

US Significantly Expands Sanctions Targeting North Korea

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On March 16, 2016, the United States Department of the Treasury's Office of Foreign Assets Control (OFAC) expanded sanctions on North Korea (the DPRK) pursuant to Executive Order 13722 (EO 13722). This action implements in part the North Korea Sanctions and Policy Enhancement Act of 2016 (the Act) signed into law on February 18, 2016. It also follows the passage of UN sanctions on March 2, 2016 that require member states to enhance sanctions against the DPRK, including with respect to cargo inspections, financial sanctions measures, and sanctions targeting sectors of the DPRK economy.

EO 13722 blocks the Government of North Korea and the Workers' Party of Korea; prohibits the exportation of goods, services, and technology to North Korea; prohibits new investment in North Korea; and establishes nine new criteria that may be used to designate parties as blocked on the List of Specially Designated Nationals and Blocked Persons (SDN List). These criteria allow OFAC to target human rights abuses; censorship; cybersecurity threats; trade in metals, graphite, coal, or software; revenue from overseas workers; and attempts to engage in those activities. They also authorize the US government to determine specific industries in the North Korean economy, in which persons found to be operating in such industry may be designated on the SDN List. On March 16, 2016, a determination was made pursuant to this authority that persons operating within North Korea's transportation, mining, energy, or financial services industries may be subject to designation on the SDN List.

Previously, North Korea was subject to a patchwork of sanctions that severely restricted activities with North Korea that implicated a US nexus. Despite the extensive measures that were in place, North Korea had not been subject to fully comprehensive sanctions since 2008. These new measures restore comprehensive sanctions against North Korea in addition to broadening the scope of potential measures that could apply, including secondary sanctions. Secondary sanctions are measures the US may impose on persons, including non-US persons, for engaging in sanctionable activity even in the absence of any connection with the US.

Executive Order 13722 (“Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and Prohibiting Certain Transactions With Respect to North Korea”)

Comprehensive sanctions against the DPRK were implemented in EO 13722, effective March 16, 2016. The actions taken include:

Blocking the Government of North Korea:

All property and interests in property in the United States or that are within the possession or control of a US person¹ of the Government of North Korea or the Workers’ Party of Korea are blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in. Previously, blocking was in place for a number of individuals and entities, but did not apply to the Government of the DPRK as a whole.

Additional Blocking Criteria:

EO 13722 also provides for the designation on the SDN List and blocking of the following persons upon a determination by the Secretary of the Treasury:

- Persons operating in an industry in the North Korean economy determined to be subject to the sanctions. As of March 16 2016, this included the transportation, mining, energy, and financial services industries;
- Persons who have sold, supplied, transferred, or purchased, directly or indirectly, to or from North Korea or any person acting for or on behalf of North Korea or the Workers’ Party of Korea, metal, graphite, coal, or software, where any revenue or goods received may benefit the Government of North Korea or the Workers’ Party of Korea, including North Korea’s nuclear or ballistic missile programs;
- Persons who have engaged in, facilitated, or been responsible for an abuse or violation of human rights by the Government of North Korea or the Workers’ Party of Korea (or any person acting for or on behalf of each entity);
- Persons who have engaged in, facilitated, or been responsible for the exportation of workers from North Korea;
- Persons who have engaged in significant activities undermining cybersecurity through the use of computer networks or systems against targets outside of North Korea on behalf of the Government of North Korea or the Workers’ Party of Korea;
- Persons who have engaged in, facilitated, or been responsible for censorship by the Government of North Korea or the Workers’ Party of Korea;
- Persons who have materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services to or in support of, any person blocked under EO 13722;
- Persons owned or controlled by, or who have acted or purported to act on behalf of, directly or indirectly, persons blocked under EO 13722; or
- Persons who have attempted to engage in any activities that could result in designation under EO 13722.

Restriction on the Exportation of Goods and Services to North Korea:

EO 13722 prohibits the exportation or reexportation, directly or indirectly, from the United States or by a US person (wherever located) of any goods, services, or technology to North Korea. Previously, the exportation of any item subject to the Export Administration Regulations (EAR),² with the exception of food and medicine

¹ A US person is defined to include any US citizen or permanent resident, wherever located, any entity organized under the laws of the United States (including foreign branches), and any person located within the United States.

² Items subject to the EAR generally include US-origin items, items made outside of the US containing greater than *de minimis* US-origin content, and items made outside of the US which are the direct product of controlled US-origin technology.

classified as “EAR99” on the Commerce Control List (CCL), required an export license from the US Department of Commerce’s Bureau of Industry and Security (BIS). This prohibition expands the previous restriction by including not only items subject to the EAR, but also any exports from third countries by US persons and any services (such as financial services, which were not captured by the previous export controls).

New Investment:

US persons, wherever located, may not engage in “new investment” in the DPRK. Previously, new investment in the DPRK was not officially prohibited, though as a practical matter was very difficult due to the other restrictions in place, such as the prohibition on importation into the US of any goods of North Korean origin, restrictions on vessel-related activities, and prohibitions on dealing with a number of DPRK-related parties designated on the SDN List.

Facilitation:

US persons may not approve, finance, facilitate, or guarantee a transaction by a foreign person that would be prohibited if performed directly by a US person.

General Licenses

The comprehensive sanctions measures were accompanied by nine general licenses which authorize certain transactions involving diplomatic missions, legal services, service charges on blocked accounts, personal remittances, humanitarian activities by nongovernmental organizations, telecommunications and mail, the protection of intellectual property, and nonscheduled emergency medical services. At this time, no general license is available for services and software incident to Internet-based communications, which is a feature in other sanctions programs administered by OFAC.

SDN List Designations

To carry out the new measures, OFAC designated 15 entities and 11 vessels on the SDN List under EO 13722. Additionally, OFAC designated two individuals and nine vessels on the SDN List under existing authorities (i.e., EO 13687 and EO 13551). These designations are described below.

Designations pursuant to EO 13722:

- The Workers’ Party of Korea, Propaganda and Agitation Department (the “Propaganda and Agitation Department”) has been found to be an agency, instrumentality, or controlled entity of the Government of North Korea. The Propaganda and Agitation Department has been found to engage in or be responsible for censorship by the Government of North Korea;
- Ilsim International Bank was determined to be operating in the financial services industry in the North Korean economy. It also has attempted to evade UN sanctions and is affiliated with the North Korean military. According to OFAC, the bank has a close relationship with Korea Kwangson Bank (KKBC), which was designated under EO 13382 and by the UN;
- Korea United Development Bank was found to operate in the financial services industry of the North Korean economy;
- Singwang Economics and Trading General Corporation was found to be a subordinate of the DPRK’s Ministry of People’s Armed Forces and to operate in the mining industry of the North Korean economy;
- Korea Foreign Technical Trade Center was found to support the North Korean special weapons research entity Pongwha Research Center and to operate in the mining industry of the North Korean economy;
- Ten entities, and 11 vessels tied to these entities, were found to operate in the transportation industry in the North Korean economy: Korea Ocean Shipping Agency (KOSA), Korean Buyon Shipping Co. Ltd., Thaephyongsan Shipping Co. Ltd., Chongbong Shipping Co. Ltd., Ocean Bunkering JV Co., Korea Samilpo Shipping Co., Mirim Shipping Co. Ltd., Korean Polish Shpg Co. Ltd., Hoeryong Shipping Co. Ltd., and Korea Zuzagbong Maritime Ltd.

Designations pursuant to EO 13687:

Two individuals, Ri Won Ho and Jo Yong Chol (both officials of the DPRK Ministry of State Security), were designated for being officials of the Government of North Korea. Both individuals facilitate North Korea's Mining Development Trading Corporation's (KOMID) business in Egypt and Syria. KOMID was designated by both the US and the UN Security Council (UNSC) under UNSC Resolution 1718 for activities related to ballistic missiles and conventional weapons.

Designations pursuant to EO 13551:

Nine vessels were designated as vessels in which Ocean Maritime Management Company (OMMC) has an interest. OMMC was designated in July 2014 for its role in the importation, exportation, or reexportation of weapons to or from the DPRK.

North Korea Sanctions and Policy Enhancement Act of 2016

EO 13722 implements certain provisions of the North Korea Sanctions and Policy Enhancement Act of 2016, such as blocking of the Government of North Korea, as discussed above. Separately, the Act also authorizes the President to make mandatory and discretionary designations of persons engaging in certain activities related to North Korea. The Act provides for sanctions to be applied to any person designated under the Act—including a non-US person—engaging in certain activities involving the DPRK. These are effectively secondary sanctions measures, which can restrict a non-US person's access to the US financial and commercial system and may include blocking measures. Key provisions of the Act are discussed below.

Mandatory designations:

The Act requires the President to designate persons knowingly engaged in activities relating to:

- Significant activities or transactions with the Government of North Korea that materially contribute to the proliferation of weapons of mass destruction;
- The direct or indirect provision of training, advice, or other services or assistance, or significant financial transactions, relating to the manufacture, maintenance, or use of any weapon, device or system imported, exported, or reexported to, into, or from North Korea;
- The direct or indirect import, export, or reexport to, into or from North Korea of arms or related materiel;
- The direct or indirect import, export, or reexport of significant luxury goods to or into North Korea;
- Serious human rights abuses by the Government of North Korea;
- Censorship by the Government of North Korea;
- Money laundering, counterfeiting of goods or currency, bulk cash smuggling, narcotics trafficking, or other illicit activity that involves or supports the Government of North Korea or any senior official or person acting on behalf of the Government of North Korea;
- Significant activities undermining cybersecurity on behalf of the Government of North Korea;
- The direct or indirect sale, supply, or transfer of a significant amount of precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal, or software, for use by or in activities related to WMD proliferation, the Korean Workers' Party, armed forces, internal security, intelligence, or prison camps; or
- Attempts at engaging in the conduct described above.

Discretionary designations:

The Act permits the President to designate any persons that knowingly:

- Engage in, contribute to, assist, sponsor or provide financial, material or technological support for, or goods and services in support of, any person designated pursuant to an applicable United Nations Security Council resolution;
- Contributed to the bribery of an official of the Government of North Korea or any person acting for or on behalf of that official;
- Contributed to the misappropriation, theft, or embezzlement of public funds by, or for the benefit of, an official of the Government of North Korea or any person acting for or on behalf of that official; or
- Materially assisted, sponsored, or provided significant financial, material, or technological support for, or goods or services to or in support of, the activities described above.

Sanctions for designation under the Act:

Persons who are designated under the Act may be subject to the following measures:

- Prohibition on US government procurement contracts;
- Certain financial special measures;
- Prohibition on foreign exchange transactions subject to US jurisdiction;
- Prohibition on transfers of credit or payments between financial institutions or by, through, or to financial institutions that are subject to US jurisdiction;
- Visa ban for designated persons, corporate officers of designated persons, or shareholders with controlling interests in designated persons; or
- Designation on the SDN List and blocking of all property and interests in property in the United States or possession or control of any US person, wherever located. This designation shall apply with respect to a person determined to be owned or controlled by, or to have acted or purported to act for or on behalf of, directly or indirectly, any persons blocked under this authority.

Forfeiture of Property:

Any real or personal property involved in a violation or attempted violation, or which constitutes or is derived from proceeds traceable to a prohibition relating to mandatory designation of persons under the Act is subject to forfeiture.

Cargo Inspections:

The US government may require enhanced inspections of any goods that have been transported through a port or airport identified in a report that the President will submit to Congress identifying ports and airports at which inspections of shipments originating in North Korea, carrying North Korean property, or operated by the Government of North Korea are not sufficient to effectively prevent the facilitation of the sanctionable activities described in the Act. Vessels, aircraft, or conveyances used to facilitate sanctionable activities under the jurisdiction of the United States may be seized and forfeited.

Government Contracts Certification:

The Act requires that prospective US government contractors submit a certification that such person does not engage in any activity that could result in designation under the secondary sanctions measures described in the Act.

United Nations Security Council Resolution (UNSCR) 2270

The UNSC adopted Resolution 2270 on March 2, 2016, enhancing the sanctions against the DPRK. Key features of the UNSCR include:

- Measures to constrain the DPRK's conventional arms capabilities;
- New cargo inspection and maritime procedures to limit the DPRK's ability to transfer UN-prohibited items;
- Sectoral sanctions on the DPRK's trade in resources, including bans on exports from the DPRK of gold, titanium ore, vanadium ore, rare earth metals, aviation fuel, and certain coal, iron, and iron ore;
- New financial sanctions targeting DPRK banks and assets, including an asset freeze and restrictions on activities by financial institutions of UN member states; and
- Ban on specialized teaching or training of DPRK nationals in certain fields that could contribute to the DPRK's proliferation-sensitive activities.

Annexes to the UNSCR further identify 16 individuals designated for an asset freeze/travel ban; 12 entities (including government agencies and banks) designated for an asset freeze, and 31 vessels that must be impounded.

Companies doing business that could potentially involve the DPRK should monitor closely the measures imposed pursuant to these new sanctions, and any further developments, to ensure compliance. Penalties for noncompliance can be severe.

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