

## TRUMP ADMINISTRATION HEIGHTENS PRESSURE ON ENTITIES ENGAGED IN PROHIBITED TRANSACTIONS WITH NORTH KOREA: IMPLICATIONS FOR NON-US FINANCIAL INSTITUTIONS.

On 23 February 2017, the Trump administration heightened its pressure on North Korea with new sanctions against 27 entities and 28 vessels either registered or flagged in North Korea, China, Singapore, Taiwan, Hong Kong, Marshall Islands, Tanzania, Panama, and Comoros. According to US Treasury Secretary, Steven Mnuchin, the US is "*aggressively targeting all illicit avenues used by North Korea to evade sanctions, including taking decisive action to block vessels, shipping companies, and entities across the globe that work on North Korea's behalf.*" As a practical matter, the US authorities actions also increase the pressure on financial institutions to strengthen their customer and transactional due diligence and to increase the rigour of their risk management programmes.

The majority of the designations of the third country entities and vessels were pursuant to Executive Order ("EO") 13810 of 20 September 2017. According to the US Treasury Department's press release, available [here](#); the reason for the designation was that the vessels had "*been used to export coal from North Korea or to engage in UN-prohibited ship-to-ship transfers of refined petroleum products.*" As a result, OFAC designated the vessels and entities involved in the transactions. The list of designated entities included, Yuk Tung Energy Private Limited, a Singaporean company, and Hong Kong-based shipping companies Liberty Shipping Co Ltd., Chang An Shipping & Technology, Hongxiang Marine Hong Kong Ltd., Shen Zhong International Shipping Ltd., and Huaxin Shipping Hong Kong Ltd.

OFAC also designated North Korean vessels and entities under EO 13810 for "*operating in the transportation industry in North Korea.*" Lastly, OFAC designated a Taiwanese individual and two of his companies under EO 13722 for coordinating "*North Korean coal exports with a Russia-based North Korean broker,*" and his "*history of other sanctions evasion activities.*"

Under OFAC's 50 Percent Rule, the sanctions apply to the designated persons and any entities in which one or more designated persons has a direct or indirect 50 percent or more ownership interest in the aggregate.

### Key issues

- OFAC designates third country individuals, companies, and vessels, including entities in Singapore, Hong Kong, and Taiwan
- Focus on shipping and energy trading companies
- Non-US banks need to consider sanctions risk from continuing to deal with the designated persons

In addition to the designations, OFAC also issued a global shipping advisory to "alert persons of the significant sanctions risks to those continuing to enable shipments of goods to and from North Korea." The advisory also describes North Korea's sanctions evasions practices. The advisory is available [here](#).

### Issues for Non-US Financial Institutions

Financial institutions engaged in business with companies and in jurisdictions that are at higher risk of being involved, directly or indirectly, with North Korean efforts to evade US sanctions need to take the expanding risk of US action into account in assessing customer and transactional risk, and to manage such risk accordingly.

Section 4(a) of EO 13810 specifically authorises OFAC to designate a non-US financial institution that has:

*(i) knowingly conducted or facilitated any significant transaction on behalf of any person whose property and interests in property are blocked pursuant to Executive Order 13551 of August 30, 2010, Executive Order 13687 of January 2, 2015, Executive Order 13722 of March 15, 2016, or this order, or of any person whose property and interests in property are blocked pursuant to Executive Order 13382 in connection with North Korea-related activities; or*

*(ii) knowingly conducted or facilitated any significant transaction in connection with trade with North Korea.*

OFAC defines knowingly as follows: "with respect to conduct, a circumstance, or a result, means that a person has actual knowledge, or should have known, of the conduct, the circumstance, or the result." Although OFAC has not provided a definition of "significant transaction" under EO 13810, in relation to other sanctions programs it has provided the following guidance:

*OFAC will consider the totality of the facts and circumstances when determining whether transactions are "significant." OFAC will consider the following list of seven broad factors that can assist in the determination of whether a transaction is "significant": (1) the size, number, and frequency of the transaction(s); (2) the nature of the transaction(s); (3) the level of awareness of management and whether the transaction(s) are part of a pattern of conduct; (4) the nexus between the transaction(s) and a blocked person; (5) the impact of the transaction(s) on statutory objectives; (6) whether the transaction(s) involve deceptive practices; and (7) such other factors that the Secretary of the Treasury deems relevant on a case-by-case basis.*

OFAC has the authority to impose the following measures against any non-US financial institution designated under Section 4(b) of EO 13810:

(i) prohibit the opening and prohibit or impose strict conditions on the maintenance of correspondent accounts or payable-through accounts in the United States; or

(ii) impose a blocking requirement which would prohibit US persons (including US banks) from dealing with the designated person and require US persons to block all property and property interests of such blocked persons that come within the possession or control of the US person. EO 13810 is available [here](#).

## **Analysis**

As OFAC continues to target non-US entities that engage in prohibited trade with North Korea, we believe that it will be imperative for non-US financial institutions in particular to assess their existing relationships with any such designated persons and, where necessary, consider exiting the relationship.

We would suggest an active risk-assessment programme to supplement the bank's existing controls such as sanctions screening of transaction and customer data.

These sanctions come at the same time as further EU measures are adopted in line with UN Security Council Resolution 2397 (2017). As well as designating a number of the vessels now listed by OFAC such that their access to EU ports is also restricted, the EU has added additional restrictions to its suite of existing measures. This includes a ban on the import from North Korea of food and agricultural products, machinery, electrical equipment, earth and stone, and wood. It also includes a ban on exports to North Korea of industrial machinery, transportation vehicles, and certain metals.

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