

New National Security Law Represents Significant Sanctions Expansion

April 29, 2024

On April 24, 2024, President Biden signed into law H.R. 815,¹ a bill consolidating supplemental foreign aid to Israel, Ukraine and Taiwan together with several congressional national security priorities, including:

- numerous provisions targeting Russia and China, including authorizing the President to seize Russia’s “sovereign assets” for Ukraine’s reconstruction and effectively forcing a divestment of TikTok by its Beijing-headquartered parent company, ByteDance, Ltd. (“ByteDance”);
- a new requirement to be enforced by the Federal Trade Commission (“FTC”) prohibiting data brokers from selling specified personal data to foreign adversaries;
- authorizing the harmonization of U.S. sanctions against Russia with those imposed by the United Kingdom (“UK”) and European Union (“EU”); and
- imposing numerous new sanctions and export controls.

Below, we highlight key provisions, focusing on the sanctions and other national security regulatory measures.

KEY COMPONENTS OF THE NEW LAW

Novel Powers To Seize Assets, Restrict Data and Require Divestment

The new law includes a number of novel powers and authorizations not previously deployed by the President.

¹ H.R. 815, 118th Cong. (2023–2024), available [here](#).

Russian Sovereign Assets

The President now holds the authority to “seize, confiscate, transfer, or vest any Russian aggressor state sovereign assets” and to place such assets in a newly created “Ukraine Support Fund” to provide assistance to Ukraine “for the damage resulting from the unlawful invasion by the Russian Federation that began on February 24, 2022.”

“Russian aggressor state sovereign asset” includes any funds and other property of the Central Bank of the Russian Federation, the Russian National Wealth Fund or the Ministry of Finance of the Russian Federation, as well as any other funds or other property that are owned by the Russian government.

The law appears to prohibit any funds or other property meeting this definition that are already blocked by U.S. persons from being released or mobilized for any other purpose, with U.S. financial institutions holding such blocked property expected to face related reporting requirements.

TikTok Divestment

The new law includes provisions that make it unlawful for any entity to “distribute, maintain, or update” a “foreign adversary controlled application” within U.S. jurisdiction unless a “qualified divestiture” occurs within 270 days of the law’s enactment. “Qualified divestiture” is defined under the law as a divestiture or similar transaction that the President determines, through an interagency process, “would result in the relevant foreign adversary controlled application no longer being controlled by a foreign adversary,” such as China, and precludes any operational relationship between the U.S. operations of the relevant foreign adversary controlled application and any formerly affiliated entities controlled by a foreign adversary. The President may grant a one-time extension of up to 90 days for the prohibition’s effective date if the President determines that significant progress has been made toward such a divestiture.

The bill specifically identifies applications operated by ByteDance and TikTok as such foreign adversary controlled applications and, in effect, forces ByteDance to divest of TikTok in order to prevent the video-sharing application from being banned in the United States. The measure broadly applies, however, to other applications “controlled by a foreign adversary” and determined by the President, following public notice, to represent a “significant threat to the national security of the United States.” The term “controlled by a foreign adversary” refers to companies or entities domiciled in or organized under the laws of a foreign adversary country as defined in 10 U.S.C. §4872(d)(2), namely North Korea, China, Russia and Iran.

This measure is widely expected to face legal challenges from TikTok and will require judges to assess Congress’s national security objectives against the First Amendment

rights of TikTok and its users. The law contemplates that a petition for review challenging the measure may be filed only in the U.S. Court of Appeals for the District of Columbia Circuit and may be brought no later than 165 days after the date of enactment.

Data Controls Under the FTC Act

The new law makes it unlawful for a data broker to “sell, license, rent, trade, transfer, release, disclose, provide access to, or otherwise make available personally identifiable sensitive data” of a U.S. individual (a natural person residing in the United States) to any “foreign adversary country” or any entity that is controlled by a foreign adversary. “Foreign adversary country,” as used in this section, means North Korea, China, Russia and Iran, while the term “controlled by a foreign adversary” refers to an individual or entity domiciled in or organized under the laws of a foreign adversary country, an entity in which such a foreign person or combination of foreign persons directly or indirectly own at least a 20 percent stake or a person subject to the direction or control of any of the foregoing foreign persons or entities. A violation of the data transfer prohibition is treated as a violation of a rule defining an unfair or a deceptive act or practice under section 18(a)(1)(B) of the FTC Act (15 U.S.C. §57a(a)(1)(B)), and the FTC is authorized to enforce the section with the same jurisdiction, powers and duties granted under the FTC Act.

This measure parallels similar restrictions adopted by an earlier executive order, which we discussed in an earlier client [update](#), reinforcing a “whole-of-government approach” to preventing certain “countries of concern” from accessing U.S. sensitive personal data.

Expansion of Existing U.S. Sanctions

The new law significantly expands nearly all existing U.S. sanctions by doubling the relevant statute of limitations for related violations, and authorizes U.S. sanctions authorities to impose sanctions against targets of EU and UK sanctions against Russia.

Extended Statute of Limitations

The law amends section 206 of the International Emergency Economic Powers Act (“IEEPA”) (50 U.S.C. §1705) and section 16 of the Trading with the Enemy Act (50 U.S.C. §4315) by setting a ten-year statute of limitations for violations of U.S. sanctions. Specifically, the amendments provide under both sections that “an action, suit, or proceeding for the enforcement of any civil fine, penalty, or forfeiture,” as well as any criminal indictment or information, must be commenced or instituted within ten years after the latest date of the violation. Previously, the applicable federal statute of limitations for sanctions violations was generally five years from the date of the violation.

Harmonization of Russia Sanctions with U.S. Allies

The law seeks to harmonize U.S. sanctions against Russia with those imposed by the UK and EU. Within 90 days of enactment, the President is required to submit a report to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate identifying all foreign persons currently subject to the UK's and EU's Russia sanctions programs that also meet the criteria for imposition of sanctions by the United States pursuant to specified sanctions authorities. The President may impose sanctions against such parties sanctioned by the UK and EU that are not already subject to U.S. sanctions.

New Sanctions and Export Controls

Subject to certain exceptions, the new law requires the President to impose, pursuant to authorities granted under IEEPA, additional sanctions against a wide range of foreign individuals and entities, as follows:

- **Fentanyl Trafficking.** Any foreign person determined by the President to be knowingly involved in the significant trafficking of fentanyl, fentanyl precursors or other related opioids.
- **Iranian Petroleum Transactions.** Any foreign person that:
 - owns or operates a foreign port at which such person knowingly permits to dock a vessel (i) included on the list of specially designated nationals and blocked persons maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") for transporting Iranian crude oil or petroleum products, or (ii) the operator or owner of which knowingly engages in a significant transaction involving such vessel to transport or deal in significant transactions in petroleum or other petrochemical products originating from Iran;
 - owns or operates a vessel through which such owner knowingly conducts a ship-to-ship transfer involving a significant transaction of any petroleum product originating from Iran;
 - owns or operates a refinery through which such owner knowingly engages in a significant transaction to process, refine or otherwise deal in any petroleum product originating from Iran; or
 - is a covered family member of a foreign person described in the immediately preceding sub-bullets or is owned or controlled by such foreign person.

- **Proliferation of Iranian Missiles.** Any foreign person that the President determines engages knowingly in the following activities or is an adult family member of such a person:
 - engages in any effort to acquire, possess, develop, transport, transfer or deploy covered technology (*i.e.*, goods, technology software or related material specified in the Missile Technology Control Regime Annex) to, from or involving the Government of Iran (“GOI”) or Iran-aligned entities;
 - provides entities owned or controlled by the GOI or Iran-aligned entities with goods, technology, parts or components that may contribute to the development of covered technology;
 - participates in joint missile or drone development, including development of covered technology, with the GOI or Iran-aligned entities, including technical training, storage and transport;
 - imports, exports or re-exports to, into or from Iran any significant arms or related materiel prohibited under paragraph (5) or (6) to Annex B of United Nations Security Council Resolution 2231 (2015) as of April 1, 2023; or
 - provides significant financial, material or technological support to, or engages in a significant transaction with, a foreign person subject to sanctions for conduct described in the immediately preceding sub-bullets.
- **Acts of Terrorism or Significant Transactions with Senior Members of Hamas, Palestinian Islamic Jihad and Other Palestinian Terrorist Organizations.** Any foreign person that the President determines knowingly:
 - assists in sponsoring or providing significant financial, material or technological support for, or goods or other services to enable, acts of terrorism; or
 - engages in a significant transaction with (i) a senior member of Hamas, Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion’s Den or any affiliate or successor thereof or (ii) a senior member of a foreign terrorist organization designated pursuant to section 219 of the Immigration and Nationality Act (8 U.S.C. §1189) that is responsible for providing support to these organizations.
- **Threats to Current or Former U.S. Officials.** Any foreign person that the President determines has, on or after the date of enactment, 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 U.S. government.

- **Illicit Captagon Trafficking.** Any foreign person that the President determines, on or after the date of enactment:
 - engages in or attempts to engage in activities or transactions that have materially contributed to, or pose a significant risk of materially contributing to, the illicit production and international illicit proliferation of captagon; or
 - knowingly receives any property or interest in property that the foreign person knows (i) constitutes or is derived from proceeds of activities or transactions that have materially contributed to or pose a significant risk of materially contributing to the illicit production and international illicit proliferation of captagon or (ii) was used or intended to be used to commit or facilitate activities or transactions that have materially contributed to or pose a significant risk of materially contributing to the illicit production and international proliferation of captagon.

The law further imposes the following sanctions-related measures:

- **Iran's Supreme Leader's Office, its Appointees and any Affiliated Persons.** The President is required to determine within 90 days of the law's enactment whether certain persons, including the Supreme Leader of Iran, the President of Iran, any entity overseen by the Supreme Leader of Iran that is complicit in human rights abuses or the support of terrorism, and any official or entity owned or controlled by the Supreme Leader of Iran or the Office of the Supreme Leader of Iran, meet the criteria for imposition of sanctions under one or more of the specified Iran-related sanctions programs (*i.e.*, section 105(c) of the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010 (22 U.S.C. §8514(c)), Executive Order 13224 (50 U.S.C. §1701 note), Executive Order 13818, Executive Order 13876 and section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2021).
- **Foreign Financial Institutions with Respect to the Purchase of Petroleum Products and Unmanned Aerial Vehicles ("UAVs") from Iran.** The law amends U.S. secondary sanctions against Iran (section 1245(d) of the National Defense Authorization Act for Fiscal Year 2012 (22 U.S.C. §8513a(d))) by:
 - defining "significant financial transaction" to include any transaction (i) by a Chinese financial institution (without regard to the size, number, frequency or nature of the transaction) involving the purchase of petroleum or petroleum products from Iran and (ii) by a foreign financial institution (without regard to the size, number, frequency or nature of the transaction) involving the purchase of Iranian UAVs, UAV parts or related systems; and

- requiring the President to determine if any Chinese or other financial institution has engaged in a significant financial transaction as described above.

With respect to export controls, the law imposes the following new requirements:

- **Foreign States Providing Support to Hamas, Palestinian Islamic Jihad and Other Palestinian Terrorist Organizations.** The President is required, within 180 days of the law's enactment, to prohibit the export for a period of one year of any item on the United States Munitions List (22 U.S.C. §2778) or the Commerce Control List set forth in Supplement No. 1 to part 774 of title 15, Code of Federal Regulations, to a foreign state that the President determines knowingly provides significant material or financial support for acts of international terrorism, provides significant material support to, or engages in a significant transaction that materially contributes to the terrorist activities of, Hamas, the Palestinian Islamic Jihad, Al-Aqsa Martyrs Brigade, the Lion's Den or any affiliate or successor thereof.
- **Application of Foreign-Direct Product Rules to Iran.** Beginning 90 days after enactment, a foreign-produced item shall be subject to the Export Administration Regulations ("EAR") if (i) the item is a direct product of U.S.-origin technology or software subject to the EAR that is specified in a covered Export Control Classification Number or identified in supplement no. 7 to part 746 of the EAR, or is produced by any plant located outside of the United States that is itself a direct product of such United States-origin technology or software; (ii) the item is destined to Iran or will be incorporated into or used in the production or development of any component or equipment subject to the EAR and produced in or destined to Iran; and (iii) is exported, reexported or in-country transferred to Iran from abroad or involves the GOI.

WHAT WE'RE WATCHING

Interested stakeholders should familiarize themselves with the law's requirements, particularly with respect to sanctions against Russia, Iran, certain terrorist organizations and foreign persons involved in fentanyl trafficking. Many of the sanctions-related measures require the President to take action between 90 and 180 days of the law's enactment and, accordingly, we expect OFAC to be active in the coming months in implementing the law's sanctions requirements. In addition, the law requires the Biden Administration to produce a number of new reports and triggers imposition of possible sanctions and other steps based on the findings in those reports.

In light of the extension of the statute of limitations for sanctions violations from five to ten years, impacted stakeholders also should consider the need for certain changes, such as revising recordkeeping policies, transactional due diligence scope and contractual representations and warranties in transaction and other agreements.

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We will continue to monitor developments and provide updates as warranted. Please do not hesitate to contact us with any questions.



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