

Coal Hard Facts: North Korea Sanctions Remain in Place and Remain a Risk

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KEPCO is at the heart of an inquiry into the alleged repeated import of North Korean coal into the Republic of Korea. Reportedly, 8 other Korean companies and 2 other banks may also be involved and may also be under investigation.

The story may have come as a shock to some, who saw President Trump's visit with the North Korean leader Kim Jung Un as a sign of a coming détente. However, that meeting resulted in very little substantive change by the DPRK or the United States, and UN and U.S. sanctions remain in place.

Why Coal?

In early 2016, UN sanctions on North Korea, most of which have been accepted and implemented by ROK, began targeting the import of North Korean Coal as one of the major exports of the DPRK. In August 2017, UN Sanctions prohibited Member States from importing North Korean coal, iron, lead, and seafood. The Republic of Korea implemented the UN resolution in its domestic law.

However, a real risk of violations arises not only out of UN and ROK sanctions regulations, but also from U.S. regulations that have an effect on Korean companies.

What is the risk?

U.S. and UN sanctions create risks beyond the import of coal. For the U.S. sanctions, the key to extraterritorial enforcement is use of the U.S. banking system – generally by clearing a transaction in dollars. Many of the commodities traded from North Korea.

U.S. sanctions affect Korean companies outside the United States by effectively prohibiting the use of the U.S. financial system in connection with any transaction with the Government of North Korea, the Workers' Party of Korea, or Specially Designated Nationals (SDNs) of North Korea. Therefore, any transaction involving North Korea must be reviewed to ensure that the transaction does not unlawfully involve U.S. financial institutions or otherwise involve the U.S. financial system.

Further, U.S. and UN sanctions prohibit the movement of "bulk cash" to avoid sanctions triggered by

U.S. dollar use in a transaction. Additionally, according to a [U.S. Treasury Department Publication](#), the U.S. government is keenly observing deceptive shipping practices and has designated numerous shipping entities as blocked.

Where a Korean company, including Korean banks, transacts with a designated party in North Korea, that company may be subject to U.S. sanctions that would effectively cut it off from trade with the United States, many U.S. allies around the world, and from use of the U.S. Dollar. If the Korean entity involves a U.S. person in the transaction, the Korean company, including individuals at the company, may be subject to fines and penalties, up to \$1,000,000 and 20 years in prison.

What can my business do?

If your business has transacted with North Korea, now is the time to take a hard look at what has happened. U.S. enforcement agencies are actively investigating transactions and cooperating Korean companies may name others who have traded with the DPRK. A company's best defense is to have an outside counsel or expert conduct an investigation, identify the issues, and take mitigating and corrective actions as soon as possible.

No U.S. regulation requires that Korean companies disclose the issues they find. Further, the investigation by outside counsel will generally be covered by the attorney-client privilege, giving the Korean company the power to decide whether and how it controls its internal issues. By contrast, attempts to hide or destroy evidence of violations may be considered an aggravating factor by U.S. enforcers and create an even greater penalty than the original violation.

A company that has addressed its sanctions compliance issues is a much less tempting target for regulators than one that is involved in a cover up.

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