

KIRKLAND ALERT

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The Trump Administration Sharpens Secondary Sanctions — China and Russia Are On Notice

As recently as July 25, 2017, in a wide-ranging interview with the *Wall Street Journal*, President Trump suggested a willingness to offer trade-related inducements to China in return for China's assistance in peacefully resolving the North Korea problem. In recent weeks, however, as the threat from North Korea has intensified, the Trump administration has signaled a shift in tactics in dealing with China, North Korea's principal economic partner and strategic ally, and Russia.

Whereas once the President offered inducements to China in particular for its assistance in dealing with North Korea, the administration is now increasingly willing to use secondary sanctions — coercive trade measures against third-country individuals and entities — in an attempt to resolve the crisis and otherwise advance its national security objectives.

A number of recent developments illustrate the tactical policy shift, including:

- On July 28, 2017, Secretary of State Tillerson labeled China and Russia North Korea's "economic enablers" in a press release condemning North Korea's launch of an intercontinental ballistic missile.¹
- On August 2, 2017, the President signed the *Countering America's Adversaries Through Sanctions Act*, which imposed new sanctions on Russia, North Korea and Iran. The sanctions on North Korea mostly targeted North Korean banks, metals and mineral companies, North Korean cargo and shipping, and forced labor. However, the Act grants authority to impose sanctions on both North Korean entities and third-country entities assisting North Korea.
- On August 22, the U.S. Treasury Department Office of Foreign Assets Control ("OFAC") sanctioned sixteen (16) Chinese, Russian, and other foreign national individuals and companies for their role, among other things, in assisting North Korea's nuclear and ballistic missile programs; supporting the North Korean energy market; and allowing North Korean entities access to U.S. and international financial systems in violation of UN resolutions.² As a result of these sanctions, U.S. persons are forbidden from transacting business with them and must freeze assets belonging to them that come into their possession (e.g., U.S. financial institutions). The Treasury Department stated that these sanctions are intended to "increase pressure on North Korea by targeting those who support the advancement of nuclear and ballistic missile programs, and isolating them from the American financial system."³

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- On September 3, Secretary of the Treasury Mnuchin announced that the Treasury Department would prepare a new sanctions package on North Korea “*cutting off all trade and other business*” and asserted that “*people need to cut off North Korea economically.*”⁴

Key Takeaways

- As the Trump administration increasingly uses secondary sanctions in relation to North Korea, the importance of restricted party screening will be heightened. Companies should also consider increasing the frequency of those checks because sanctioned parties can change quickly given the dynamic nature of the situation.
- Now that the administration has begun sanctioning Chinese parties, it will be important for companies with Chinese counterparties in particular to undertake due diligence on their connections to North Korea, to mitigate the risk of potential sanctions exposure that could emerge as a result of doing business with them.
- Those who rely on materials from Chinese entities should start to consider and analyze whether these types of sanctions could pose a supply chain risk. Reviewing current suppliers and understanding how sanctions might apply to them may help avoid future supply chain disruptions.
- Periodic internal audits of compliance practices can help avoid more serious liability under U.S. sanctions laws, as well as any reputational damage. Detecting and reporting potential violations as early as possible significantly reduces exposure to U.S. economic sanctions. Reviewing compliance practices on a regular basis can prevent ongoing or repetitive sanctions violations that can result in higher penalties.

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- ¹ On the Latest DPRK Provocation, U.S. Department of State (July 28, 2017), <https://www.state.gov/secretary/remarks/2017/07/272936.htm>.
 - ² The full list of newly sanctioned parties is available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20170822.aspx>.
 - ³ *Treasury Targets Chinese and Russian Entities and Individuals Supporting the North Korean Regime*, Office of Foreign Assets Control (Aug. 22, 2017), available at <https://www.treasury.gov/press-center/press-releases/Pages/sm0148.aspx>.
 - ⁴ *Trump, Mattis, Mnuchin warn North Korea of 'overwhelming' military response, halted trade*, FoxNews (Sep. 3, 2017), available at <http://www.foxnews.com/politics/2017/09/03/mnuchin-vows-north-korea-sanctions-after-bomb-test-to-cut-off-all-trade.html>.

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