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FinCEN Proposes New Rule to End North Korea's Access to U.S. Financial System

In the wake of North Korea's nuclear tests that violated United Nations (UN) sanctions, on June 1, 2016, the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) released a Notice of Finding that concludes that the Democratic People's Republic of Korea (DPRK or North Korea) is a "jurisdiction of primary money laundering concern."

FinCEN also released a notice of proposed rulemaking (NPRM) recommending a special measure to further isolate North Korea from the international financial system by prohibiting covered U.S. financial institutions from opening or maintaining correspondent accounts with North Korean financial institutions, and prohibiting the use of U.S. correspondent accounts to process transactions involving North Korean financial institutions. The proposed rule requires covered institutions to implement special due diligence measures designed to guard against the risk of North Korean financial institutions gaining access to their correspondent accounts. These actions were taken pursuant to Section 311 of the USA PATRIOT Act (31 U.S.C. § 5318A), following on the heels of the [North Korea Sanctions and Policy Enhancement Act of 2016](#) (H.R. 757), which increased U.S. sanctions against North Korea in March 2016. To read about these increased sanctions in more detail please see our previous [GT Alert, "President Obama Signs Legislation Tightening North Korea Sanctions."](#)

Section 311

Before the special measures can go into effect, the public has until Aug. 2, 2016, to submit written comments. Per Section 311 requirements, FinCEN, on behalf of the Treasury Department, consulted with the Federal Reserve, representatives of other Federal functional regulators, the Department of Justice, and the Department of State, among others.

The statute provides for a menu of special measures, which may be implemented in any combination (31 U.S.C. 5318A) (b)(1)-(5)):

- > **Increased recordkeeping and reporting** regarding each transaction or the aggregate amount of transactions concerning any jurisdiction, financial institution, class of transactions involving a jurisdiction, or type of account that is of primary money laundering concern. Such recordkeeping and reporting would include the identity of the beneficial owner and a description of any transaction;
- > **Collection and retention of information relating to beneficial ownership** of foreign account holders or their representatives involving the above parties;
- > **Collection of increased information relating to certain payable-through or correspondent accounts with a foreign financial institution** involving a designation of primary money laundering concern, including the identity of each customer (and any representative of such customer) who is permitted to use, or whose transactions are routed through, such account, and information about them that is substantially comparable to that maintained on its domestic customers; and/or
- > **An outright prohibition or conditions** on opening or maintaining such correspondent or payable-through accounts.

While many international and other significant financial institutions appeared to have cut financial relationships with North Korea after the 2005 U.S. sanctioning of the Macau-based Banco Delta Asia, the Treasury Department's Notice lists transactions, including those involving internationally prohibited arms deals, that have continued to flow from or through North Korea using entities or individuals in other countries. As FinCEN explained, in finding that the DPRK is a jurisdiction of primary money laundering concern, North Korea has continued to evade U.S. and international sanctions through the use of front companies and deceptive financial activities.

Heightened Due Diligence for U.S. Financial Institutions

U.S. financial institutions and foreign financial institutions with a U.S. presence that qualify as covered financial institutions have until August 2nd to submit comments to the proposed rule.

Once the rule is final, covered financial institutions should ensure that they do not open or maintain a correspondent account that is used for or on behalf of a North Korean banking institution or an account used to process a transaction involving a North Korean financial institution. To ensure compliance, covered financial institutions should consider consulting with counsel and notifying those foreign correspondent account holders that the covered financial institutions know or have reason to believe provide services to a North Korean financial institution that they may not provide a North Korean financial institution with access to the correspondent account maintained at the covered financial institution. Additional steps to implement this heightened due diligence may include use of software comparable to the software used to comply with Office of Foreign Assets Control (OFAC) sanctions, and procedures to identify and prevent risks arising from suspicious activities or patterns of transactions. While the proposed rulemaking does not anticipate additional recordkeeping burdens, financial institutions should maintain records documenting their compliance.

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