

KIRKLAND ALERT

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New North Korea Sanctions Impact Shipping Transactions Worldwide

On February 23, 2018, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued some of the widest sweeping North Korea-related sanctions imposed to date.¹ The sanctions aim at disrupting companies from doing business with North Korean shipping and trading companies and vessels. The primary aim of these sanctions is to prevent North Korean trading, including coal sales and oil purchases, which can be used to support North Korea's nuclear program and ballistic missile development. In addition, OFAC, along with the U.S. Department of State and U.S. Coast Guard, issued a 10-page advisory ("Advisory") to alert all parties involved in the shipping industry of deceptive shipping practices used by North Korea to evade sanctions and to put them on notice that engaging in transactions with North Korea places them at significant risk of having sanctions imposed against them as well.² Similar sanctions have long targeted Iran's vessels and international trading, and companies can learn from the lessons and enforcement actions that have resulted from these sanctions.

The new North Korea sanctions directly target North Korean parties, but more notably extend to parties from any country seen as doing business with North Korea.

The View from Washington

The new sanctions were issued almost simultaneously with the closing ceremonies of the Winter Olympics in South Korea — a stark reminder that the U.S. remains at a standoff with North Korea, even as North Korea has tried to use an Olympic thaw with the South Korean government to try to drive a wedge between the U.S. and its Asian allies and Seoul. North Korea's missile and nuclear program remains one of the Trump Administration's most urgent national security priorities. The new sanctions are part of the Trump Administration's "maximum economic pressure campaign."³ At a press conference announcing the sanctions, Treasury Secretary Mnuchin stated forcefully: "[a]ny company that chooses to help North Korea fund its nuclear and ballistic missile programs will not be allowed to do business with anyone in the United States."⁴ Should the new sanctions fail to curb North Korea's recent activity, President Trump warned of a "phase two" that could be "very, very unfortunate for the world."⁵

Summary of Sanctions Developments

The new North Korea sanctions directly target North Korean parties, but more notably extend to parties from any country seen as doing business with North Korea. Press reports have described many nations including in Asia and Europe, which have continued to trade with North Korea even with international sanctions in place. New restricted parties and vessels involve many countries outside North Korea.

Addition of Restricted Parties

OFAC added 56 parties to the Specially Designated Nationals and Blocked Persons List (the “SDN List”), which prohibits U.S. persons from engaging in transactions with them. These parties consist of one individual, 27 companies and 28 vessels.⁶

- The individual is Tsang Yung Yan, a Taiwanese citizen, who was targeted due to his involvement with coordinating North Korean coal exports with a Russia-based North Korean broker and other sanctions evasion activities. Two Taiwan-based companies owned or controlled by Tsang were also designated.
- The 27 companies include shipping and energy firms from China, Hong Kong, Singapore and Taiwan.
- The 28 vessels are located, registered or flagged in North Korea, China, Hong, Singapore and Taiwan, as well as Comoros, the Marshall Islands, Panama and Tanzania.

Issuance of Shipping Industry Advisory

The Advisory provides an overview of deceptive shipping practices employed by North Korea to educate companies in the shipping industry about red flags for potentially prohibited activity, and it outlines risk mitigation measures to undertake to safeguard against those practices. In 2011 and 2012, OFAC released similar advisories with regard to Islamic Republic of Iran Shipping Lines (“IRISL”), which at that time was on the SDN List, similarly alerting the maritime industry to be vigilant of potentially fabricated vessel registration and flag credentials.⁷ Notably, OFAC imposed six-figure fines on U.S. companies involved in transactions with IRISL, including a provider of fuel inspection services and a technology company.⁸

Deceptive Shipping Practices

The Advisory identifies the following tactics employed by North Korea to evade sanctions, including with regard to the identity of vessels, shipped goods, and the origin or destination of cargo:

- **Physically Altering Vessel Identification.** North Korean-flagged vessels have physically altered vessels to obscure their identities by painting over vessel names and International Maritime Organization (“IMO”) numbers, a required vessel identification code for vessels meeting certain tonnage thresholds, with alternative IMO numbers.
- **North Korean Ship-to-Ship (“STS”) Transfers.** In order to conceal the origin or destination of cargo, North Korean vessels have transferred cargo from one ship to another while at sea as opposed to at port. North Korea operates a fleet of 24 tankers capable of engaging in STS transfers of refined petroleum products or other illicit goods.⁹

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- **Falsifying Cargo and Vessel Documents.** Falsifying shipping documentation (e.g., bills of lading, certificates of origin, invoices, packing lists, proof of insurance, etc.) has been a method known to be employed by North Korea to hide the origin or destination of cargo.
- **Disabling and Manipulating Automatic Identification System (“AIS”) Transponders and Data.** AIS is a collision avoidance system, which transmits a vessel’s identification and certain navigational and positional data via radio waves. North Korean-flagged merchant vessels have intentionally disabled AIS transponders and manipulated AIS data, such as vessel names and IMO numbers, in order to conceal information regarding a vessel’s voyage (e.g., origin or destination).

These measures serve notice not only on the shipping industry itself, but also on ancillary parties involved in shipping-related transactions, such as insurance companies and financial institutions.

Risk Mitigation Measures

The Advisory also identifies steps parties can take to try to lessen the risk of engaging in prohibited activity or processing prohibited transactions with North Korea. These include:

- **Monitor Potential AIS Manipulation.** Companies in the shipping industry (e.g., registries, insurers, vessel owners, etc.) should investigate vessels that show signs of manipulating AIS transponders or data while in areas surrounding the Korean peninsula.
- **Perform Due Diligence Prior to STS Transfers.** Prior to conducting STS transfers near the Korean peninsula, vessel operators should ensure there is a legitimate business purpose for the STS transfer and verify vessel name, IMO number and flag.
- **Review Shipping Documentation.** Shipping documentation should be reviewed to confirm it is complete and accurate and includes details of the underlying voyage, relevant vessel(s), cargo, origin, and destination.

These measures serve notice not only on the shipping industry itself, but also on ancillary parties involved in shipping-related transactions, such as insurance companies and financial institutions. For example, the U.S. may impose meaningful restrictions on a foreign financial institution that has knowingly facilitated a significant export to or import from North Korea or a significant transaction on behalf of North Korea, including on its ability to maintain a correspondent account in the U.S., which is necessary for it to be able to access U.S. dollars.

As OFAC’s prior enforcement actions related to IRISL demonstrate, companies that trade globally also need to work closely with their shipping and logistics providers to ensure that they are not inadvertently using North Korean flagged vessels or otherwise involving North Korean parties related to international transport particularly in Asia.

Key Takeaways

- The Trump Administration is demonstrating that addressing North Korea's nuclear program is among its highest priorities, such that it will target not only North Korea itself but anyone who does business with it.
- The U.S. is using its economic power to exert leverage on non-U.S. companies and non-U.S. financial institutions through the prospect of imposing "secondary sanctions," such as losing access to the U.S. financial system.
- Companies in the shipping industry should make sure to update their compliance programs to incorporate the risk mitigation measures addressed in the Advisory and in OFAC's prior enforcement actions related to IRISL.
- It is imperative to conduct thorough due diligence, as there is a risk that failure to do so will be considered to be facilitating prohibited North Korea transactions, and potentially result in getting shut out of U.S. business.

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¹ *Treasury Announces Largest North Korean Sanctions Package Targeting 56 Shipping and Trading Companies and Vessels to Further Isolate Rogue Regime*, U.S. Dept. of the Treasury, Feb. 23, 2018, <https://home.treasury.gov/news/press-releases/sm0297>.

² *North Korea Sanctions Advisory*, U.S. Dept. of the Treasury, Feb. 23, 2018, https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf.

³ *Press Briefing by Treasury Secretary Steven Mnuchin on North Korea Sanctions*, The White House, Feb. 23, 2018, <https://www.whitehouse.gov/briefings-statements/press-briefing-treasury-secretary-steven-mnuchin-north-korea-sanctions/>.

⁴ *Id.*

⁵ Steve Holland and Christine Kim, *U.S. Imposes more North Korea Sanctions, Trump Warns of 'Phase Two'*, Reuters, <https://www.reuters.com/article/us-northkorea-missiles-trump/u-s-imposes-more-north-korea-sanctions-trump-warns-of-phase-two-idUSKCN1G71RD>.

⁶ The full list of newly sanctioned parties is available at <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180223.aspx>.

⁷ *Global Advisory to the Maritime Industry Regarding the Islamic Republic of Iran Shipping Lines*, U.S. Dept. of the Treasury, July 19, 2012, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/ofac_irisl_advisory_07192012.pdf; *Nonproliferation and Weapons of Mass Destruction Advisory*, U.S. Dept. of the Treasury, Mar. 31, 2011, https://www.treasury.gov/resource-center/sanctions/Programs/Documents/20110331_advisory.pdf.

⁸ *Maritech Commercial Inc. Settles Potential Civil Liability for Alleged Violations of the Weapons of Mass Destruction Proliferators Sanctions Regulations*, U.S. Dept. of the Treasury, Mar. 21, 2013, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20130321_maritech.pdf; *John Bean Technologies Corporation ("JBT") Settles Potential Civil Liability for Alleged Violations of Executive Order 13382 and/or the Weapons of Mass Destruction Proliferators Sanctions Regulations*, U.S. Dept. of the Treasury, June 19, 2015, https://www.treasury.gov/resource-center/sanctions/CivPen/Documents/20150619_jbt.pdf.

⁹ *North Korea Sanctions Advisory*, U.S. Dept. of the Treasury, Feb. 23, 2018, https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Documents/dprk_vessel_advisory_02232018.pdf.

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