

## Summary of the North Korea Sanctions and Policy Enhancement Act of 2016

*February 18, 2016*

Less than a week after North Korea's January 6, 2016 nuclear test, the U.S. House of Representatives passed a sanctions bill, [H.R. 757](#), on a 418-2 vote. The Senate unanimously approved an amended version of the bill on February 10, which the House subsequently agreed to. The final version of the legislation, the North Korea Sanctions and Policy Enhancement Act of 2016 (NKSPEA), was signed into law by President Obama on February 18, 2016.

While the Act is a complex piece of legislation, some of its core components include:

- A requirement for the President to sanction entities found to have contributed to North Korea's WMD program, arms trade, human rights abuses, or other illicit activities. (Sanctioned entities may face civil or criminal penalties, as well as loss of access to the U.S. financial system.)
- Mandatory sanctions for entities that are involved in North Korea's mineral or metal trade, which contribute to a large component of the country's foreign export earnings.
- Discretionary authority for the President to sanction entities that provide support to persons sanctioned by the UN Security Council.
- A requirement that the Treasury Department determine whether North Korea should be listed as "a jurisdiction of primary money laundering concern," which would entail the application of new financial restrictions.
- The blocking of any property belonging to the North Korean government, the Korean Workers' Party, or a person acting on their behalf, if it comes under U.S. jurisdiction.
- New sanctions authorities related to North Korean human rights abuses and violations of cybersecurity.
- Authorization for the President to waive sanctions contained in the Act in order to facilitate humanitarian activities in North Korea. Certain activities including operations related to POW/MIA remains recovery missions are exempt from sanctions, and the President may also waive the application of sanctions contained in the Act on a case-by-case basis for national security or for other reasons.

*We thank NCNK Member James Min for his contribution to this summary. Please note that this summary should not be construed as legal advice or a comprehensive assessment of the legislation's implications.*

<i>Issue</i>	<i>Summary</i>	<i>Notes</i>
<b>Current Status</b>	<i>Passed by both Houses of Congress; awaiting the President's signature.</i>	
<b>Sanctions Designations</b>	<p>The President is required to sanction individuals/entities determined to have knowingly:</p> <ul style="list-style-type: none"> <li>• Transferred WMD-related goods and services, or arms and related materiel, to/from North Korea.</li> <li>• Transferred luxury goods to North Korea.</li> <li>• Been responsible or complicit in censorship or human rights abuses by the government of North Korea.</li> <li>• Engaged in money laundering, counterfeiting, narcotics trafficking, bulk cash smuggling, or other illicit activities that involve or support the government of North Korea</li> <li>• Engaged in acts undermining cybersecurity.</li> <li>• Sold, supplied, or transferred to/from North Korea significant amounts of precious metal, graphite, raw or semi-finished metals (including aluminum, steel, and coal), or software, if directly related to WMD production, the Korean Workers' Party, military/security activities, or forced labor (including outside of North Korea).</li> </ul> <p>The President has discretionary authority to sanction individuals/entities who have:</p> <ul style="list-style-type: none"> <li>• Supported any person sanctioned by the UN Security Council.</li> <li>• Contributed to bribery of or misappropriation of public funds by a North Korean government official.</li> </ul>	<p>This is a key section of the sanctions legislation. While the White House already has the authority to impose a broad range of North Korea-related sanctions under the International Emergency Economic Powers Act (IEEPA), the UN Participation Act, and the applicable Executive Orders issued thereunder, NKSPEA would make the application of specified sanctions in the Act mandatory rather than discretionary.</p> <p>The Act's inclusion of sanctions for mineral and metals trade with North Korea would impact an important source of hard currency for Pyongyang which involves many Chinese buyers and investors. Many of the mineral rights in the DPRK are ultimately controlled by the Korean Workers' Party, thereby falling under this restriction even if not WMD related.</p> <p>Somewhat unique in comparison to other U.S. sanctions, NKSPEA also integrates anti-bribery, anti-money laundering, and cybersecurity into the sanctions legal regime.</p>
<b>Penalties for violations</b>	<p>Sanctioned individuals/entities may face:</p> <ul style="list-style-type: none"> <li>• Civil/criminal penalties;</li> <li>• Blocking/forfeiture of assets that come under U.S. jurisdiction;</li> <li>• Loss of access to the U.S. financial system; and</li> <li>• Denial of entry to the U.S.</li> </ul> <p>Additionally,</p> <ul style="list-style-type: none"> <li>• The U.S. government may not procure goods or services from any</li> </ul>	

	<p>person/entity that has violated sanctions;</p> <ul style="list-style-type: none"> <li>• Ships and aircraft used to facilitate sanctioned activities may be seized and forfeited.</li> </ul>	
<b>Blocking of North Korean government property</b>	The President is directed to block any property under U.S. jurisdiction belonging to the government of North Korea, the Worker’s Party of Korea, or a person acting on their behalf.	
<b>Transaction Licensing</b>	The President shall deny or revoke a license for any transaction that lacks sufficient financial controls to ensure that it will not facilitate prohibited activities.	Under current regulations, the importation of North Korean goods, technology, or services into the U.S. requires a license from the Treasury Department’s Office of Foreign Assets Control. Exports of U.S. goods and technologies to North Korea and North Korean end users are subject to stringent licensing requirements under the Export Administration Regulations (EAR), which the Commerce Department’s Bureau of Industry and Security oversees.
<b>Money Laundering</b>	Urges the President “in the strongest terms, to immediately designate” North Korea as a jurisdiction of primary money laundering concern, and requires the Treasury Department to determine within 180 days whether reasonable grounds exist for such a designation.	This designation, made under Section 311 of the Patriot Act, could require U.S. banks to implement additional due diligence measures to prevent improper access by North Korean financial institutions to U.S. correspondent accounts. (Most U.S. banks and banks with a presence in the U.S. already avoid most transactions with North Korea.)
<b>Export Licensing</b>	Prohibits defense exports to the government of North Korea, and requires a license for the export of any goods/technology.	This is already the case under the Arms Export Control Act, the International Traffic in Arms Regulations, and EAR. The Act reaffirms the status quo.
<b>Humanitarian and Other Exemptions</b>	Transactions related to U.S. intelligence activities, DPRK diplomatic activities at the UN Headquarters in New York, or POW/MIA remains recovery missions in North Korea, are exempt from sanctions contained	This exemptions and waiver described in this section apply to the sanctions contained in the Act, and not necessarily to sanctions in general.

	<p>in the Act.</p> <p>The President may waive certain sanctions contained in the Act for renewable periods of between 30 days and one year, if doing so is necessary for humanitarian assistance or the promotion of North Korean human rights. This waiver must include notification and accountability controls to ensure that the activities covered are for humanitarian or human rights-related purposes. Permitted activities under this waiver include financial transactions, shipping, and other services related to humanitarian activities, as well as incidental contact with individuals under the control of a person/entity subject to sanctions in the course of providing humanitarian assistance.</p> <p>The President is also authorized to issue regulations necessary to facilitate the provision of financial services by a foreign financial institution not controlled by North Korea in support of humanitarian activities.</p>	<p>Humanitarian assistance is already exempt under IEEPA, and thus this section reaffirms that the new restrictions or designation requirements under NKSPEA can be waived for humanitarian or human rights related activities.</p> <p>The authorization for a “clean” banking channel for humanitarian activities is consistent with what was needed under the Iran sanctions to facilitate banks to service humanitarian transactions. However, while such affirmative authorization is helpful, banks will decide on their own commercial risk threshold and not necessarily undertake transactions involving North Korea merely due to a general license that may be issued by OFAC.</p>
<p><b>Waivers &amp; sanctions removal</b></p>	<ul style="list-style-type: none"> <li>• The President may waive, on a case-by-case basis, the application of sanctions for renewable periods of between 30 days and one year, if doing so is important to U.S. national security interests, will further the enforcement of this Act, or is for an important law enforcement purpose.</li> <li>• Sanctions may be suspended for up to one year (renewable every 180 day period) if North Korea has made progress on issues including compliance with UN Security Council resolutions, human rights, and illicit activities.</li> <li>• Sanctions may be terminated if North Korea has made significant progress toward achieving further milestones on these issues.</li> </ul>	
<p><b>Human Rights</b></p>	<p>The executive branch is required to report to Congress on:</p> <ul style="list-style-type: none"> <li>• Plans for promoting unrestricted mass electronic communications in North Korea;</li> <li>• North Korean political prison camps;</li> <li>• Serious human rights abuses or censorship undertaken by the North</li> </ul>	

	<p>Korean government, with specific findings as to the responsibility of Kim Jong Un, members of North Korea’s National Defense Commission, and members of the Organization and Guidance Department of the Workers’ Party of Korea; and</p> <ul style="list-style-type: none"> <li>• Plans for a U.S. strategy to promote international awareness of the human rights situation in North Korea, and to engage in international outreach on issues including forced labor, trafficking, and repatriation of North Koreans.</li> </ul> <p>The President is required to sanction any person found responsible for serious human rights abuses or censorship in North Korea.</p>	
<b>Cyber Security</b>	<p>The President is required to sanction any North Korea-linked individual/entity found to have engaged in significant acts undermining cybersecurity aimed against the U.S. government or private sector.</p> <p>The President is required to report to Congress every 180 days on:</p> <ul style="list-style-type: none"> <li>• The identify of persons who have contributed to North Korean government activities undermining cyber security;</li> <li>• The extent to which foreign governments have provided material support to North Korean activities undermining cyber security;</li> <li>• U.S. efforts to engage foreign governments to halt North Korea’s capability to conduct activities undermining cyber security; and</li> <li>• The U.S. strategy to counter North Korea’s efforts to undermine U.S. cybersecurity.</li> </ul> <p>Additionally, U.S. sanctions concerning North Korean activities undermining cybersecurity, as provided for in previous Executive Orders, are to remain in effect until the President certifies that North Korea is no longer engaged in such activities or in violation of UN Security Council Resolutions.</p>	
<b>Arms Trade</b>	<p>The President is directed to withhold foreign aid (other than for human rights, democracy, rule of law, or emergency humanitarian assistance) to the government of any country that provides lethal military</p>	

	equipment to North Korea. This provision may be waived if the Secretary of State deems it to be in the national interest.	
<b>Cargo Inspections</b>	The President must submit an annual report identifying foreign ports or airports that have not taken sufficient measures to prevent the facilitation of sanctioned North Korean activities. The Department of Homeland Security may require enhanced inspections of any cargo that has been transported through one of the identified ports or airports.	
<b>Reporting Requirements (not otherwise noted in this comparison)</b>	<p>Requires the Executive Branch to periodically brief Congress on efforts to implement this Act.</p> <p>Requires the Secretary of State to conduct a comprehensive review of current U.S. policy toward North Korea and possible alternatives, and to submit to Congress a report based on this review.</p> <p>Requires the President to direct the Secretary of State to develop a strategy to improve international implementation and enforcement of UN North Korea sanctions.</p> <p>Requires the Executive Branch to regularly brief Congress on efforts to strengthen high-level trilateral policy coordination between the U.S., Japan, and South Korea in regards to North Korea.</p>	
<b>Terrorism</b>	Finds that the government of North Korea has sponsored acts of international terrorism.	While the Act would not direct the State Department to re-list North Korea as a State Sponsor of Terror, it would clearly state Congress' position on the issue. (Exports to North Korea under the anti-terrorism category in the EAR are currently denied irrespective of NKSPEA.)
<b>Travel warning</b>	The Secretary of State is directed to expand the scope, details, and frequency of travel warnings for North Korea.	
<b>Funding</b>	<p>Authorizes the appropriation of funds for:</p> <ul style="list-style-type: none"> <li>• Radio broadcasting into North Korea (\$3,000,000 authorized)</li> <li>• Actions to increase the availability of information sources not controlled by the government of North Korea, such as radios capable</li> </ul>	

	<p>of receiving international broadcasts (\$2,000,000 authorized)</p> <ul style="list-style-type: none"> <li>• Actions to make unrestricted electronic mass communication devices available within North Korea (\$2,000,000 authorized)</li> <li>• Humanitarian support for North Korean refugees (\$2,000,000 authorized)</li> </ul>	
<b>Effective Date</b>	Effective upon enactment, except as otherwise provided for.	In practical terms, the President will need to issue Executive Orders and/or OFAC will need to issue general licenses and/or revisions to the North Korea Sanctions Regulations (31 CFR Part 510) for the Act to be fully implemented.