

United States Imposes Additional Sanctions Against North Korea

September 22, 2017

International Trade Controls

President Trump has issued an [Executive Order](#) (“the Order”), effective September 21, 2017, imposing additional sanctions on persons doing business in certain sectors of the North Korean economy or engaging in certain trade or financial activities involving North Korea. President Trump issued the Order in response to North Korea’s recent intercontinental ballistic missile launches and September 2 nuclear test, its use of funds from foreign trade to support these weapons programs, and its human rights abuses. The Order builds on sanctions imposed last month through the [Countering America’s Adversaries Through Sanctions Act](#), which is described in our [July 28 client alert](#).

The European Union also has agreed to impose additional sanctions against North Korea, which might extend beyond asset-freezing measures to include broad investment and oil export restrictions, but it has not yet published a regulation implementing these sanctions.

Overview of New U.S. Sanctions

Sanctions Against Key Sectors of North Korean Economy and Persons Trading with North Korea

The Order requires the Secretary of the Treasury, in consultation with the Secretary of State, to block the property and property interests that are or come into the United States or the possession or control of a U.S. person of any persons, including entities that are owned or controlled by or act for or on behalf of such persons, who are determined to:

- Operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea;
- Own, control, or operate any port in North Korea, including any seaport, airport, or land port of entry;
- Have engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology;
- Be a North Korean person, including a North Korean person engaged in commercial activity that generates revenue for the Government of North Korea or the Workers’ Party of Korea; or

- Have materially assisted, sponsored, provided financial, material, or technological support for, or goods or services in support of, any person whose property is blocked pursuant to the Order.

A “North Korean person” is defined to mean “any North Korean citizen, North Korean permanent resident alien, or entity organized under the laws of North Korea or any jurisdiction within North Korea (including foreign branches).” It does not include U.S. citizens or U.S. lawful permanent residents who otherwise meet the definition of “North Korean person.”

Under the [North Korea Sanctions and Policy Enhancement Act of 2016](#), discussed in our client alert dated [March 8, 2016](#), and other sanctions measures, U.S. persons already are generally prohibited from engaging in transactions with North Korea or its government without authorization from the Treasury Department’s Office of Foreign Assets Control (“OFAC”). However, this Order goes significantly further by requiring the Treasury Secretary to block the property and property interests of persons as described above. In some cases, the Treasury Secretary must act to designate persons described under the Order; however, no further designation or action would be necessary to effect certain of these blocking measures, such as the blocking required of the property of North Korean persons.

Consistent with other Executive Orders imposing sanctions, this Order suspends the entry into the United States as “immigrants or non-immigrants” of any of the persons “determined to meet” any of the criteria for blocking summarized above.

Aircraft- and Vessel-Related Sanctions and Travel Restrictions

In an effort to further discourage and restrict the ability of persons who wish to trade with the United States to conduct trade with North Korea, the Order prohibits any vessel or aircraft in which a non-U.S. person has an interest that has called or landed at a port or place in North Korea in the previous 180 days, and vessels that have engaged in a ship-to-ship transfer with such a vessel in the previous 180 days, from entering the United States. OFAC has issued a limited new general license, General License No. 10, that authorizes such vessels or airplanes to call at a port or land in the United States only in situations of emergency or distress, or when their landing or calling at a port in North Korea was due solely to an emergency or distress, or when an aircraft is engaging in a nontraffic stop (without discharging cargo, passengers, or mail) in the United States.

In addition, OFAC noted in [FAQs](#) that it issued with the Order that while travel to North Korea by U.S. persons is not prohibited by sanctions, the State Department has issued a [Geographical Travel Restriction](#) for U.S. citizens traveling to North Korea. The restriction makes it invalid to use U.S. passports for travel to North Korea and requires those who wish to travel to North Korea on a U.S. passport to obtain a special passport validation, which will be issued only in limited circumstances.

Sanctions Against Foreign Financial Institutions and Relating to Funds of North Korean Persons

The Order also authorizes the Secretary of the Treasury, in consultation with the Secretary of State, to impose sanctions on a foreign financial institution, broadly defined, that, on or after September 21, 2017, knowingly conducts or facilitates “any significant transaction” (1) in connection with any trade with North Korea or (2) on behalf of persons blocked pursuant to the North Korean sanctions. This action might particularly affect Chinese banks, since they have

come under scrutiny for their role as a conduit for funds flowing to and from North Korea. On September 18, 2017, the Central Bank of China reportedly told the Chinese banks to strictly implement United Nations sanctions against North Korea and stop providing financial services to new North Korean customers and wind down loans with existing customers. It is not clear, however, how the Central Bank's warning would affect existing accounts linked to North Korea.

If sanctioned under the Order, foreign financial institutions could be prohibited from opening correspondent or payable-through accounts in the United States, or they could be subject to strict conditions on the maintenance of such U.S. accounts. Further, the Order authorizes the Treasury Secretary to block all property and interests in property belonging to such financial institutions that are in the United States or come within the possession or control of a U.S. person.

The Order also blocks funds that are or come into the United States or the possession or control of a U.S. person if those funds originate from, are destined for, or pass through a foreign bank account that the Treasury Secretary has determined is owned or controlled by a North Korean person or has been used to transfer funds in which a North Korean person has an interest. No U.S. person may facilitate transactions involving such funds by a non-U.S. person. Notably, while similar blocking provisions in this Order and other Executive Orders and OFAC regulations apply broadly to "property and interests in property" of any kind, this blocking provision is limited to "funds," which is not defined further in the Order. OFAC indicated in one of the FAQs it issued on the new Order that it would "provide appropriate notice and additional guidance, as necessary, to clarify its expectations for implementation" related to this section of the Executive Order, and that "[a]bsent such a determination and notice from Treasury, this provision does not create any immediate compliance obligations on U.S. persons."

General License No. 3-A (revising and superseding former General License 3) authorizes U.S. financial institutions to debit any account blocked in connection with sanctions against North Korea in payment or reimbursement for "normal service charges" owed by the account owner.

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Covington has deep experience advising clients on the legal, policy, and practical dimensions of international sanctions, including with respect to North Korea. We will continue to closely monitor the developments in this area, and are well-positioned to assist clients in understanding how these new sanctions may affect their business operations.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our International Trade practice:

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