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U.S. Congress Passes Russia Sanctions Legislation

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The legislation includes a mix of mandatory and discretionary sanctions that could significantly discourage investment in, and transactions with, Russia's energy and defense sectors. The legislation also authorizes extraterritorial sanctions aimed at foreign financial institutions that facilitate certain sanctionable activities. Below is a summary of the key sanctions provisions provided in the legislation.

A. Sanctions Against Russian Energy and Defense Sectors

1. Energy Sector Provisions

The legislation includes several measures targeting Russia's energy sector. Specifically, it:

- **authorizes** the president to impose **three or more** of the sanctions (identified in A.3 below) against foreign persons deemed to knowingly make significant investments in "special Russian crude oil projects" (i.e., projects intended to extract crude oil from Russian deepwater (greater than 500-feet depth), Arctic offshore locations and shale formations); in a previous version of this legislation, these sanctions were mandatory, but, under the legislation approved by both the Senate and the House, they are discretionary
- **authorizes** the departments of Commerce and Treasury to impose additional licensing requirements for, or restrictions on, the export or re-export of items for use in the energy sector in Russia, including equipment used for tertiary oil recovery
- **requires** that, if the president determines that Gazprom is withholding significant natural gas supplies from member countries of NATO or further withholds such supplies from countries such as Ukraine, Georgia or Moldova, the president shall

restrict U.S. persons from investing in debt with greater than 90 days' maturity or equity of Gazprom and impose one additional type of sanction (identified in A.3 below) against Gazprom.

2. Defense Sector Provisions

In connection with the Russian defense sector, the legislation separately **requires** the President to impose **three or more** types of sanctions (identified in Section A.3 below) against:

- Rosoboronexport
- Russian-owned or -controlled entities that knowingly manufacture, sell, transfer or broker the transfer of defense articles to Syria or specified countries (e.g., Ukraine, Georgia, Moldova) without authorization from the internationally recognized governments of those specified countries
- other foreign persons knowingly assisting, sponsoring or providing financial, material or technological support for, goods or services to or in support of, entities identified in the bullet above.

3. Potential Sanctions

The legislation provides a menu of potential sanctions from which the president may choose:

- restrictions on U.S. Export-Import Bank assistance
- restrictions on obtaining U.S. government procurement contracts
- arms export prohibitions
- dual-use item export prohibitions
- property-blocking measures
- restrictions on banking transactions
- prohibitions on investment in equity or debt of the sanctioned person
- visa bans
- sanctions on principal executive officers of sanctioned entities.

As noted above, the president has the discretion to decide which of the above sanctions will be imposed against the entities identified in Sections A.1 and A.2 above.

B. Foreign Financial Institutions

The legislation also authorizes extraterritorial sanctions against foreign financial institutions that facilitate certain sanctionable activity with respect to Russia's energy and defense sectors or Specially Designated Nationals ("SDNs"). Specifically, discretionary sanctions are available against foreign financial institutions that knowingly:

- engage in "significant transactions" involving sanctioned entities engaged in activities described in:
  - the Energy Sector Provisions above in Section A.1 (excluding the licensing provisions in bullet 2)
  - the Defense Sector Provisions above in Section A.2 (including Rosobornexport only to the extent that it is participating in the types of activities described in Section A.2).

The legislation does not provide a definition of what constitutes a "significant transaction."

- facilitate "significant financial transactions" on behalf of Russian SDNs designated under the various Ukraine/Russia-related measures. The legislation does not provide a definition of what constitutes a "significant financial transaction."

In such cases, the president may restrict foreign financial institutions from opening or maintaining correspondent accounts or payable-through accounts in the United States. These measures are similar to sanctions that OFAC is authorized to impose against non-U.S. financial institutions found to knowingly engage in certain sanctionable activities with respect to Iran.