

United States Ratchets Up North Korean Sanctions while Continuing to Ease Cuban Sanctions

Recent developments in economic sanctions and export controls administered by the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") and the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") provide for the incremental easing of sanctions in support of the President's rapprochement with Cuba while responding to the growing threat from North Korea by imposing comprehensive sanctions. Section I of this memorandum addresses recent actions taken by BIS and OFAC to expand access to Cuba. Section II outlines the new restrictions on dealings with North Korea.

Cuban Sanctions Update

On March 15, 2016, OFAC and BIS announced additional¹ amendments to the [Cuban Assets Control Regulations](#) ("CACR")² and [Export Administration Regulations](#) ("EAR")³, respectively. These revised regulations, effective March 16, 2016, continue to ease U.S. sanctions on Cuba and expand authorizations for trade and travel with Cuba. Most notably, the new amendments:

- Authorize U.S. financial institutions to:
 - process U.S. dollar ("USD") "U-turn" transactions between foreign institutions in which Cuba or a Cuban national has an interest;
 - accept and process USD monetary instruments presented for payment indirectly by Cuban financial institutions through a third country bank, with correspondent accounts at third-country financial institutions used for such transactions permitted to be denominated in U.S. dollars; and
 - open and maintain bank accounts in the U.S. for Cuban nationals in Cuba to receive payments in the U.S. for authorized or exempt transactions and to remit such payments back to Cuba.

¹ Please see our alert memos [U.S. Continues Incremental Easing of Cuban Sanctions](#) (January 28, 2016), [U.S. Continues Incremental Easing of Cuban Sanctions](#) (September 22, 2015), and [Revised Cuba Regulations](#) (January 26, 2015) for additional information regarding the recent amendments to the Cuban Asset Control Regulations.

² 31 C.F.R. Part 515.

³ 15 C.F.R. Parts 730-774.

- Expand the existing authorization for U.S. entities to maintain a physical presence⁴ in Cuba to include:
 - entities that engage in authorized humanitarian projects;
 - entities that engage in authorized non-commercial activities intended to provide support for the Cuban people; and
 - private foundations or research or educational institutes engaging in certain authorized activities pursuant to sections 515.574, 515.575 and 515.576 of the CACR.
- Expand the existing authorization for a business presence in Cuba⁵ to include:
 - exporters of goods that are authorized for export or reexport to Cuba or that are exempt;
 - entities providing mail or parcel transmission services or cargo transportation services; and
 - providers of carrier and travel services to facilitate authorized transactions.
- Authorize the export or reexport of items needed to establish and maintain a physical or business presence in Cuba to all persons authorized by OFAC to have such presence.
- Expand the existing authorization for people-to-people educational travel to permit individual travel as well as travel sponsored by a U.S. organization. To qualify for this general license, the traveler must (i) engage in a full-time schedule of educational exchange activities intended to enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities and (ii) retain records related to the authorized travel, including records that demonstrate a full-time schedule of authorized activities.
- Authorize the importation of Cuban-origin software.
- Authorize transit through Cuban territory of cargo from the U.S. aboard a vessel on temporary sojourn to Cuba that is destined for other countries.
 - Previously a license was required for the temporary export to Cuba. For cargo to be eligible for this BIS license exception, the cargo (i) must depart with the vessel at the end of its temporary sojourn, (ii) cannot enter the Cuban economy, and (iii) cannot be transferred to another vessel while in Cuba.

⁴ A physical presence includes an office, warehouse, classroom, or retail outlet space.

⁵ A business presence includes establishing and maintaining subsidiaries, branches, offices, joint ventures, franchises, and agency or other business relationships with any Cuban national.

- Authorize Cuban nationals in the U.S. in a non-immigrant status to earn a salary or compensation, so long as the recipient is not subject to any special tax assessments in Cuba. In connection with this authorization, U.S. companies will be authorized to engage in transactions related to the sponsorship or hiring of Cuban nationals to work or perform in the United States similar to nationals from other countries, provided that no additional payments may be made to the Cuban government in connection with such sponsorship or hiring.
- Authorize individuals to buy Cuban-origin merchandise for personal consumption while in a third country and receive services from Cuba or a Cuban national that are ordinarily incident to travel and maintenance within a third country. For example, this authorization will allow U.S. citizens traveling in Europe to purchase and consume Cuban-origin products while abroad.
- Authorize the provision of educational grants and awards to a Cuban national or in which Cuba or a Cuban national otherwise has an interest, and clarify that an existing authorization applies to the provision of grants and awards for the humanitarian projects authorized in OFAC's regulations.

In addition to these new and expanded authorizations, BIS is adopting a licensing policy of case-by-case review for exports and reexports of items that would enable or facilitate exports from Cuba of items produced by the Cuban private sector. However, BIS explained that applications to export or reexport items for use by state-owned enterprises, agencies, and other organizations that primarily generate revenue for the state, or to export or reexport items to the Cuban military, policy, intelligence, or security services, will generally be denied.

North Korean Sanctions Update

As the United States eases sanctions on Cuba, it continues to tighten restrictions on the Government of North Korea, and persons providing various forms of material support to North Korea, in light of North Korea's continuing nuclear and ballistic missile activities.

On February 18, 2016, the President signed the bipartisan [North Korea Sanctions and Policy Enhancement Act of 2016](#) (the "[Act](#)").⁶ The Act provides for secondary sanctions (i.e., sanctions targeting persons engaged in disfavored conduct outside U.S. jurisdiction) against any person who knowingly:

- Engages in significant activities with the Government of North Korea⁷ that materially contribute to the proliferation of weapons of mass destruction and the means to deliver them;

⁶ Pub. L. No. 114-122 (2016).

⁷ The Act defines the Government of North Korea as "the Government of North Korea and its agencies, instrumentalities, and controlled entities." *Id.* § 3(5). Likewise, Section 9 of Executive Order 13722 defines the Government of North Korea as "the Government of the Democratic People's Republic of Korea and its agencies, instrumentalities, and controlled entities." 81 Fed. Reg. 14943, 14945 (Mar. 16, 2016).

- Trades in, or provide significant training or other services with respect to, arms or related material with North Korea;
- Trades in luxury goods with North Korea;
- Engages in censorship or serious human rights abuses;
- Engages in money laundering or any other illicit activity in support of the Government of North Korea or any senior government official thereof;
- Engages in significant activities to undermine cybersecurity;
- Directly or indirectly, sells to the Government of North Korea a significant amount of metal or software related to weapons proliferation, military, intelligence or political repression; or
- Attempts any of the above prohibited activities.

These designations are phrased as mandatory, though as a practical matter affirmative action by U.S. authorities is required. The Act also provides authority to impose sanctions against any person who knowingly:

- Facilitates the activities of persons designated by relevant U.N. Security Council resolutions;
- Bribes a North Korean government official or otherwise participates in the misappropriation, theft, or embezzlement of public funds to the benefit of a North Korean government official; or
- Provides material support to persons engaged in such activities.

The Act also imposes a comprehensive export ban on North Korea, imposing a licensing requirement, with the presumption of denial, for most exports of U.S.-origin goods and technology to North Korea. In support of the comprehensive export ban, the Act calls for enhanced customs screenings by the U.S. Department of Homeland Security for goods being conveyed through any seaport and airport that the President deems deficient in its ability to effectively prevent facilitation of sanctionable activities with respect to vessels transiting North Korea.

The Act also requires the President to determine whether North Korea is a jurisdiction of primary money laundering concern, instructs the President to withhold foreign assistance from countries providing lethal military equipment to North Korea, prohibits government contracts with designated persons, and imposes a travel ban on designated persons.

On March 16, 2016, President Obama issued, [Executive Order 13722](#), further expanding on the Act. North Korea is now the subject of comprehensive U.S. sanctions forbidding:

- Exporting or reexporting any goods, services, or technology to North Korea;
- Making new investment in North Korea; and
- Facilitating actions by a foreign person that would be prohibited if conducted by a person subject to U.S. jurisdiction.

Prior provisions barred all imports to the United States from North Korea.

Further, the Executive Order blocks all property of the Government of North Korea, the Workers' Party of Korea, or any agency, instrumentality, or controlled entity of the Government of North Korea. It further provides authority for future designation of any person or entity:

- Operating in sectors of the North Korean economy designated for potential sanctions (so far, the transportation, mining, energy and financial services sectors of North Korea have been designated);
- Participating in the trade of certain metals, coal, graphite, or software where either the goods or the revenue benefits the Government of North Korea or the Workers' Party of Korea;
- Engaging in the violation of human rights, censorship, undermining of cybersecurity, or the exportation of workers from North Korea to generate revenue; or
- Providing material support for any of the preceding activities or acting on behalf of any blocked person or entity in North Korea.

With the enactment of the Act and the promulgation of the Executive Order, North Korea is now subject to comprehensive U.S. sanctions. Non-U.S. persons must also consider the new risks associated with the secondary sanctions incorporated in the enhanced U.S. sanctions being imposed on North Korea.

If you have any questions, please feel free to contact any of your regular contacts at the Firm, or [Paul Marquardt](#) of our Washington office, listed on our website at <http://www.clearygottlieb.com>.

Office Locations

NEW YORK

One Liberty Plaza
New York, NY 10006-1470
T: +1 212 225 2000
F: +1 212 225 3999

WASHINGTON

2000 Pennsylvania Avenue, NW
Washington, DC 20006-1801
T: +1 202 974 1500
F: +1 202 974 1999

PARIS

12, rue de Tilsitt
75008 Paris, France
T: +33 1 40 74 68 00
F: +33 1 40 74 68 88

BRUSSELS

Rue de la Loi 57
1040 Brussels, Belgium
T: +32 2 287 2000
F: +32 2 231 1661

LONDON

City Place House
55 Basinghall Street
London EC2V 5EH, England
T: +44 20 7614 2200
F: +44 20 7600 1698

MOSCOW

Cleary Gottlieb Steen & Hamilton LLC
Paveletskaya Square 2/3
Moscow, Russia 115054
T: +7 495 660 8500
F: +7 495 660 8505

FRANKFURT

Main Tower
Neue Mainzer Strasse 52
60311 Frankfurt am Main, Germany
T: +49 69 97103 0
F: +49 69 97103 199

COLOGNE

Theodor-Heuss-Ring 9
50688 Cologne, Germany
T: +49 221 80040 0
F: +49 221 80040 199

ROME

Piazza di Spagna 15
00187 Rome, Italy
T: +39 06 69 52 21
F: +39 06 69 20 06 65

MILAN

Via San Paolo 7
20121 Milan, Italy
T: +39 02 72 60 81
F: +39 02 86 98 44 40

HONG KONG

Cleary Gottlieb Steen & Hamilton (Hong Kong)
Hysan Place, 37th Floor
500 Hennessy Road
Causeway Bay
Hong Kong
T: +852 2521 4122
F: +852 2845 9026

BEIJING

Twin Towers – West (23rd Floor)
12 B Jianguomen Wai Da Jie
Chaoyang District
Beijing 100022, China
T: +86 10 5920 1000
F: +86 10 5879 3902

BUENOS AIRES

CGSH International Legal Services, LLP-
Sucursal Argentina
Avda. Quintana 529, 4to piso
1129 Ciudad Autonoma de Buenos Aires
Argentina
T: +54 11 5556 8900
F: +54 11 5556 8999

SÃO PAULO

Cleary Gottlieb Steen & Hamilton
Consultores em Direito Estrangeiro
Rua Funchal, 418, 13 Andar
São Paulo, SP Brazil 04551-060
T: +55 11 2196 7200
F: +55 11 2196 7299

ABU DHABI

Al Sila Tower, 27th Floor
Sowwah Square, PO Box 29920
Abu Dhabi, United Arab Emirates
T: +971 2 412 1700
F: +971 2 412 1899

SEOUL

Cleary Gottlieb Steen & Hamilton LLP
Foreign Legal Consultant Office
19F, Ferrum Tower
19, Eulji-ro 5-gil, Jung-gu
Seoul 100-210, Korea
T: +82 2 6353 8000
F: +82 2 6353 8099