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UN and U.S. Sanctions Target North Korea: Impacts for Asia and Beyond

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The United Nations and United States recently took significant new steps to expand sanctions on North Korea, with implications for international banking; shipping and port activities; air transport; energy and mining sectors; trade in labor and specified metals, minerals and commodities; aviation fuels; and software. The new rules will have a particular impact on companies conducting business in Asia, most importantly China, but also including South Korea, India, Russia and shipping hubs like Singapore and Hong Kong.

North Korea was subjected to new sanctions under United Nations Security Council Resolution 2270 on March 2, 2016 (UNSC Resolution 2270). The United States expanded its North Korea primary and secondary sanctions via a March 15, 2016 Executive Order, following a new U.S. sanctions statute on February 18, 2016. These UN and U.S. steps were taken in response to North Korean nuclear weapon and ballistic missile tests in January and February of 2016.

UN Sanctions

UNSC Resolution 2270 introduced broader sanctions on North Korea, prohibiting Member States from:

- Procuring coal, iron ore, gold, titanium ore, vanadium ore and rare earth minerals from North Korea.
- Supplying to North Korea aviation fuel, aviation gasoline, naptha-type jet fuel, kerosene-type jet fuel and kerosene-type rocket fuel.
- Leasing or chartering vessels or aircraft to, providing crews for, or insuring vessels under the flag of North Korea.

UNSC Resolution 2270 also recited existing export restrictions on trade with North Korea covering certain nuclear-related, military, dual-use, luxury good and imposed new inspection and service controls which require each Member State to:

- Inspect cargo transiting through the Member's territory if the cargo has originated, is destined for or is brokered by North Korea or any designated entities.
- Prohibit entry of vessels believed to be owned or controlled by designated individuals or those carrying prohibited cargo.
- Prohibit the registering of the Member's vessels in North Korea; using the North Korean flag; owning, leasing or operating North Korean vessels; or providing any vessel classification or certification service.

Resolution 2270 also calls upon Member States to sever banking and financial relationships with North Korean banks including by terminating all joint ventures, ownership interests or correspondent banking relationships. Finally, the resolution added several sanctions designations for individuals and companies.

U.S. Sanctions

North Korea Sanctions and Policy Enhancement Act of 2016

On February 18, 2016, President Obama signed into law the North Korea Sanctions and Policy Enhancement Act of 2016 (the Act). This expanded existing sanctions authorities for North Korea and mandated secondary sanctions for non-U.S. parties found to engage in a range of activities with North Korea.

Executive Order 13722

On March 15, 2016, President Obama issued Executive Order 13722, which implements the Act as well as aspects of UNSC Resolution 2270. This adds broad new primary sanctions for North Korea and secondary sanctions pursuant to the Act (in fact covering more activity than required by the Act). Specifically, Executive Order 13722:

- (a) blocks the property of the Government of North Korea and the Workers' Party of Korea (together, the North Korean Regime) and prohibits transactions and services relating to those parties;
- (b) implements secondary sanctions against participants in sectors of the North Korean economy and persons engaging in a variety of activities relating to North Korea;
- (c) implements a broad trade embargo on exports or reexports of goods, services or technology from the United States or by U.S. persons to North Korea;
- (d) prohibits new investment in North Korea by U.S. persons; and
- (e) prohibits approval, finance, facilitation or guarantee by a U.S. person of transactions by a non-U.S. person which would be prohibited if performed by a U.S. person or in the United States.

The U.S. Treasury Department's Office of Foreign Assets Control (OFAC) has issued several general licenses for North Korea in light of the expansion of sanctions, which include authorizations for certain telecommunications and mail transactions, personal remittances, NGO activity, diplomatic activity, patent and intellectual property transactions and emergency medical services.

The Executive Order authorizes secondary sanctions under which the Secretary of Treasury may block parties where it determines that they:

- (i) Operate in a designated industry in the North Korean economy. The U.S. has initially designated the transportation, mining, energy and financial services industries.
- (ii) Sell, supply, transfer or purchase to or from North Korea or a person acting on behalf of the North Korean Regime, directly or indirectly, metal, graphite, coal, or software where it may benefit the North Korean Regime, including the nuclear or ballistic missile programs.
- (iii) Have engaged in, facilitated or been responsible for human rights abuses by or on behalf of the North Korean Regime.
- (iv) Have engaged in, facilitated or been responsible for the exportation of workers from North Korea;
- (v) Have engaged in significant activities undermining cybersecurity by or on behalf of the North Korean Regime.
- (vi) Have engaged in, facilitated or been responsible for censorship by the North Korean Regime.

Secondary sanctions also may be applied to any person who materially assists, sponsors or provides financial, material or technological support for, or goods or services to (or in support of) parties blocked under the Executive Order.

Secondary sanctions are not automatic and require an affirmative designation by the U.S. executive branch. To date, the U.S. government has not made secondary sanctions designations under the Act or Executive Order 13722 (on March 2, 2016, OFAC made designations for North Korea, but U.S. statements indicated that these were made pursuant to the UN resolution.)

However, any non-U.S. person engaging in the activities subject to secondary sanctions would be at risk of sanctions, which under Executive Order 13722 would result in blocking—normally effected by listing as a Specially Designated National, or SDN. The Act also provides for other secondary sanctions penalties including loss of access to the U.S. financial system, exclusion from U.S. government contracts, denial of entry into the United States and seizure and forfeiture of any vessel, aircraft or conveyance that is used to facilitate prohibited activities.

Pending Executive Action

In addition, there are several provisions of the Act where action is pending:

- By August 17, 2016, the Treasury Department is required to determine if North Korea should be designated as a jurisdiction of primary money laundering concern, which would result in additional U.S. anti-money laundering special measures for North Korea.
- By August 17, 2016 and every year thereon, the President is required to submit to Congress a report which identifies foreign ports or airports where inspections of conveyance from Korea are not sufficient to prevent activities giving rise to secondary sanction required under the Act. Goods entering the United States which have been transported through such ports will be subject to enhanced inspection.
- The President is authorized (but not required) under the Act to designate persons who contribute to the bribery of a North Korean government official or contribute to the embezzlement and theft of public funds by a North Korean government official. This could be addressed in a future Executive Order.

Conclusion

These actions represent a significant expansion of UN sanctions as well as U.S. primary and secondary sanctions. The passing of a UN resolution required U.S., European, Chinese and Russian agreement and will make it more likely for other countries in Asia to cooperate with U.S. enforcement efforts. Shortly after the UN resolution, the Philippines searched and then seized a ship owned by North Korea. Chinese enterprises are among those facing risk of U.S. secondary sanctions given China's role as North Korea's largest trading partner. Developments in North Korea will require a new (or renewed) focus on compliance.

If you have any questions about the content of this alert please contact the Pillsbury attorney with whom you regularly work, or the authors below.

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