

CLIENT ALERT

New U.S. and UN Sanctions Increase Pressure on Non-U.S. Persons Transacting with North Korea

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On September 20, 2017, President Trump signed Executive Order 13810, which substantially increases the authority of the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) to impose both primary and secondary sanctions on non-U.S. persons transacting with the Democratic People's Republic of Korea (aka North Korea). These new sanctions come soon after, and implement, two United Nations Security Council Resolutions (UNSCRs) expanding sanctions on North Korea. They also follow new sanctions imposed in August by the [Countering America's Adversaries Through Sanctions Act](#) and a [travel ban imposed by the United States in July](#) (see our previous summary of the travel ban [here](#)). The European Union is reportedly also considering new sanctions to be announced in mid-October. Below, we provide summaries of the new actions taken by the following jurisdictions:

- [United States](#)
- [United Nations](#)
- [European Union](#)

New U.S. Sanctions

The United States has maintained a comprehensive embargo on North Korea since March 15, 2016, which has prohibited U.S. persons from exporting any goods or services, directly or indirectly, to North Korea. A ban on imports into the United States of North Korean-origin goods also has been in place since April 18, 2011. Previous executive orders also have provided for the designation of persons that trade with specific sectors of the North Korean economy, for example metal, graphite, coal or software. The new EO greatly expands the types of trade with North Korea that may subject non-U.S. persons to designation, substantially increasing secondary sanctions and forcing non-U.S. persons to choose between dealing with North Korea or retaining access to the U.S. dollar. In particular, it includes:

- **Broad New Authority To Impose Primary Sanctions on Any North Korean and Secondary Sanctions on Persons Conducting Virtually Any Transaction with North Korea:** The EO grants OFAC authority to designate all North Korean persons, defined to include all North Korean citizens and permanent residents, and all entities incorporated in North Korea, as specially designated nationals (SDNs). It also grants OFAC authority to designate as SDNs any person conducting almost any type of business with North Korea. The EO defines persons broadly – as is typical for OFAC sanctions programs – and includes joint ventures. Given recent rhetoric from the Hill and in the press, it is foreseeable that U.S. entities engaged in joint venture projects in China and other third countries that undertake any activity related to North Korea may get swept up in the sanctions restrictions. Specifically, OFAC can designate a person as an SDN if it concludes that the person: (1) operates in the construction, energy, financial services, fishing, information technology, manufacturing, medical, mining, textiles, or transportation industries in North Korea; (2) owns, controls, or operates a port in North Korea; and (3) has engaged in one significant exportation to or importation from North Korea of any goods,

services, or technology. OFAC also may designate any person that provides material support to the foregoing or acts for or on behalf of the persons described above.

- **Secondary Sanctions Targeting Foreign Financial Institutions Transacting with North Korea:** OFAC is now authorized to impose either (a) full asset blocking sanctions or (b) more limited restrictions or prohibitions on the maintenance of correspondent or payable through accounts in the United States on any foreign financial institution that, after September 21, 2017, knowingly conducts or facilitates any significant transaction: (1) with any SDN designated pursuant to the [DPRK], [DPRK2], [DPRK3], this EO, or any North Korean person designated pursuant to the [NPWMD] program; or (2) in connection with trade with North Korea.
- **New Restrictions on Vessels or Planes that Travel to North Korea:** The EO imposes three transportation-related prohibitions: (1) vessels in which a non-U.S. person has an interest that call at a port in North Korea cannot call at a U.S. port for 180 days; (2) vessels in which a non-U.S. person has an interest that engage in a ship-to-ship transfer with vessels described in (1) above within the last 180 days cannot call at a U.S. port; and (3) aircraft in which a non-U.S. person has an interest that have landed in North Korea may not land in the United States for 180 days following their departure from North Korea.
- **Blocking All Assets Passing Through North Korean Accounts:** The EO blocks (or freezes) all funds that “originate from, are destined for, or pass through a foreign bank account” that OFAC determines is owned or controlled by a North Korean person or has been used to transfer funds in which a North Korean person has an interest.

In parallel to this executive action, the U.S. Congress is debating several pieces of legislation on North Korea. The scope of the package that will pass Congress is not yet clear, but it is widely expected to include (a) broad secondary sanctions authority on persons knowingly conducting certain types of significant transactions with North Korea and (b) a broader authority to ban travel than that currently being exercised by the State Department. Finally, on September 26, 2017, President Trump also announced an expansion of the Administration’s travel and visa restrictions to cover North Korean and Venezuelan nationals, in addition to the Middle Eastern countries it had previously covered.

New United Nations Sanctions

Prior to the new U.S. actions, the United Nations had also passed two recent resolutions—UNSCR 2371 (passed on August 5, 2017) and UNSCR 2375 (passed on September 11, 2017)—expanding its restrictions on North Korea. These resolutions imposed a series of restrictions including, *inter alia*:

- **Prohibitions on Export to North Korea:** UNSCR 2375 prohibits the export to North Korea of all condensates, natural gas liquids, and all refined petroleum products, and imposes a cap on crude oil exports. The UNSCR authorizes the export of a limited amount (up to 2,000,000 barrels per year) of refined petroleum products provided that the transactions do not involve any designated persons and are designed exclusively for improving the livelihood of North Korean persons.
- **Prohibitions on Import from North Korea:** The resolutions require member states to prohibit the import of coal, iron, iron ore, seafood, lead, lead ore, and textiles from North Korea or its nationals, with limited exceptions for certain pre-existing contracts.
- **Restrictions on North Korea Labor:** UNSCR 2371 limited the number of North Korean nationals that UN Member States are allowed to have work within their countries to the number that held work authorizations as of August 5, 2017,

unless authorized in advance by the UN. UNSCR 2375 goes further and requires that UN authorization is required for a Member State to grant any new work permits to North Korean nationals.

- **Financial Restrictions:** UNSCR 2371 requires Member States to prohibit their nationals from entering into new joint ventures with North Korean persons. UNSCR 2375 then prohibits even existing joint ventures unless those joint ventures have been approved in advance by the UN. It provides a 120 day wind down period for entities to withdraw from existing joint ventures. The prohibition does not apply to China-DPRK hydroelectric power infrastructure projects or Russia-DPRK ports and rail projects.
- **Shipping and Cargo Restrictions:** The UNSCRs authorize the identification as blocked property of any vessels that are violating North Korea-related restrictions in previous UNSCRs. It also requires Member States to inspect any vessel at sea that they have reasonable grounds to believe is carrying cargo in violation of applicable UN restrictions on North Korea.
- **New Designations:** The resolutions also require Member States to impose travel bans and asset freezes on 10 individuals and seven entities, including the Foreign Trade Bank, which serves as North Korea's primary foreign exchange bank.

EU Debate on New Measures

In parallel, the European Union is reportedly considering a package of new EU sanctions that would expand the scope of the EU's measures beyond those implemented by the United Nations, though they would not be as comprehensive as those implemented by the United States. These are expected to be announced on or before the meeting of EU Foreign Ministers on October 16 and reportedly will include (a) a ban on EU persons investing in North Korea, (b) an expansion of the definition of "luxury goods" for which exports are prohibited, and (c) an oil import embargo.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Carlton Greene

Partner – Washington, D.C.
Phone: +1 202.624.2818
Email: cgreene@crowell.com

Cari N. Stinebower

Partner – Washington, D.C.
Phone: 202.624.2757
Email: cstinebower@crowell.com

Michelle J. Linderman

Partner – London
Phone: +44.20.7413.1353
Email: mlinderman@crowell.com

David (Dj) Wolff

Counsel – Washington, D.C.
Phone: 202.624.2548
Email: djwolff@crowell.com

Christopher Monahan

Counsel – Washington, D.C.
Phone: 202.624.2529
Email: cmonahan@crowell.com