

United States Imposes Additional Sanctions Targeting North Korea

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On September 21, 2017, President Trump signed an Executive Order (EO) entitled “Imposing Additional Sanctions with Respect to North Korea.”¹ The EO authorizes the US to impose blocking sanctions on North Korean persons, persons who are found to operate in key economic sectors in North Korea, persons who own, control, or operate any port in North Korea, and persons found to have exported or imported any goods, services, or technology to or from North Korea, among others. The EO also prohibits vessels and aircraft that have traveled to North Korea in the previous 180 days, and vessels that engaged in a ship-to-ship transfer with a vessel that has traveled to North Korea in the previous 180 days, from entering the United States. Additionally, the EO authorizes the US to block any funds transiting accounts linked to North Korea that come within the United States or within the possession of a United States person.

The EO also expands sanctions targeting foreign financial institutions by authorizing the imposition of sanctions on any such institution found to knowingly conduct or facilitate (1) any significant transaction on behalf of certain blocked persons or (2) any significant transaction in connection with trade with North Korea.

US entities and individuals are already prohibited from transacting with North Korea. These new measures dramatically increase the scope of North Korea-related activity that can give rise to US sanctions restrictions on non-US entities and individuals, even in the absence of any connection between such activity and the United States. The EO therefore imposes expansive new secondary sanctions. Non-US entities found to engage in sanctionable conduct can be effectively shut out of the US commercial and financial systems.

In addition, the People’s Bank of China reportedly has instructed Chinese banks to cease providing financial services to new North Korean customers and to wind down loans with existing North Korean customers.

¹ <https://www.whitehouse.gov/the-press-office/2017/09/21/presidential-executive-order-imposing-additional-sanctions-respect-north>.

Blocking Sanctions

The EO authorizes blocking the property and interests in property located in the United States or in the possession or control of a US Person² of any person determined:

- To operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea
- To own, control, or operate any port in North Korea, including any seaport, airport, or land port of entry
- To have engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology
- To be a North Korean person,³ including a North Korean person that has engaged in commercial activity that generates revenue for the Government of North Korea or the Workers' Party of Korea
- To have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person whose property and interests in property are blocked pursuant to this order
- To be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any person whose property and interests in property are blocked pursuant to the EO

Aircraft and Vessel Restrictions

The EO imposes the following restrictions with respect to aircraft and vessels:

- No aircraft in which a foreign person has an interest that has landed at a place in North Korea may land at a place in the United States within 180 days after departure from North Korea.
- No vessel in which a foreign person has an interest that has called at a port in North Korea within the previous 180 days, and no vessel in which a foreign person has an interest that has engaged in a ship to ship transfer with such a vessel within the previous 180 days, may call at a port in the United States.

On September 21, the US Department of the Treasury's Office of Foreign Assets Control (OFAC) issued new General License No. 10,⁴ which provides that vessels and aircraft subject to the above prohibitions are authorized to land at a port or place in the United States in the following circumstances only:

- The vessel is in distress and seeks refuge in the United States.
- The vessel's call at a port in North Korea was due solely to its distress and the resulting need to seek refuge.
- The aircraft is engaging in a nontraffic stop (*i.e.*, a stop for any purpose other than taking on or discharging cargo, passengers, or mail) or an emergency landing in the United States.
- The aircraft's landing in North Korea was due solely to an emergency.

² US person means any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States.

³ North Korean person means 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 any United States citizen, any permanent resident alien of the United States, any alien lawfully admitted to the United States, or any alien holding a valid United States visa.

⁴ https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nk_gl10.pdf.

Sanctions Relating to Funds and Transactions

The EO blocks funds that are in the United States, that come within the United States, or that are or come within the possession or control of any United States person and that originate from, are destined for, or pass through a foreign bank account that has been determined to be owned or controlled by a North Korean person, or to have been used to transfer funds in which any North Korean person has an interest.

OFAC has stated in a FAQ that they will provide notice and guidance regarding the implementation of this provision, and that absent such a determination and notice, there are no immediate compliance obligations for US persons at this time.⁵

Sanctions on Foreign Financial Institutions

The EO authorizes the blocking of all property and interests in property, or prohibition of the opening, and prohibition or imposition of strict conditions on the maintenance of, correspondent accounts or payable-through accounts in the United States, of any foreign financial institution⁶ that has, on or after September 21, 2017, knowingly conducted or facilitated:

- Any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to the EO, or pursuant to one of the North Korea-related executive orders (*i.e.*, Executive Order 13551 of August 30, 2010, Executive Order 13687 of January 2, 2015, or Executive Order 13722 of March 15, 2016)
- Any significant transaction on behalf of any person whose property and interests in property are blocked under the non-proliferation sanctions pursuant to Executive Order 13382 in connection with North Korea related activities
- Any significant transaction in connection with trade with North Korea

In this context, “knowingly” with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result

OFAC has updated General License No. 3 to account for the new EO. The updated General License No. 3-A authorizes a US financial institution to debit any account at that financial institution blocked pursuant to the new EO in payment or reimbursement for normal service charges owed it by the owner of that blocked account.⁷

⁵ The FAQ relating to the DPRK sanctions are available here: https://www.treasury.gov/resource-center/faqs/Sanctions/Pages/faq_other.aspx#nk.

⁶ Foreign financial institution means any foreign entity that is engaged in the business of accepting deposits, making, granting, transferring, holding, or brokering loans or credits, or purchasing or selling foreign exchange, securities, commodity futures or options, or procuring purchasers and sellers thereof, as principal or agent. The term includes, among other entities, depository institutions; banks; savings banks; money service businesses; trust companies; securities brokers and dealers; commodity futures and options brokers and dealers; forward contract and foreign exchange merchants; securities and commodities exchanges; clearing corporations; investment companies; employee benefit plans; dealers in precious metals, stones, or jewels; and holding companies, affiliates, or subsidiaries of any of the foregoing.

The term does not include the international financial institutions identified in 22 U.S.C. 262r(c)(2), the International Fund for Agricultural Development, the North American Development Bank, or any other international financial institution so notified by the Secretary of the Treasury.

⁷ https://www.treasury.gov/resource-center/sanctions/Programs/Documents/nk_gl3a.pdf.

Multilateral Action

The issuance of the EO followed the September 11, 2017, United Nations Security Council resolution condemning North Korea's recent nuclear test. The resolution imposed extensive new sanctions on North Korea, including a ban on the sale of natural gas liquids to North Korea and a limit on the supply of refined petroleum products and crude oil to North Korea, a ban on North Korea's export of textiles, and a ban on UN member states providing work authorizations to North Korean nationals. The sanctions also expanded existing asset freezes and travel bans to new individuals and entities.

Parallel Chinese Government Actions

Following the adoption on September 11, 2017, of UN Security Council Resolution 2375, the People's Bank of China reportedly has instructed Chinese banks to strictly implement UN sanctions on North Korea. In particular, Chinese banks reportedly have been instructed to cease providing financial services to new North Korean customers and to wind down loans with existing North Korean customers.

The consequences of engaging in sanctionable conduct under the EO are severe, including exclusion from the US commercial and financial systems. Entities worldwide, and especially financial institutions, should monitor closely and make sure they understand these restrictions to ensure compliance.

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