

Increased Sanctions on North Korea Focus on China and Russia

Article By:

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Last week, **President Obama** significantly increased sanctions on **North Korea** through [Executive Order 13722](#), which implements the [North Korea Sanctions and Policy Enhancement Act of 2016 \(H.R. 757\)](#). The Executive Order's prohibitions and blocking provisions, and designation criteria are substantially more expansive than that Act. Concurrently with the issuance of the Executive Order, OFAC [announced](#) the designations of 17 North Korean government officials and organizations, 15 entities, two individuals, and identified 40 blocked vessels under various sanctions authorities.

While neither Congress nor the President imposed secondary sanctions per se, China and Russia should interpret the Executive Order as a clear warning about their economic ties with North Korea. In the Iran sanctions program, secondary sanctions require that a foreign financial institution "knowingly facilitate or conduct a significant financial transaction" for a particular individual or entity. This evidentiary standard greatly limited the use of those sanctions authorities. The new sanctions against North Korea are clearly aimed at foreign business interests, but unlike secondary sanctions, this new authority does not have an evidentiary impediment to its implementation.

Transportation, Mining, Energy, and Financial Services

Subsection 2(a)(i) of the Executive Order authorizes the Secretary of the Treasury to identify industries in the North Korean economy, the participants of which may be designated solely based on their operating within that industry. The Secretary of the Treasury determined that entities within the transportation, mining, energy, and financial services industries are subject to designation. The Treasury Department's Office of Foreign Assets Control (OFAC) then designated Ilsim International Bank and Korea United Development Bank for operating in the financial services industry.

OFAC's authority to derivatively designate any bank that provides services to any identified North Korean bank creates de facto secondary sanctions. Executive Order 13722 authorizes OFAC to designate any individual or entity that provides services to any identified Korean bank. Therefore, any financial institution that provides an identified North Korean bank with an account, serves as an intermediary, confirms or advises a letter of credit, or provides any other service can be designated. The most likely targets of these derivative actions are Russian and Chinese financial institutions.

North Korean Slave Labor and Coal

The Executive Order authorizes OFAC to designate businesses that “have 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.” According to open source reporting, North Korea has between [50,000](#) and [100,000 “state-sponsored slaves”](#) predominantly located in China and Russia. The North Korean regime earns between [\\$1.2 and \\$2.3 billion](#) annually in foreign currency through these slave laborers. Apart from the appalling human rights violations, this practice finances the North Korean nuclear and missile development programs.

In addition to companies that utilize North Korean slave labor, entities that deal in metal, graphite, coal, or software to or from North Korea are now subject to designation, “where any revenue or goods received may benefit the Government of North Korea.” United Nations Security Council Resolution [2270](#) of March 2, 2016 address the sale of coal and iron from North Korea, but in a very limited manner. Unlike the United States sanctions program, the prohibitions do not apply to transactions “exclusively for livelihood purposes and unrelated to generating revenue for the DPRK’s nuclear or ballistic missile programs.” As a result of these substantial limitations, any application of the sanctions on coal and iron are likely to be enforced unilaterally by the United States.

Chinese companies are clearly the most susceptible to this designation criteria. According to the press release announcing the Executive Order and designations, “coal generates over \$1 billion in revenue per year for North Korea.” Open source reporting also indicates that in 2015, North Korea supplied China with [19.63 metric tons](#) of coal.

Return to a Comprehensive Sanctions Program

In addition to the designation criteria highlighted above, Executive Order 13722 also transitions U.S. sanctions against North Korea back into a comprehensive sanctions program. All property and interests in property of the North Korean government are now blocked, and the Department of Commerce licensing requirements are now supplemented with a prohibition on the exportation of goods and services.

OFAC released a series of 9 General Licenses to address issues that commonly arise from comprehensive programs. These include authorization of certain legal services, certain services in support of nongovernmental organizations, transactions related to intellectual property, and noncommercial personal remittances.

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