

Client Update

United States Imposes New Sanctions on North Korea

On Wednesday, September 20, 2017, President Trump signed [Executive Order 13810](#), further expanding U.S. sanctions targeting North Korea. The new sanctions authorized by the executive order seek to deter significant transactions, either financial or commercial, by non-U.S. entities with North Korea.

NEW FINANCIAL SANCTIONS

The new executive order, for the first time, authorizes the U.S. Treasury Department (1) to sanction foreign banks that engage in “significant” transactions with North Korea, and (2) to block specific bank accounts linked to North Korea.

First, the Secretary of the Treasury, in consultation with the Secretary of State, is now authorized to impose sanctions on any non-U.S. financial institution that knowingly conducts or facilitates a “significant transaction” (i) involving any person blocked under U.S. sanctions against North Korea or (ii) in connection with trade with North Korea. Foreign financial institutions sanctioned under this authority may be subject either to restrictions on maintaining correspondent accounts in the United States or to full blocking sanctions.

The executive order does not define “significant transaction.” Based on past guidance related to Iran, however, we believe the Treasury Department is likely to take into account a variety of factors in determining if a transaction is significant. These factors include not only the size of the transaction but also, for example, whether the transaction is part of an ongoing pattern or series of transactions, whether it was known to senior management of the financial institution, whether it involved deceptive practices, whether it provided a significant benefit to the sanctions target and other relevant factors.

Second, the new executive order prohibits U.S. persons from transferring funds that “originate from, are destined for, or pass through a foreign bank account” determined by the Treasury Department to be owned or controlled by a North Korean person. There currently are no new compliance obligations for U.S. persons related to this provision, as no bank accounts have yet

been designated. Although the executive order is not entirely clear, the newly authorized restrictions appear to differ from most blocking requirements, in that any funds that pass through a designated account would continue to be subject to blocking even if transferred out of the North Korean person's ownership or control to a third-country national.

The Treasury Department's Office of Foreign Assets Control ("OFAC") has updated its [Frequently Asked Questions](#) ("FAQs") to discuss how the executive order changes the sanctions regime and how the Secretary of Treasury will determine whether a North Korean person owns, controls or has used a foreign bank account. In particular, FAQ No. 526 states that further guidance will be issued if a bank account is blocked under the new executive order.

OFAC also has replaced existing General License No. 3 with [General License No. 3A](#), which permits U.S. financial institutions to debit blocked accounts for normal service charges. These "normal service charges" include, for instance, cable and internet charges, custody fees, charges for credit reports and various other charges.

NEW COMMERCIAL SANCTIONS

The new commercial sanctions target North Korea's business operations and international partners, by (1) authorizing new blocking sanctions against both North Korean persons and third-country nationals that undertake certain business activities in or involving North Korea, and (2) excluding from the United States, for 180 days, aircraft and vessels that have stopped in North Korea.

Specifically, the Secretary of the Treasury, in consultation with the Secretary of State, may impose blocking sanctions on any person determined:

- To be a North Korean person, including one who is earning income for the government of North Korea;
- 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 goods, services or technology;
- 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 is blocked under the North Korea sanctions; or
- To be owned or controlled by a blocked person or to have acted on behalf of a blocked person.

As discussed above in connection with financial sanctions, the determination of whether an import or export transaction is significant is likely to involve the consideration of a number of factors.

Additionally, the executive order prohibits a vessel or aircraft owned by a non-U.S. person from calling at a U.S. port or landing at a U.S. airport within 180 days of such vessel's or aircraft's (i) passing through a North Korean port or airport or (ii) engaging in a ship-to-ship transfer with a vessel that has called at a North Korean port. OFAC concurrently issued [General License No. 10](#), which waives these restrictions for vessels or aircraft that called in North Korea, or seek to call in the United States, under distress or emergency. General License No. 10 also waives the restrictions for aircraft making nontraffic stops in the United States, defined as stops that do not involve receiving or discharging passengers, cargo or mail.

INAPPLICABILITY OF EXISTING LICENSES

OFAC has clarified in FAQ No. 525 that general licenses issued under previous sanctions authorities, particularly Executive Order 13722, will not apply to new sanctions imposed under Executive Order 13810, except for General Licenses No. 2 (legal services) and No. 9 (emergency medical services). In addition, the text of the executive order suggests that existing specific licenses will not apply to newly imposed sanctions. The executive order, however, exempts transactions for official U.S. government or United Nations business.

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Please do not hesitate to contact us with any questions.

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