

September 26, 2017

President Trump Signs Executive Order Authorizing Sweeping Secondary Sanctions On Entities Involved In North Korean Trade

On September 20, 2017, President Trump signed Executive Order 13810, “Imposing Additional Sanctions with Respect to North Korea” (the “EO”), which broadly authorizes the Department of the Treasury to impose sanctions against individuals and entities, including non-U.S. financial institutions, for conducting or facilitating trade with North Korea. The EO marks the Trump Administration’s decision to employ a strategy of threatening secondary sanctions—sanctions that target conduct with no nexus to the United States—to pressure companies around the world to sever business involving North Korea. When announcing the EO, President Trump stated, “Foreign banks will face a clear choice: Do business with the United States, or facilitate trade with the lawless regime in North Korea.”¹

The EO builds on recent U.N. Security Council Resolutions² and the Countering America’s Adversaries Through Sanctions Act (“CAATSA”), which President Trump signed into law on August 2, 2017³ and signals Congress’s embrace of broad secondary sanctions against North Korea.

We describe below the EO’s most significant provisions.

Key Provisions of the Executive Order

A. Authorization to Sanction Entities for Engaging in or Supporting a Wide Range of North Korea-related Trade

The EO authorizes the Treasury Secretary to designate—i.e., place on the Treasury Department’s Office of Foreign Assets Control (“OFAC”) list of Specially Designated Nationals (“SDN”)—any individual or entity determined:

- “To have engaged in at least one significant importation from or exportation to North Korea of any goods, services, or technology”;⁴
- “To operate in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea”;

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- “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” the EO;⁵ or
 - “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.

Notably, this conduct does not require any nexus to the United States.

B. Authorization to Sanction Foreign Financial Institutions For Conducting or Facilitating Transactions Involving North Korea Trade

The EO contains provisions specifically targeted at foreign financial institutions. Specifically, the EO authorizes the Treasury Secretary to designate as a SDN—or to impose the lesser measure of prohibiting or restricting U.S. correspondent accounts for—foreign financial institutions that, on or after September 21, 2017:

- “Knowingly conduct[] or facilitate[] any significant transaction on behalf of any person whose property and interests in property are blocked” pursuant to, among others, North Korea-related executive orders;⁶ or
- “Knowingly conduct[] or facilitate[] any significant transaction in connection with trade with North Korea.”

C. Restrictions on U.S. Entry for Aircraft and Vessels

The EO imposes new restrictions on aircraft and vessels that have travelled to North Korea in the previous 180 days. Specifically:

- Any aircraft, in which a non-U.S. person has an interest, that lands in North Korea is prohibited from landing in the United States within 180 days after its departure from North Korea; and
- Any vessel, in which a non-U.S. person has an interest, that has called at a North Korean port within the previous 180 days, or has engaged in a ship-to-ship transfer with a vessel that has called at a North Korean port within the previous 180 days, is prohibited from calling at a port in the United States.

D. Blocking of Funds Related to North Korean Persons

The EO blocks all funds that come within the United States and originate from, are destined for, or pass through a non-U.S. bank account determined by the Treasury Secretary 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.”

On September 21, 2017, OFAC issued guidance stating that it “will provide appropriate notice and additional guidance, as necessary, to clarify its expectations for implementation” of this provision.⁷ Absent a future determination from the Treasury Secretary, this provision does not create any immediate compliance obligations on U.S. persons.⁸

Continued Escalation of Sanctions and Other Measures Regarding North Korea

The EO reflects the high priority placed by both the Trump Administration and Congress on the expansion and enforcement of North Korea sanctions. The EO builds on a number of actions designed to bring maximum pressure to bear on the North Korean regime, including:

- On June 14, 2017, the Department of Justice filed a \$1.9 million civil forfeiture action against funds held at a U.S. bank that belonged to Chinese company Minzheng International Trading Limited, which was allegedly facilitating transactions on behalf of a North Korean bank.⁹
- On June 29, 2017, Treasury Secretary Mnuchin announced that Treasury’s Financial Crimes Enforcement Network (“FinCEN”) had found that the Bank of Dandong, a Chinese financial institution, was a financial institution of “primary money laundering concern” under Section 311 of the USA PATRIOT Act and initiated a rulemaking to cut off the Bank of Dandong’s correspondent banking relationships with the United States.¹⁰ In announcing this finding, Secretary Mnuchin stated that “the United States is sending an emphatic message across the globe that we will not hesitate to take action against persons, companies and financial institutions who enable this regime.”¹¹
- On August 22, 2017, OFAC designated ten entities and six individuals for engaging in trade with North Korea, including China- and Russia-based companies.¹² The same day, the Department of Justice announced two civil forfeiture complaints seeking to forfeit \$11 million in funds at U.S. banks belonging to Singapore- and China-based companies that allegedly engaged in coal and petroleum transactions with North Korea.¹³
- In a September 12, 2017 hearing before the House Foreign Affairs Committee, Treasury’s Assistant Secretary for Terrorist Financing Marshall S. Billingslea described all of these recent actions, and emphasized that, “[f]inancial institutions in China, or elsewhere, that continue to process transactions on behalf of North Korea should take heed. We will continue to target North Korea’s illicit activity, regardless of location.”¹⁴

Although the ultimate effect of the new EO will largely turn on its implementation, the EO reflects the continued commitment of the Trump Administration to sever North Korea’s access to international trade

and financial markets. Under this new threat of secondary sanctions, non-U.S. entities should seriously consider the risks associated with forming or maintaining trade, financial, or other business relationships, directly or indirectly, with North Korea. While most financial institutions were already conducting enhanced diligence related to North Korea, the new EO serves as another warning of the importance of these compliance measures.

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The full text of the EO is available [here](#). We will continue to monitor sanctions developments and look forward to providing you with further updates.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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- ¹ Remarks by President Trump, President Moon of the Republic of Korea, and Prime Minister Abe of Japan Before Trilateral Meeting (Sep. 21, 2017), available [here](#).
- ² See U.N. Security Council Resolution 2371 (Aug. 5, 2017), available [here](#); U.N. Security Council Resolution 2375 (Sep. 11, 2017), available [here](#).
- ³ See Statement by President Donald J. Trump on Signing the “Countering America’s Adversaries Through Sanctions Act” (Aug. 2, 2017), available [here](#). Paul, Weiss previously analyzed the major provisions in CAATSA in a client memorandum published on Aug. 3, 2017, available [here](#). Notably, the EO does not specifically cite CAATSA as an authority.
- ⁴ This provision goes beyond the sanctions set out in the recent U.N. resolutions and CAATSA by broadly targeting any significant transaction involving North Korea, regardless of product or industry.
- ⁵ This provision appears to permit the Treasury Department to designate as a SDN any entity, such as a financial institution, for providing services to an entity that is sanctioned under the EO for trade with North Korea.
- ⁶ The EO defines “foreign financial institutions” broadly and defines “knowingly” as what is known or should have been known. The EO does not define “significant,” but in the Iran secondary sanctions context that term was given a broad and flexible meaning to preserve agency discretion.
- ⁷ Office of Foreign Assets Control, Frequently Asked Questions, FAQ 526 (Sep. 21, 2017), available [here](#).
- ⁸ *Id.*
- ⁹ U.S. Dep’t of Justice, United States Files Complaint to Forfeit More Than \$1.9 Million From China-Based Company Accused of Acting as a Front for Sanctioned North Korean Bank (June 15, 2017), available [here](#).
- ¹⁰ U.S. Dep’t of the Treasury, Treasury Acts to Increase Economic Pressure on North Korea and Protect the U.S. Financial System (June 29, 2017), available [here](#).
- ¹¹ *Id.*
- ¹² U.S. Dep’t of the Treasury, Treasury Targets Chinese and Russian Entities and Individuals Supporting the North Korean Regime (Aug. 22, 2017), available [here](#).
- ¹³ U.S. Dep’t of Justice, United States Files Complaints to Forfeit More Than \$11 Million From Companies That Allegedly Laundered Funds To Benefit Sanctioned North Korean Entities (Aug. 22, 2017), available [here](#).
- ¹⁴ House Foreign Affairs Committee, Testimony of Assistant Secretary Marshall S. Billingslea (Sep. 12, 2017), available [here](#).