

## U.S. ECONOMIC SANCTIONS UPDATE: NORTH KOREA



*Washington, August 2, 2017*

### **THE UNITED STATES ENACTS NEW LAW REQUIRING THE IMPOSITION OF ADDITIONAL U.S. ECONOMIC SANCTIONS WITH RESPECT TO IRAN, RUSSIA AND NORTH KOREA**

Today, President Trump signed into law, H.R. 3364, Countering America's Adversaries Through Sanctions Act (the "Act"). The Act requires the imposition of additional U.S. economic sanctions with respect to Iran, Russia and North Korea.

The portion of the Act dealing with North Korea is entitled the Korean Interdiction and Modernization of Sanctions Act (the "New North Korea Sanctions Act"). The main elements/provisions of the New North Korea Sanctions Act, which build upon already existing U.S. sanctions, are as follows:

The New North Korea Sanctions Act modifies and increases the President's authority to impose sanctions on persons in violation of certain United Nations Security Council resolutions regarding North Korea.

The New North Korea Sanctions Act amends existing law with respect to U.S. North Korean sanctions and further provides for the imposition of sanctions against any persons that:

1. knowingly, directly or indirectly, purchases or otherwise acquires from North Korea any significant amounts of gold, titanium ore, vanadium ore, copper, silver, nickel, zinc, or rare earth minerals;

2. knowingly, directly or indirectly, sells or transfers to North Korea any significant amounts of rocket, aviation, or jet fuel (except for use by a civilian passenger aircraft outside North Korea, exclusively for consumption during its flight to North Korea or its return flight);
3. knowingly, directly or indirectly, provides significant amounts of fuel or supplies, provides bunkering services, or facilitates a significant transaction or transactions to operate or maintain, a vessel or aircraft that is designated under an applicable Executive order or an applicable United Nations Security Council resolution, or that is owned or controlled by a person designated under an applicable Executive order or applicable United Nations Security Council resolution;
4. knowingly, directly or indirectly, insures, registers, facilitates the registration of, or maintains insurance or a registration for, a vessel owned or controlled by the Government of North Korea, except as specifically approved by the United Nations Security Council;
5. knowingly, directly or indirectly, maintains a correspondent account (as defined in section 201A(d)(1)) with any North Korean financial institution, except as specifically approved by the United Nations Security Council;
6. knowingly, directly or indirectly, purchased or otherwise acquired from the Government of North Korea significant quantities of coal, iron, or iron ore, in excess of the limitations provided in applicable United Nations Security Council resolutions;
7. knowingly, directly or indirectly, purchased or otherwise acquired significant types or amounts of textiles from the Government of North Korea;
8. knowingly facilitated a significant transfer of funds or property of the Government of North Korea that materially contributes to any violation of an applicable United National Security Council resolution;
9. knowingly, directly or indirectly, facilitated a significant transfer to or from the Government of North Korea of bulk cash, precious metals, gemstones, or other stores of value;
10. knowingly, directly or indirectly, sold, transferred, or otherwise provided significant amounts of crude oil, condensates, refined petroleum, other types of petroleum or petroleum by products, liquefied natural gas, or other natural gas resources to the Government of North Korea (except for heavy fuel oil, gasoline, or diesel fuel for humanitarian use);

- 11.** knowingly, directly or indirectly, engaged in, facilitated, or was responsible for the online commercial activities of the Government of North Korea, including online gambling;
- 12.** knowingly, directly or indirectly, purchased or otherwise acquired fishing rights from the Government of North Korea;
- 13.** knowingly, directly or indirectly, purchased or otherwise acquired significant types or amounts of food or agricultural products from the Government of North Korea;
- 14.** knowingly, directly or indirectly, engaged in, facilitated, or was responsible for the exportation of workers from North Korea in a manner intended to generate significant revenue, directly or indirectly, for use by the Government of North Korea or by the Workers' Party of Korea;
- 15.** knowingly conducted a significant transaction or transactions in North Korea's transportation, mining, energy, or financial services industries; or
- 16.** except as specifically approved by the United Nations Security Council, and other than through a correspondent account, knowingly facilitated the operation of any branch, subsidiary, or office of a North Korean financial institution.
- 17.** The New North Korea Sanctions Act also requires reports to Congress as to why the following entities should not be designated as sanctions targets:
  - (A) The Korea Shipowners' Protection and Indemnity Association, a North Korean insurance company, with respect to facilitating imports, exports, and reexports of arms and related materiel to and from North Korea, or for other prohibited activities.
  - (B) Chinpo Shipping Company (Private) Limited, a Singapore corporation, with respect to facilitating imports, exports, and reexports of arms and related materiel to and from North Korea.
  - (C) The Central Bank of the Democratic People's Republic of Korea, with respect to the sale of gold to, the receipt of gold from, or the import or export of gold by the Government of North Korea.
  - (D) Kumgang Economic Development Corporation (KKG), with respect to being an entity controlled by Bureau 39 of the Workers' Party of the Government of North Korea.

(E) Sam Pa, also known as Xu Jinghua, Xu Songhua, Sa Muxu, Samo, Sampa, or Sam King, and any entities owned or controlled by such individual, with respect to transactions with KKG.

(F) The Chamber of Commerce of the Democratic People's Republic of Korea, with respect to the exportation of workers.

**18.** The New North Korea Sanctions Act requires United States financial institutions to ensure that accounts managed by that institution for a foreign financial institution are not being used by the foreign financial institution to provide significant financial services indirectly to any person, foreign government, or financial institution designated as a North Korean sanctions target. The United States financial institution shall ensure that such correspondent account is no longer used to provide such services.

**19.** Under the New North Korea Sanctions Act, a foreign government that provides to or receives from North Korea a defense article or service is prohibited from receiving certain types of U.S. foreign assistance.

**20.** The New North Korea Sanctions Act provides that the U.S. Department of Homeland Security may require enhanced screening procedures to determine whether physical inspections are warranted of any cargo bound for or landed in the United States that—

(A) has been transported through a sea port or airport the operator of which has been identified by the President as having repeatedly failed to comply with applicable United Nations Security Council resolutions;

(B) is aboard a vessel or aircraft, or within a conveyance that has, within the last 365 days, entered the territory or waters of North Korea, or landed in any of the sea ports or airports of North Korea; or

(C) is registered by a country or jurisdiction whose compliance with international sanctions against North Korea has been identified by the President as deficient.

The foregoing shall not apply to any vessel, aircraft, or conveyance that has entered the territory or waters of North Korea, or landed in any of the sea ports or airports of North Korea, exclusively to import food, medicine, or supplies into North Korea to meet the humanitarian needs of the North Korean people.

**21. ENFORCING COMPLIANCE WITH UNITED NATIONS SHIPPING SANCTIONS AGAINST NORTH KOREA**

The New North Korea Sanctions Act amends the Ports and Waterways Safety Act (33 U.S.C. 1221 et seq.) by adding the following new section:

In general, no vessel described below may enter or operate in the navigable waters of the United States or transfer cargo in any port or place under the jurisdiction of the United States.

A vessel referred to above is a foreign vessel for which a notice of arrival is required to be filed, and that—

- (1) is on the most recent list of vessels published in Federal Register under subsection (c)(2); or
- (2) more than 180 days after the publication of such list, is knowingly registered, pursuant to the 1958 Convention on the High Seas entered into force on September 30, 1962, by a government the agents or instrumentalities of which are maintaining a registration of a vessel that is included on such list.

The New North Korea Sanctions Act requires the Secretary of the department in which the Coast Guard is operating, with the concurrence of the Secretary of State, to —

- (1) maintain timely information on the registrations of all foreign vessels over 300 gross tons that are known to be—
  - (A) owned or operated by or on behalf of the Government of North Korea or a North Korean person;
  - (B) owned or operated by or on behalf of any country in which a sea port is located, the operator of which the President has identified in the most recent report submitted under section 205(a)(1)(A) of the North Korea Sanctions and Policy Enhancement Act of 2016; or
  - (C) owned or operated by or on behalf of any country identified by the President as a country that has not complied with the applicable United Nations Security Council resolutions; and
- (2) publish in the Federal Register a list of the vessels described above.

The New North Korea Sanctions Act states that the foregoing shall not be construed as authority to restrict the right of innocent passage or the right of transit passage as recognized under international law.

## **22. SANCTIONS ON FOREIGN PERSONS THAT EMPLOY NORTH KOREAN LABOR**

The New North Korea Sanctions Act prohibits, subject to certain limited exceptions, the importation or entry into the United States of any significant goods, wares, articles, and

merchandise mined, produced, or manufactured wholly or in part by the labor of North Korean nationals or citizens.

Sanctions may also be imposed on designated foreign persons that employ North Korean labor. A foreign person may not be designated if the President certifies to the appropriate congressional committees that the President has received reliable assurances from such person that—

(A) the employment of North Korean laborers does not result in the direct or indirect transfer of convertible currency, luxury goods, or other stores of value to the Government of North Korea;

(B) all wages and benefits are provided directly to the laborers, and are held, as applicable, in accounts within the jurisdiction in which they reside in locally denominated currency; and

(C) the laborers are subject to working conditions consistent with international standards.



- 23.** Additionally, the New North Korea Sanctions Act requires the State Department to submit a determination regarding whether North Korea meets the criteria for designation as a state sponsor of terrorism.
- 24.** Sanctions imposed under the New North Korea Sanctions Act will, in most part, prohibit transactions and activities with or involving designated persons and U.S. persons or those with a U.S. nexus. The property and all interest in property of designated persons within U.S. jurisdiction will be blocked. Additionally, individuals who are sanctions targets will not be permitted to enter the United States.
- 25.** The New North Korea Sanctions Act expands the existing universe of North Korean as well as non-North Korean persons that may be targeted by U.S. sanctions.
- 26.** The U.S. Treasury Department will issue regulations implementing the New North Korea Sanctions Act and identify the new North Korea sanctions targets that are designated pursuant to the New North Korea Sanctions Act.

The persons (entities and individuals) against whom the foregoing sanctions will be imposed will be identified by the U.S. Treasury's Office of Foreign Assets Control ("OFAC") by the inclusion of such persons on OFAC's List of SDNs and Blocked Persons.

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## Questions and Further Guidance

For more information or questions regarding the subject covered in this *Economic Sanctions Update*, please contact:

Hal Eren	Washington, DC	 + 1 202 429 9883	hal.eren@erenlaw.com
Steven Pinter	Washington, DC	 + 1 202 429 9883	steven.pinter@erenlaw.com

The Eren Law Firm is an economic sanctions boutique. Its other core areas of concentration and practice include corporate transactions, and international dispute resolution, anti-money laundering, and international trade regulation. The Firm's clients from around the world include banks and financial institutions; insurance, reinsurance and other financial services companies; natural resource extraction companies, industrial companies, marine and air transportation companies, ship owners; sovereign governments; foreign state enterprises; and individuals.

Mr. Eren and Mr. Pinter of the Firm served in senior positions at the U.S. Treasury's Office of Foreign Assets Control (OFAC), the U.S. government agency that administers and enforces U.S. economic sanctions, for a combined 25 years prior to entering private law practice, respectively 17 and 16 years ago, and since this time, they have devoted and continue to devote most of their time in private practice to economic sanctions issues and matters, particularly those involving Iran.

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