagon is an “amphetamine-type stimulant.” H.R. 4681, 118th Cong. (2023). “The revenue from the illicit Captagon trade has become a major source of income for the Assad regime, the Syrian armed forces, and Syrian paramilitary forces.” U.S. Dep’t of Treasury, *Treasury Sanctions Financial Facilitators and Illicit Drug Traffickers Supporting the Syrian Regime* (Mar. 26, 2024), available [here](#).

¹¹ See Act, at 235.

¹² The Act codifies some elements of the Malicious Cyber Activities Executive Order 13694 issued by President Obama in 2015. See Executive Order 13694, *Blocking the Property of Certain Persons Engaging in Significant Malicious Cyber-Enabled Activities* (Apr. 1, 2015) (amended 2016), available [here](#).

Transfer of Russian Sovereign Assets¹³

The Act notes that approximately \$300 billion in Russian sovereign assets have been immobilized on a global level, with approximately \$4 to \$5 billion of those assets subject to U.S. jurisdiction. Over the past year, there have been growing demands for the United States and its partners to confiscate those funds and transfer them to Ukraine.¹⁴

The existing statutory authority only allowed the President to freeze these assets and limited confiscation to circumstances where the “United States is engaged in armed hostilities or has been attacked by a foreign country or foreign nationals.”¹⁵ The Act grants the President new authority to “seize, confiscate, transfer, or vest any Russian aggressor state sovereign assets” for the purpose of making them available to Ukraine, through a new “Ukraine Support Fund,” which is to be administered by the State Department for the purpose of supporting Ukraine’s recovery efforts.¹⁶

While the Act does not require the President to seize and transfer these assets, it does seek to limit the possibility that the funds would be released as part of any potential resolution to the conflict. The statute states that blocked or effectively immobilized assets cannot be released until the President certifies to Congress that hostilities have ended and Russia has issued “full compensation” to Ukraine for the invasion.¹⁷

Report on Sanctions Imposed by European Partners¹⁸

The Act requires the President to submit by July 23, 2024 a report identifying foreign persons that have been sanctioned by the EU or the UK under their Russia-sanctions authorities and that the President determines would be eligible to be sanctioned by the United States under the Global Magnitsky Human Rights Accountability Act (relating to corruption and human rights abuses) and Russia-related Executive Orders. The Act does not require that the President issue sanctions against these persons, but the process of producing this list—and the requirement to notify Congress of which persons have not been designated by OFAC—may create pressure to designate those persons.¹⁹

Conclusion

We will monitor developments related to the implementation of the Act in the coming months. In the meantime, companies should factor the potential for the new sanctions outlined above into their risk assessments and determine whether any of their ongoing activities may subject them or their business partners or counterparties to the threat of sanctions.

¹³ See Rebuilding Economic Prosperity and Opportunity for Ukrainians Act (the “REPO Act”), Act, at 107.

¹⁴ See, e.g., Politico, *Johnson Eyes Russian Assets in Ukraine Funding Fight* (Apr. 4, 2024), available [here](#).

¹⁵ See 80 U.S.C. § 1702 (a)(1)(C), available [here](#).

¹⁶ Before seizing, confiscating, transferring, or vesting any such assets, the President must submit to the appropriate congressional committees a certification that: (1) seizing, confiscating, transferring, or vesting Russian sovereign assets is “in the national interests of the United States”; (2) the President has “meaningfully coordinated with G7 leaders to take multilateral action with regard to any seizure, confiscation, vesting or transfer of Russian sovereign assets for the benefit of Ukraine”; and (3) either (a) “the President has received an official and legitimate request from a properly constituted international mechanism” or (b) Russia “has not ceased its unlawful aggression against Ukraine” or Russia has ceased its “unlawful aggression against Ukraine” but “has not provided full compensation to Ukraine for harms” and is not participating in a bona fide process to compensate Ukraine for harms. See Act, at 121.

¹⁷ Blocked or effectively immobilized Russian sovereign assets by OFAC may not be released or mobilized until “the President certifies to the appropriate congressional committees that—(1) hostilities between the Russian Federation and Ukraine have ceased; and (2)(A) full compensation has been made to Ukraine for harms resulting from the invasion of Ukraine by the Russia Federation; or (B) the Russia Federation is participating in a bona fide international mechanism” that discharges its obligations to compensate Ukraine. See Act, at 116-17.

¹⁸ See Act, p. 137.

¹⁹ For an example of a report-creation requirement in prior sanctions law, see Paul, Weiss, *Treasury Department Releases Report Listing Russian Senior Political Figures and Oligarchs* (Feb. 5, 2018), available [here](#).

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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