

North Korea Sanctions – European Union

1. Who do the EU Sanctions apply to?

The EU sanctions regime applies:

- within the territory of the EU, including its airspace;
- on board any aircraft or any vessel under the jurisdiction of a Member State;
- to any person inside or outside the territory of the EU, who is a national of a Member State;
- to any legal person, entity or body which is incorporated or constituted under the law of a Member State; and
- to any legal person, entity or body in respect of any business done in whole or in part within the EU.

This will include Owners, Managers, Operators, Charterers and even vessels which are registered, incorporated, constituted or do business in whole or in part within the EU.

The sanctions do not apply to non-EU companies. However, if those companies take any action that is in breach of sanctions, associated EU companies and employees who are EU citizens may face penalties under the EU regime.

In addition, under point (e) above, non-EU companies may face sanctions in respect of any business that is done in whole or in part within the EU. The sanctions are limited to that particular business, and would not extend to exclusively non-EU business carried out by those companies.

2. Prohibitions: Overview

The prohibitions of greatest significance to the shipping sector relating to North Korea are as follows (noting that this is by no means a complete list of prohibitions):

a. Asset Freezes

All funds and economic resources belonging to, owned, held or controlled by listed parties are to be frozen. In addition, no funds or economic resources shall be made available, directly or indirectly, to or for the benefit of listed parties. These provisions have a very wide scope, and are intended to go beyond affecting only the funds and economic resources of listed parties. Indirect payments, such as payment to a non-listed party who then in turn pays the money to a listed party, are prohibited.

b. Financial Measures / Investments

The financial restrictions effectively prohibit transacting with any entity based in the DPRK. The restrictions include (but are not limited to):

- Prohibitions on transferring funds to or from the DPRK. It is not permissible to provide public or private financial support for trade with the DPRK, to DPRK nationals, or entities involved in such trade.
- Investment in the territories of the Member States by the DPRK, its nationals, or entities incorporated in the DPRK.

c. Export and Import Restrictions

The restrictions imposed on trade with North Korea are comprehensive. These include (but are not limited to):

Metals / Minerals

- It is prohibited to procure coal, iron, and iron ore from the DPRK.
- It is prohibited to import copper, nickel, silver and zinc from the DPRK.
- It is prohibited to import, purchase or transfer earth and stone, including magnesite and magnesite from the DPRK.
- It is prohibited to export, import or broker gold and precious metals, as well as of diamonds, to, from or for the Government of the DPRK. The procurement from the DPRK of gold, titanium ore, vanadium ore, rare-earth minerals, copper, nickel, silver and zinc is also prohibited.
- It is prohibited to sell, supply, transfer or export all industrial machinery, transportation vehicles, and iron, steel and other metals to the DPRK.

Liquid Cargoes / Petroleum Products

- It is prohibited to export to the DPRK all condensates and natural gas liquids.
- It is prohibited to export aviation fuel to the DPRK.
- It is prohibited to sell, supply, transfer or export crude oil to the DPRK.
- It is prohibited to import, purchase or transfer petroleum products from the DPRK.
- It is prohibited to sell, supply, transfer or export all refined petroleum to the DPRK.

Other goods

- It is prohibited to import, purchase or transfer food and agricultural products from the DPRK.
- It is prohibited to export helicopters and vessels to the DPRK. It is also prohibited to import, purchase or transfer vessels from the DPRK.
- It is prohibited to import or export luxury goods to or from the DPRK.
- It is prohibited to import, purchase or transfer machinery and electrical equipment from the DPRK.
- It is prohibited to import textiles from the DPRK.
- It is prohibited to import, purchase or transfer wood from the DPRK.

Dual Use Goods

- It is prohibited to export to DPRK (1) items, materials and equipment relating to dual-use goods and technology; (2) and any other item listed in the conventional arms dual-use list adopted by the UN Sanctions Committee pursuant to paragraph 7 of UNSCR 2321 (2016). Related assistance, technical training, advice and services are also prohibited.

d. Ports and Vessels

There are further restrictions on DPRK Ports and Vessels. Outlined below are those key restrictions applicable to EU persons (including individuals and companies) operating in the shipping sector:

- It is prohibited to obtain authorization for a vessel to use the DPRK flag, to own, lease, operate, or provide any vessel classification, certification or associated service, or to insure any vessel flagged to the DPRK, including chartering such vessels.
- It shall be prohibited to register vessels in the DPRK. It is prohibited to apply for or to assist in the registration or maintenance on the register of any vessel owned, controlled or operated by the DPRK or DPRK nationals, any vessels listed by the EU or that has been deregistered by another State.
- It is prohibited to provide any servicing to DPRK vessels, if there is information available that the vessels carry prohibited items. Vessels listed by the EU shall be seized.
- It is prohibited to facilitate or engage in ship-to-ship transfers to or from any DPRK flagged vessel of any goods that are being sold, supplied, transferred or exported to or from the DPRK.

e. Restrictions on Services

The following restrictions on services are also relevant to those operating in the shipping sector:

- It is prohibited to provide services incidental to mining and to manufacturing in the chemical, mining and refining industry to the DPRK.
- It is prohibited to lease or charter vessels and aircraft and to provide crew services to (1) the DPRK, (2) any persons listed by the EU, (3) any other DPRK entities, or (4) any other persons or entities whom the Member State determines to have assisted in the evasion of sanctions.
- It is prohibited to procure vessel or aircraft services from the DPRK.

3. Due diligence as a defence to liability

The EU Regulations implementing these prohibitions include a defence to liability where the person, entity or body concerned “*did not know, and had no reasonable cause to suspect*”, that their actions would infringe the relevant prohibitions.

Conducting thorough investigations into any particular trade or transaction involving sanctioned jurisdictions is, therefore, critical as well documented investigations and screenings may serve as a defence to unintentional sanctions violations.

4. Anti-circumvention

The Regulations contain anti-circumvention wording that provides that it “*shall be prohibited to participate knowingly and intentionally in activities the object or effect of which is to circumvent the prohibitions...*” Therefore, even if a transaction is not in direct breach of sanctions, if it is intended to circumvent sanctions, a violation and liability may still arise.

5. Avoiding a breach – effective due diligence

Due to the scope of the restrictions detailed above, any trade involving DPRK is likely to involve serious sanctions risk and will only be permitted in exceptionally narrow circumstances.

In these circumstances, we advise Members to carry out effective due diligence to identify any DPRK involvement in their trade and take legal advice if identified.

In particular, in order to minimise the risk of falling foul of the cargo prohibitions, the following questions should be asked:

- What is the cargo? It should be identified as precisely as possible.
- What is the origin of the cargo?
- What is the location of the cargo? This may be different to the cargo's origin.
- What is the destination of the cargo? This should include the cargo's final destination and any intermediate destinations.
- Who will be the ultimate receiver of the cargo? Will the cargo pass through the custody of any intermediaries before reaching the ultimate receiver and if so, who are they?
- What will the cargo be used for?

Additionally, Members should be particularly aware of inadvertently undertaking ship-to-ship ("STS") transfers of DPRK origin or destination goods, which are prohibited. Where STS activities are contemplated (particularly off the Chinese, Korean, and Japanese coasts) then the following steps should be taken:

- Those outlined at above;
- Review of a vessel's AIS history for anomalies and/or periods of "dark activity";
- Verification of a vessel's names, IMO number and flag;
- Verify if there is a history of "flag hopping" or frequent changes in name; and
- Review whether the vessel has been identified in any advisory (including U.S. or UN) indicating it has a history of STS operations linked to DPRK.

Disclaimer: This Member Alert is intended to provide only general guidance and information pertaining to the issues identified and commented upon herein. The content of this Alert is not intended to be, and should not be treated as being final and binding legal advice. If Members consider they are likely to or in fact have encountered problems or difficulties as discussed in this Alert, they are asked to contact the Club and obtain further legal advice relevant to their specific circumstances.