

NORTH KOREA SANCTIONS UPDATE



Following the nuclear test conducted by North Korea on 6 January 2016 and the rocket launch conducted on 7 February 2016, the UN, the US and EU have significantly expanded the scope of sanctions against North Korea. Other UN members, including China, are also reported to have imposed their own new set of sanctions against North Korea, in line with the new UN sanctions.

The new measures imposed by the UN Security Council and EU include trade and transportation measures, an expanded arms embargo, additional asset freeze designations and prohibitions relating to the insurance and financial sectors. The UN Security Council Resolution in respect of North Korea contains some of the toughest measures ever taken by the UN Security Council.

The US has now imposed a comprehensive trade embargo against North Korea, similar to the one in place against Iran, thereby going beyond the measures mandated by the UN and the EU.

Furthermore, Executive Order 13772 allows the US Secretary of Treasury to impose secondary sanctions on non-US persons involved in the procurement to and from North Korea of metal, graphite, coal or software where the revenue received may benefit the Government of North Korea or the Worker's Party of North Korea.

United Nations

Trade and transportation measures

UN Resolution 2270 (2016) imposed a variety of new restrictions on trade with North Korea, as follows:

- A ban on the purchase or transportation from North Korea of coal, iron and iron ore, whether or not originating in North Korea. The prohibition does not apply to coal not originating in North Korea which is transported through North Korea solely for export from the Port of Rajin (Rason) and transactions that are determined to be exclusively for



“livelihood purposes” and unrelated to generating income for North Korea’s prohibited activities.

- A ban on the purchase or transportation from North Korea of gold, titanium ore, vanadium ore and rare earth minerals, whether or not originating in North Korea.
- A ban on the supply to North Korea of aviation fuel, including aviation gasoline, naphtha-type jet fuel, kerosene-type jet fuel, and kerosene-type rocket fuel. The transportation of aviation fuel to North Korea is also prohibited. However, it is permitted to fuel civilian passenger aircraft outside North Korea if that fuel will be used to fly to North Korea and back.
- A ban on the transfer of gold, including through gold couriers, transiting to and from North Korea.
- The ban on the supply to North Korea of luxury goods has been expanded to include luxury watches, aquatic recreational vehicles, snowmobiles worth more than US\$2,000, lead crystal items and recreational sports equipment.
- Mandatory inspection of all cargo, including transit cargo that has originated in North Korea, or that is destined for North Korea, or has been brokered or facilitated by North Korea or its nationals or owned/controlled persons or that is being transported on North Korea flagged aircraft or maritime vessels.
- A ban on entry into ports of any vessels suspected of being owned by designated persons or suspected of carrying prohibited items (subject to a number of limited exemptions).
- Aircraft suspected of carrying prohibited items must be denied permission to take off from, land

in or overfly the territory of UN member states. The prohibition on landing does not apply if the landing is solely for inspection. In addition, emergency landing is exempted.

- A ban on leasing and chartering vessels and aircraft, as well as providing crew services, to North Korea and designated persons and entities (subject to the “livelihood purposes” exception mentioned above).
- UN members must de-register vessels owned, operated or crewed by North Korea.
- A ban on owning, operating, providing any vessel classification certification or associated services to North Korean flagged vessels (subject to the “livelihood purposes” exception mentioned above).

Arms embargo

The arms embargo has been expanded to include small arms and light weapons. The Resolution bans the supply to North Korea of any items that could be used for military end-use, nuclear or ballistic missile programs or other weapons of mass destruction programs. Both prohibitions also cover ancillary services and financing.

Asset freeze

The Security Council added 16 individuals and 12 entities to the list of asset freeze targets. The list of designated entities includes North Korea banks, shipping and trading companies.

In addition, an asset freeze is imposed on all entities owned by the Government of North Korea or the Worker’s Party of Korea if associated with its nuclear or ballistic missile program or other prohibited activities. This asset freeze would also cover

entities involved in the sale of coal, iron and iron ore, gold, titanium ore, vanadium ore and rare earth minerals.

Member States shall expel individuals who are acting on behalf of designated individuals or entities or otherwise infringing the sanctions.

Insurance sector

Insuring any vessel flagged by North Korea is prohibited. This is subject to the “livelihood purposes” exception mentioned above.

Financial sector

The UN imposed additional restrictions both on the operation of North Korean banks abroad and also on the operation of foreign banks in North Korea, as follows:

- A ban on the opening and operation of new branches, subsidiaries and representative offices of North Korean banks in UN member states, unless approved by the Sanctions Committee. Moreover, all existing branches, subsidiaries and representative offices must be closed by 31 May 2016.
- A ban on establishing new joint ventures or purchasing an ownership interest or establishing or maintaining correspondent relationships with North Korean banks, unless approved by the Sanctions Committee. Existing joint ventures, ownership interests and correspondent relationships must be terminated by 31 May 2016. In addition, there is a prohibition on opening new representative offices, subsidiaries, branches or banking accounts in North Korea. In contrast to correspondent accounts, joint ventures and ownership in North Korean banks, the existing representative offices, subsidiaries, branches or banking



accounts in North Korea can remain open unless suspected of contributing to North Korea nuclear or ballistic missile program or other prohibited activities.

Finally, the provision of financial support for trade with North Korea associated with North Korea's nuclear or ballistic missile programs or other prohibited activities is banned. This prohibition would cover, for example, granting of export credits, guarantees or insurance in respect of such trade.

Member States should report to the Security Council by early June on "concrete measures they have taken in order to implement effectively the provisions" of the UN Resolution.

European Union

On 31 March 2016, the Council published Regulation 2016/465 and Decisions (CFSP) 2016/475 and 2016/476 implementing the UN sanctions against North Korea.

The new prohibitions include:

- A ban on the purchase or transportation from North Korea of gold, titanium ore, vanadium ore and rare earth minerals, whether or not originating in North Korea.
- A ban on the purchase or transportation from North Korea of coal, iron and iron ore, whether or not originating in North Korea. The prohibition does not apply to coal not originating in North Korea which is transported through North Korea solely for export from the Port of Rajin (Rason) and transactions that are determined to be exclusively for "livelihood purposes".
- Prohibitions on the sale and supply of aviation fuel to North Korea (subject to certain exceptions).
- Inspection of all cargo to and from North Korea.

- A ban on leasing and chartering vessels and aircraft, as well as providing crew services, to North Korea and designated persons and entities (subject to the "livelihood purposes" exception).

- An obligation to de-register vessels owned, operated or crewed by North Korea.

- A ban on owning, operating, providing any vessel classification certification or associated services, including insurance, to North Korean flagged vessels (subject to the "livelihood purposes" exception).

In the financial sector, in addition to the UN-mandated restrictions on the operations of North Korean banks in the EU and on the operation of EU banks in North Korea, EU Member States are obliged to exercise enhanced monitoring of the transactions between EU banks and North Korean banks.

The Council also listed Korea National Insurance Corporation (KNIC) as an asset freeze target, but authorised payments of premium to KNIC by EU persons in connection with non-prohibited activities in North Korea.

Previously, on 4 March 2016 the EU added UN designated entities and individuals (including individuals connected with KOMID – the Korea Mining Development Trading Corporation) to the EU asset freeze targets list.

United States

On 16 March 2016, Executive Order 13722 came into effect imposing a sweeping ban on virtually all business dealings between the US and North Korea.

In addition to the previously existing ban on importation to the US of goods,

services and technology from North Korea, the US now also prohibits exportation of any goods, services or technology to North Korea by a United States person or from the United States. Any new investments in North Korea by US persons are likewise prohibited.

Executive Order 13722 also contains a "facilitation" provision making it an offence for any US person to approve, finance, facilitate or guarantee export of goods, services and technology to North Korea or investments in North Korea by non-US persons. Thus, for example, US insurers will not be allowed to provide cover in respect of non-US persons' exports to North Korea.

An asset freeze is imposed on all property of the Government of North Korea or the Worker's Party of Korea or entities controlled by them, irrespective of whether such entities are associated with North Korea's nuclear or ballistic missile program or other prohibited activities. In addition, blocking sanctions can be imposed on any entity operating in North Korea's transportation, mining, energy, and financial services industries.

Additional grounds for designation include engaging in human rights abuses by or on behalf of North Korea; significant activities undermining cyber security by or on behalf of North Korea and censorship.

In the latest round of designations, OFAC added two North Korean individuals, 15 companies and 20 vessels to the US Specially Designated Nationals and Blocked Persons List.

Secondary sanctions primarily target North Korea's coal sector and exports of labour from North Korea. In particular, the US Secretary of the Treasury is authorised to impose blocking sanctions in respect of the



following persons, including non-US persons:

- Persons that deal in metal, graphite, coal, or software to or from North Korea, where any revenue or goods received may benefit the Government of North Korea or the Workers' Party of Korea.
- Persons that have engaged in, facilitated, or been responsible for the exportation of workers from North Korea, including exportation to generate revenue for the Government of North Korea or the Workers' Party of North Korea.

Secondary sanctions also may be applied against any person who materially assists, sponsors or provides financial, material or technological support for, or goods or services to (or in support of) parties blocked under the Executive Order.

Secondary sanctions are not automatic and require an affirmative designation by the US Secretary of the Treasury.

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