

CLIENT ALERT

President Trump Announces New Cuba Restrictions; U.S. Senate Passes New Iran and Russia Sanctions

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New U.S. sanctions were announced last week on Cuba, Russia, and Iran, though none of the new restrictions has an immediate effect.

After weeks of internal deliberations, President Trump on June 16 partially fulfilled a campaign pledge by announcing a limited re-implementation of sanctions on Cuba. The new Cuba measures will only take effect after the relevant agencies implement new regulations, a revision process that will begin within the next 30 days, but may take several months.

Separately, on June 15, the U.S. Senate overwhelmingly passed new sanctions on both Iran and Russia; that legislation must still be voted on by the U.S. House of Representatives, but appears likely to pass with strong bipartisan support in the next several weeks.

Please click below for more information on what was a busy week in Washington.

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Cuba: Presidential Memorandum Announcing New Restrictions

During his campaign, President Trump committed to “overturn” President Obama’s relaxations of sanctions on Cuba. On June 16, he released a [National Security Presidential Memorandum on Strengthening the Policy of the United States Toward Cuba](#). Importantly, the memorandum does not make any immediate changes to U.S. law; instead, it announces the contours of new U.S. policy, then directs the U.S. Department of Commerce and the U.S. Department of the Treasury to “initiate a process to adjust current regulations” within the next 30 days. The Treasury’s Office of Foreign Assets Control has already indicated, in a set of [Frequently Asked Questions](#), that it expects its revisions to the Cuban Assets Control Regulations (CACR) to be issued “in the coming months.”

The memorandum announces the following changes to U.S. sanctions on Cuba:

- [Prohibitions on Transacting with the Cuban Military](#): The memorandum announces a policy to “end economic practices that disproportionately benefit the Cuban government or its military, intelligence, or security agencies or personnel at the expense of the Cuban people.” To implement this policy, the memorandum directs the Secretary of State to publish

a list of entities that are “under the control of, or act on behalf of, the Cuban military, intelligence, or security services” (the Cuban Military List), which will include the Grupo de Administración Empresarial (the Armed Forces Business Enterprises Group, or GAESA, and entities it owns or controls). U.S. Persons will generally be prohibited from transacting with persons on the Cuban Military List. However, the memorandum includes several exceptions including, among other things, transactions that: (a) support visas for permissible travel; (b) support sales of agricultural commodities, medicines, and medical devices; (c) support the expansion of direct telecommunications and internet access for the Cuban people; and (d) support programs to build democracy in Cuba. Importantly, OFAC clarified that it will not prohibit “Cuba-related commercial engagement” including direct transactions with the Cuban military, provided those engagements were in place prior to the issuance of OFAC’s new regulations.

- Removing Authorization for Individual “People-to-People” Travel: The memorandum directs the relevant agencies to limit the scope of educational travel to trips taken “under the auspices of an organization” subject to U.S. jurisdiction and on which the traveler is accompanied “by a representative of the sponsoring organization.” In practice, this policy change will remove the previous authorization for individual’s to design their own “people-to-people” exchanges. The memorandum does not otherwise direct the removal of the 12 current general licenses that authorize travel, but it does direct the Secretary of the Treasury to “regularly audit travel to Cuba to ensure that travelers are complying with relevant statutes and regulations,” a break from the more lenient enforcement posture under the Obama administration.
- Expansion of the “Prohibited Officials of the Government of Cuba”: The memorandum directs OFAC to expand its definition of the term “Prohibited Officials of the Government of Cuba”. Currently, the term applies only to members of the Council of Ministers and flag officers of the Revolutionary Armed Forces. The memorandum expands the term to apply to a number of senior Government officials including: (a) Ministers and Vice Ministers; (b) members of the National Assembly of People’s Power; (c) members of any provincial assembly; (d) Director Generals and sub-Director Generals of all Cuban ministries; (e) all employees of the Ministry of the Interior and Ministry of Defense; (f) all editors and deputy editors of Cuban state-run media organizations (including newspapers, televisions, and radio); and (g) all members and employees of the Cuban Supreme Court.

Although some observers expected a complete reversal of the Obama-era relaxations, the memorandum leaves in place large portions of President Obama’s post-2014 relaxations. For example, based on the contents of the memorandum and the limited guidance issued to date by OFAC ([OFAC FAQs](#)) and the Bureau of Industry and Security ([BIS FAQs](#)), the following are unlikely to change: (a) existing specific licenses; (b) most existing BIS license exceptions, including exports in support of the Cuban People; (c) authorized travelers will remain permitted to bring back Cuban-origin cigars and rum; (d) Cuba will not be (re)added to the list of State Sponsors of Terrorism; (e) the United States will maintain diplomatic relations with Cuba; (f) commercial travel services (*e.g.*, cruises and flights) will remain authorized; (g) remittances will not be limited; and (h) the repeal of the “wet foot, dry foot” policy will remain in place.

Russia: Senate Legislation Imposes New Primary, Secondary, and Sectoral Sanctions

On June 15, the U.S. Senate passed legislation which, if enacted into law, would dramatically expand sanctions on Russia. Specifically, a bipartisan group of Senators reached a compromise earlier in the week to combine several pending Russia-

related measures and attach them as an amendment to [S.722 - The Countering Iran's Destabilizing Activities Act of 2017](#) (the Iran-related aspects are discussed further below).

The legislation would impose an extensive series of new restrictions on Russia. The following represent a few of the key highlights:

- New “Blocking” Sanctions: The legislation provides the president with new authorities to impose sanctions on entities undertaking a variety of activities. Specifically, the president “shall” impose blocking sanctions on any person determined to be: (1) knowingly engaging in significant activities undermining cybersecurity on behalf of the Russian Government; (2) a non-U.S. person who violates, attempts to violate, or facilitates or structures transactions to evade, existing Russia-related sanctions; (3) a non-U.S. person responsible for, complicit in, or otherwise directing the commission of serious human rights abuses in Russia; or (4) a non-U.S. person who provides significant support that materially contributes to the ability of the Government of Syria to acquire chemical, biological, or nuclear weapons, ballistic missiles, or other similar items (e.g., those on the U.S. Munitions List).
- New “Sectoral” Sanctions (Sec. 223): The legislation provides new discretionary authority to impose sectoral sanctions on persons if the Secretary of the Treasury determines that the person is a “state-owned” entity operating in Russia’s (a) railway, (b) shipping, (c) metals, or (d) mining sectors. The legislation does not designate any new entities; it simply enables potential future designations.
- Expansion of Existing Sectoral Sanctions: The legislation modifies the existing sectoral sanctions in three ways: (1) it lowers the permitted maturity period for credit extended to entities designated pursuant to [Directive 1](#) to 14 days (from 30 days); (2) it lowers the permitted maturity period for [Directive 2](#) entities to 30 days (from 90 days); and (3) it expands [Directive 4](#) to target activities involving exploration and production for oil from deepwater, arctic offshore, or shale locations involving Russian energy firms and entities designated pursuant to Directive 4 anywhere in the world (as opposed to just in Russia).
- New “Secondary” Sanctions on Persons transacting with Russia’s Defense Sector, Energy Pipelines, or Privatization of State-Owned Enterprises: The legislation substantially expands the U.S.’ “secondary” sanctions targeting Russia. Currently, the United States has a limited set of secondary sanctions authorities that apply to Russia (pursuant to the Ukraine Freedom Support Act), that have never yet been utilized. The legislation expands these authorities as follows:
 - **New Authorities**: The legislation directs that the president “shall” impose five or more sanctions (see below) on non-U.S. persons determined to have engaged after the date of the legislation: (1) in significant transactions with a person who is part of, or acts on behalf of, the defense or intelligence sectors of the Government of Russia; or (2) makes an investment of \$10,000,000 that directly and significantly contributes to the ability of Russia to privatize state-owned assets in a manner that “unjustly benefits” Russian officials. Additionally, the president “may” impose five or more sanctions on non-U.S. persons determined to have made: (3) an investment of more than, or goods, services, or technology worth more than, \$1,000,000 (or \$5,000,000 in a 12-month period) that contributes to Russia’s ability to construct energy export pipelines.
 - **Potential Penalties**: The legislation provides a “menu” of secondary sanctions penalties from which the president can choose. These parallel those utilized in the Iran context and include: (1) denial of Export-Import bank assistance; (2) denial of export licenses; (3) denial of loans from U.S. financial institutions; (4) a prohibition on financial institutions serving as a primary dealer in U.S. Government debt instruments and/or serving as a repository of U.S. government funds; (5) denial of U.S. government contracts; (6) denial of access to U.S. foreign

exchange; (7) denial of access to U.S. correspondent or payable through accounts; (8) potential asset blocking; (9) prohibition on U.S. persons investing in the non-U.S. person; (10) denial of visas to corporate officers; and (11) similar restrictions imposed on principal executive officers.

- **Codification of Existing Sanctions:** The legislation codifies all of the existing Executive Orders on Russia (both those related to Ukraine and to Cyber activities). While the legislation provides the president with a termination authority, in practice this codification substantially reduces the president’s flexibility to relax the existing sanctions (by way of comparison, Congress’s “codification” of existing Cuba-related sanctions in the mid-1990s is the primary reason that President Obama was unable to fully repeal the Cuba embargo in 2014-2016 as he desired). Importantly, the legislation also codifies all existing designations, making it harder to remove persons from either the list of Specially Designated Nationals (SDN) or the Sectoral Sanctions Identification (SSI) list.
- **Restrictions on the President:** The legislation restricts the president’s ability to unwind existing sanctions, including removing existing designations. Prior to doing so, the president is now required to provide at least 30 days’ notice to Congress. Congress is then provided with procedures to issue either a ‘Joint Resolution of Approval’ or a ‘Joint Resolution of Disapproval’ of the proposed action.

Iran: Senate Legislation Imposes New Non-Nuclear Sanctions

The legislation also includes a number of new sanctions on Iran. To ensure the United States complies with its commitments under the Joint Comprehensive Plan of Action (JCPOA), which suspended or waived aspects of the U.S. sanctions targeting Iran’s nuclear program, these new restrictions are targeted at non-nuclear behavior (*e.g.*, support for terrorism, ballistic missile programs, human rights abuses, etc.). The new measures include:

- **New Blocking Sanctions Authorities:** The legislation provides that the president “shall” impose new blocking sanctions on persons determined to be: (a) knowingly engaging in activity that materially contributes to the Government of Iran’s ballistic missile program; and (b) knowingly engaged in any activity that materially contributes to the sale, supply, or transfer to or from Iran of major conventional arms systems. Additionally, the legislation indicates that the president “may” impose new blocking sanctions on persons (c) determined to be responsible for extrajudicial killings or other gross violations of human rights committed against individuals in Iran who sought to expose illegal activity or to defend human rights and freedoms.
- **Designation of the IRGC as a Terrorist Group:** The legislation designates the Islamic Revolutionary Guard Corps as a terrorist organization pursuant to the Global Terrorism Sanctions Regulations (SDGT). The IRGC had already been designated by the U.S. pursuant to the U.S. Weapons of Mass Destruction program. Its subsidiary, the Quds Force, has already been designated as an SDGT.
- **Development of a Regional Strategy for Countering Iran:** In addition to authorizing a series of new reports – including on the coordination of U.S. measures with Europe and on the detention of U.S. citizens in Iran – the legislation requires the development of a “regional strategy” for deterring conventional and asymmetric Iranian activities in the region, including the IRGC’s regional efforts, Iran’s support for Syrian President Bashar al-Assad, Iranian’s interference with commercial shipping, and other measures.

The legislation passed the Senate 98-2 and now needs to be taken up by the U.S. House of Representatives. Debate has not currently been scheduled, but given previous efforts by the House to impose restrictions on both Iran and Russia, the legislation is widely expected to be approved with a large bipartisan majority. Secretary Tillerson and other members of the Trump administration have indicated they oppose aspects of the legislation – in particular the elements that limit the administration’s discretion to unwind existing restrictions – but if it passes by large majorities in both houses of Congress, it is not yet known whether President Trump will veto the legislation and open the possibility of being overturned.

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