

With Tensions Rising, the United States Imposes Additional Sanctions on North Korea

IN SHORT

The Situation: Over the past several months, North Korea has engaged in several activities, particularly relating to missile and nuclear testing, that violate several United Nations resolutions and that threaten the national security of the United States.

The Result: President Trump issued an Executive Order expanding the sanctions in place against North Korea, as well as increasing the ability of the U.S. government to sanction third-country parties that engage in trade with North Korea.

Looking Ahead: U.S. companies must continue to exercise compliance with the sanctions against North Korea, and non-U.S. companies who want to continue to engage in business with the United States should implement policies and procedures to ensure that they do not engage in sanctionable activities involving North Korea.

In response to the "provocative, destabilizing, and repressive actions and policies of the Government of North Korea," President Trump issued [Executive Order \("EO"\) 13810](#) on September 20, 2017, which further expands existing U.S. sanctions on North Korea. While existing sanctions already effectively prohibit U.S. persons from engaging in or facilitating virtually all transactions involving North Korea, the new measures expand those restrictions and implement measures with extraterritorial effect.

Expanded Designation Criteria Relating to North Korea

The United States has expanded the scope of activities or criteria for which persons may be designated on the List of Specially Designated Nationals and Blocked Persons ("SDN List"). Pursuant to EO 13810, those criteria now include:

- Operating in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea;
- Owning, controlling, or operating any port in North Korea, including any seaport, airport, or land port of entry;
- Engaging in at least one significant importation from or exportation to North Korea of any goods, services, or technology;
- Materially assisting, sponsoring, or providing financial, material, or technological support for, or goods or services to or in support of, any person designated on the SDN List under the Executive Order; and
- Being owned or controlled by, or acting or purporting to act for or on behalf of, directly or indirectly, any person designated on the SDN List under the Executive Order.

The expanded scope also allows designation of any individual or entity determined to be a "North Korean person," which includes any North Korean citizen, North Korean permanent resident alien, or entity organized under the laws of North Korea or any jurisdiction within North Korea. (EO 13810 explicitly exempts United States citizens, any permanent resident alien of the United States, any alien lawfully admitted to the United States, and any alien holding a valid United States visa from this definition.) These criteria expand the reach of U.S. sanctions beyond North Korean parties, and will have implications for North Korea's few trading partners. In particular, they present the possibility of exclusion from the U.S. market as a result of even a single import or export transaction with North Korea. U.S. persons are required to block the property and interests of property of designated persons and are prohibited from engaging in or facilitating, directly or indirectly, virtually all transactions involving designated persons.

Imposition of Sanctions on Foreign Financial Institutions and Accounts

EO 13810 includes two measures with extraterritorial effect intended to curtail North Korea's access to international financial markets.

First, the Secretary of the Treasury is authorized to impose certain penalties on foreign financial institutions determined to have knowingly conducted or facilitated any "significant" transaction on or after September 21, 2017: (i) on behalf of any persons designated pursuant to U.S. sanctions on North Korea; or (ii) in connection with trade with North Korea. Upon such a determination, foreign financial institutions are subject to (i) a prohibition on opening and prohibition or strict conditions on maintaining correspondent or payable-through accounts in the United States; or (ii) designation on the SDN List, including blocking the institution's property and interests in property within the United States or in the control of a U.S. person. Foreign financial institutions with any dealings with North Korea should review

their internal controls in light of the risks associated with this new category of secondary sanctions.

Second, U.S. persons are required to block and are prohibited from engaging in or facilitating any transactions involving any funds 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. Pursuant to this restriction, the United States will, in effect, block certain foreign bank accounts and funds associated with those accounts, which could have far-reaching implications.

180-Day Rule for Aircraft and Vessels

The United States will now deny entry to any aircraft or vessel that has landed, entered, or dealt (including ship-to-ship transfers) with North Korea within the prior 180 days.

These sanctions mark a meaningful expansion of U.S. sanctions against North Korea, and, significantly, continue the use of secondary sanctions measures to accomplish U.S. policy goals. U.S. companies have long been prohibited from engaging in virtually all transactions with North Korea, but under EO 13810 foreign companies find themselves increasingly within the reach of U.S. sanctions in connection with any dealings involving North Korea. Consequently, companies dealing, directly or indirectly, with North Korea should review their internal policies and controls to ensure that they are able to respond to increasing potential risk and restrictions on those dealings.



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THREE KEY TAKEAWAYS

1. President Trump issued an Executive Order that strengthens and expands the sanctions against North Korea.
2. U.S. persons already were largely prohibited from engaging in transactions with North Korea; now, under the new Executive Order, the U.S. government can sanction non-U.S. persons for engaging in certain transactions involving North Korea.
3. Non-U.S. companies that engage in business with North Korea should carefully review the new sanctions to determine if any of the business activities could be sanctionable under the Executive Order.

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