

# Sanctions Update

Global

BAKER & MCKENZIE

## Client Alert



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## North Korean Executive Order

### US Government Imposes Comprehensive Sanctions Targeting North Korea

On March 15, 2016, US President Barack Obama issued [Executive Order 13722](#) (“EO 13722”) imposing additional sanctions targeting the Democratic People’s Republic of Korea (“North Korea”). As a result of these new sanctions, US Persons (defined below) are prohibited from engaging in virtually any transaction with North Korea. The US Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) supplemented EO 13722 by issuing [nine general licenses](#) authorizing certain activities involving North Korea and published [frequently asked questions](#) (“FAQs”) pertaining to EO 13722 and the new general licenses. Finally, pursuant to EO 13722, OFAC [designated](#) 2 individuals, 15 entities, and 20 vessels as Specially Designated Nationals (“SDNs”).

EO 13722 was issued in response to North Korea’s continued pursuit of nuclear and missile programs, as evidenced most recently by its February 7, 2016 launch using ballistic missile technology and its January 6, 2016 nuclear test. EO 13722 builds upon recent steps targeting North Korea by implementing certain provisions of the North Korea Sanctions and Policy Enhancement Act of 2016 and [UN Security Council Resolution 2270](#).

### Heightened Restrictions on Dealings with North Korea

By way of background, the US Government has long maintained restrictions on doing business with North Korea. Prior to the issuance of EO 13722, these restrictions included broad licensing requirements for exports and reexports to North Korea under the Export Administration Regulations, 15 C.F.R. Part 730 et seq. (“EAR”). In addition, pursuant to a series of executive orders, the US Government designated a number of North Korean individuals and entities as SDNs and imposed a ban on the importation into the United States of any goods, services, or technology from North Korea.

While significant, these restrictions were not as “comprehensive” as sanctions targeting Crimea, Cuba, Iran, Sudan, and Syria. EO 13722 virtually eliminates this distinction by significantly strengthening the restrictions on doing business with North Korea. Most notably, EO 13722:

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1. blocks the property of the Government of North Korea and the Workers' Party of Korea;
2. prohibits exports or reexports from the United States or by US Persons of goods, services (including financial services), and technology to North Korea;
3. prohibits new investment in North Korea by US Persons; and
4. expands the criteria under which parties may be designated as SDNs for engaging in North Korea-related activities.

Items 1, 2, and 3 above apply primarily to US Persons. For purposes of EO 13722, "US Persons" are US citizens or permanent resident aliens ("Green Card" holders) wherever located or employed; entities organized under US laws as well as their non-US branches; and individuals or entities in the United States. Importantly, US Persons are prohibited not only from engaging in restricted activities directly but also from providing any approval, financing, or other facilitation to a non-US Person for engaging in such activities.

Non-US Persons (including non-US subsidiaries of US Persons) are not directly subject to Items 1, 2, and 3, but they could potentially be held liable for "causing" a US Person to engage in a prohibited transaction—for instance, if a non-US Person engages in a US dollar transaction involving North Korea that is routed through a US financial institution. Also, non-US Persons now run the risk of being designated as SDNs themselves if they engage in certain activities related to North Korea, as referenced in Item 4. Finally, these new measures do not affect the existing EAR restrictions applicable to non-US Persons engaging in exports or reexports to North Korea of items subject to the EAR.

We discuss each of these new sanctions measures in more detail below.

#### Blocking of the Government of North Korea and the Workers' Party of Korea

Pursuant to EO 13722, US Persons are required to block all property and interests in property of the Government of North Korea (including its agencies, instrumentalities, and controlled entities) and the Workers' Party of Korea. As a result of this prohibition, US Persons are generally prohibited from engaging in transactions that directly or indirectly involve these entities.

#### Prohibition on Exports and Reexports to, and New Investment in, North Korea

Even before the issuance of EO 13722, US export controls imposed broad licensing requirements on most items that are "subject to the EAR." EO 13722 expands on these restrictions by prohibiting all exports or reexports to North Korea from the United States or by a US Person of any goods, services, or technology. The US Department of Commerce's Bureau of Industry and Security ("BIS") maintains primary authority to license exports and

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reexports of goods and technology subject to the EAR to the Government of North Korea, the Workers' Party of Korea, and any persons in North Korea who are not SDNs. As OFAC's FAQs note, US Persons must obtain a license from both OFAC and BIS to export or reexport items that are subject to the EAR to SDNs in North Korea. Finally, if a transaction involves only services and/or items that are not subject to the EAR, US Persons would be required to obtain a license from OFAC.

EO 13722 also prohibits US Persons from engaging in new investment in North Korea. In combination with the export and reexport ban, this prohibition essentially bars US Persons from doing business with North Korea without authorization from OFAC.

#### **New SDN Designation Criteria**

EO 13722 broadens existing US sanctions targeting North Korea by expanding the types of North Korea-related activities that may potentially subject parties to designation as SDNs. Specifically, the US Secretary of the Treasury (in consultation with the US Secretary of State) may designate as an SDN any party found 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 EO 13722;
- sold, supplied, transferred, or purchased to or from North Korea metal, graphite, coal, or software, where any revenue or goods received may benefit the Government of North Korea or the Workers' Party of Korea, including North Korea's nuclear or ballistic missile programs;
- engaged in, facilitated, or been responsible for an abuse or violation of human rights by the Government of North Korea or the Workers' Party of Korea;
- 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 Korea;
- engaged in significant activities undermining cybersecurity outside of North Korea on behalf of the Government of North Korea or the Workers' Party of Korea; or
- to have engaged in, facilitated, or been responsible for censorship by the Government of North Korea or the Workers' Party of Korea.

In addition, EO 13722 authorizes the US Secretary of the Treasury (in consultation with the US Secretary of State) to identify specific sectors of the North Korean economy and to designate as SDNs any parties that operate in those sectors. On the same day that EO 13722 was issued, the US Secretary of the Treasury published a [determination](#) targeting the transportation, mining, energy, and financial services sectors of the North Korean

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economy as subject to EO 13722. OFAC also designated 2 individuals, 15 entities, and 20 vessels as SDNs because they were determined to operate in these targeted sectors.

US Persons are prohibited from dealing, directly or indirectly, with parties designated as SDNs or with any entities in which one or more SDNs own a 50% or greater interest.

#### **New General Licenses and Travel to North Korea**

OFAC issued nine general licenses for certain activities involving North Korea that would otherwise be prohibited under EO 13722. Pursuant to these general licenses, US Persons may engage in authorized activities without needing to apply for a specific license so long as the applicable conditions are met.

Among other things, OFAC has issued general licenses for:

- the provision of certain legal services (General License 2);
- noncommercial, personal remittances (General License 4);
- certain services in support of nongovernmental activities, including certain humanitarian projects to meet basic human needs in North Korea (General License 5); and
- certain transactions related to patents, trademarks, and copyrights (General License 8).

OFAC's FAQs state that travel to North Korea is not prohibited under EO 13722. Given the recent developments in North Korea and the restrictions under EO 13722 and other US sanctions and export controls, though, travel related transactions involving North Korea continue to present compliance risks.

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