

CLIENT ALERT

North Korea: New Sanctions on U.S. and Non-U.S. Persons

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On February 18, President Obama signed into law the [North Korea Sanctions and Policy Enhancement Act of 2016](#) (the Act), expanding and strengthening U.S. sanctions against North Korea in response to that country's recent nuclear and ballistic missile tests. These measures not only broaden the scope of U.S. sanctions to categorically prohibit dealings by U.S. persons with the Government of North Korea, they also provide for additional sanctions for persons who knowingly undertake certain types of North Korea-related activity.

The new U.S. legislation substantially expands existing U.S. sanctions in numerous capacities. Several of the key measures include:

- **Prohibiting the Export of Most U.S.-Origin Goods:** Supplementing the existing prohibition on the export of most items subject to the Export Administration Regulations (EAR) to North Korea, the Act requires a validated license for the export of any goods or technology otherwise covered by section 6(j) of the Export Administration Act to North Korea and prohibits all defense exports to the Government of North Korea.
- **Blocking of the Government of North Korea and the Workers' Party of North Korea:** The Act requires the president to use existing authority under the International Emergency Economic Powers Act (IEEPA) to block the property of the Government of North Korea and the Workers' Party of North Korea. In effect, this prohibits U.S. persons from conducting any unlicensed transactions with the Government of North Korea or the Workers' Party anywhere in the world.
- **Mandatory Sanctions:** The Act requires the designation and the use of IEEPA authorities to freeze all assets subject to U.S. jurisdiction of any persons – U.S. or non-U.S. – that the administration determines knowingly engaged in specified activities related to:
 - The direct or indirect import or export from or to North Korea of goods, services, or technology controlled for export by the United States because of their potential for uses related to weapons of mass destruction or their delivery systems, and materially contributes to –
 - Development, production, possession, or acquisition by any person of a nuclear, radiological, chemical, or biological weapon or any device or system designed in whole or in part to deliver such a weapon.
 - Directly or indirectly providing services or engaging in financial transactions relating to the manufacture or use of any such weapon, device or system to be imported, exported, or re-exported to, into, or from North Korea.
 - The direct or indirect export or re-export of luxury goods to North Korea.
 - The facilitation of censorship by North Korea.
 - Engaging in or facilitating serious human rights abuses by the Government of North Korea.
 - Money laundering, counterfeiting of goods or currency, cash smuggling, or narcotics trafficking that supports North Korea.

- Undermining cybersecurity on behalf of the Government of North Korea.
- The direct or indirect sale, supply, or transfer to or from the Government of North Korea of a significant amount of precious metal, graphite, raw or semi-finished metals or aluminum, steel, coal, or software, for use by or in industrial processes directly related to weapons of mass destruction and delivery systems for such weapons, other proliferation activities, the Korean Workers' Party, armed forces, internal security, or intelligence activities, or the operation and maintenance of political prison camps or forced labor camps, including outside of North Korea.
- The direct or indirect import, export, or re-export to, into, or from North Korea of any arms or related material.

Persons designated under this provision also may be denied entry into the U.S.

- **Discretionary Sanctions:** The Act also allows for the imposition of similar blocking sanctions on additional persons the president determines knowingly:
 - Provide or contribute money, goods or services in support of a person designated under UN resolutions relating to North Korea.
 - Contribute to the bribery of North Korean officials or persons acting for such officials, the misappropriation of public funds by or for the benefit of North Korean officials or persons acting for them, or the use of proceeds from such activities.
 - Provide significant support for the above activities.
- **Additional Menu-Based Sanctions:** With respect to any person the president designates pursuant to the above mentioned discretionary sanctions, the Act further allows the president to take one or more of the actions below:
 - Prohibit U.S. government contracting.
 - Impose "special measures" under Section 311 of the U.S. PATRIOT Act.
 - Prohibit access to U.S. foreign exchange.
 - Prohibit payments or transfers of credit that involve any interest of the designated person through U.S. financial institutions.
 - Deny entry into the U.S.
- **Jurisdiction of Primary Money Laundering Concern:** The Act requires that the administration make a determination within 180 days regarding whether North Korea is a jurisdiction of 'primary money laundering concern,' in accordance with 31 U.S.C. § 5318A (also referred to as Section 311 of the U.S. PATRIOT Act). If so, the administration would be required to impose one or more of the "special measures" described in that section which include, *inter alia*, additional recordkeeping and reporting requirements for U.S. financial institutions or a prohibition on maintaining correspondent or payable through accounts by a domestic financial institution if the account involves a designated jurisdiction. Previously, the U.S. Department of the Treasury designated Banco Delta Asia SARL as a 'primary money laundering concern' in 2005 and prohibited its maintenance of correspondent accounts in the United States under 31 U.S.C. § 5318A based on its dealings with North Korea.

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

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