

**H.R. 1771, the North Korea Sanctions Enforcement Act: Issues for
Individuals/Organizations Operating in North Korea**

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H.R. 1771, the North Korea Sanctions Enforcement Act, was approved on July 28 by the House of Representatives. It now awaits action in the Senate. While the legislation includes language providing for humanitarian exemptions, it may indirectly impact the operations of NGOs and individuals engaging in humanitarian, development, business, or educational exchange projects within North Korea.

Some of these potential impacts are outlined below. (Please note that this should not be construed as legal advice.) This is only an initial assessment: the legislation may be subject to amendment in the Senate, and its regulatory implementation by the executive branch may determine the extent of its impact on NGO activities in North Korea.

It does not appear that the measures within the bill would have a direct impact on NGO activities in North Korea, but they may deter foreign financial institutions from continuing any business activities with the country. This, in turn, could potentially make it more difficult for NGOs to conduct transactions to procure local goods, pay local staff, etc. The extent to which the administration uses its new authority to sanction financial institutions will likely impact how broad this deterrent effect is.

FINANCIAL SANCTIONS: New sanctions on financial institutions that facilitate North Korean proliferation and illicit activities are at the heart of this legislation. H.R. 1771 would require the executive branch to sanction (blocking all of their property in the U.S.) any person or institution engaged in “significant acts” of money laundering, bulk cash smuggling, or other criminal activities involving the North Korean government. It would also give the President the discretionary authority to sanction financial institutions that knowingly facilitate the transfer of funds or property linked to violations of UN Security Council resolutions, on behalf of entities designated by Executive Order or the UN Security Council, or that have contributed to the bribery or misappropriation of public funds by an official of the North Korean government.

Financial institutions hit with these discretionary sanctions could be banned from accessing the U.S. financial system – as Banco Delta Asia was in 2005. The legislation

also urges the President “in the strongest terms” to consider designating North Korea as a jurisdiction of primary laundering concern and apply similar sanctions against its government.

What this provision means is that U.S. banking institutions and many foreign institutions with nexus to the U.S. financial system (e.g. European and many Chinese banks) are likely to steer clear of any transactions that relate to North Korea due to U.S. regulatory implications. This could deter even licensed and exempt financial transactions, as has happened with Iran. It became quite difficult for NGOs to conduct their business in Iran due to the practical impact of the designations of Iranian banks by the U.S. Government, until OFAC issued a guidance letter and a general license for financial transactions relating to humanitarian assistance in Iran. Only then were NGOs able to obtain financial services from foreign banks for their activities in Iran.

As is often the case with legislation, the sanctions bill was drafted with broad language on how the sanctions are to be placed on individual companies or persons. There is much room for the executive branch to interpret Congressional intent.

HUMANITARIAN EXCEPTIONS: The legislation states that financial transactions exclusively for the purposes of providing humanitarian assistance, food, agricultural products, medicine, or medical devices (unless designated by export control laws) **may** be exempt from sanctions. The President may also waive the imposition of any sanction on a year-to-year basis if it doing so meets “an important humanitarian purpose.” While these exemptions are important for continuing humanitarian work in North Korea, they may not be enough to persuade foreign banks from cutting off all business with North Korea, particularly because of their discretionary nature and for the practical ramifications as described above.

The President is also authorized to promulgate regulations to facilitate the provision of financial services in support of humanitarian activities by a foreign financial institution not controlled by the North Korean government. If, for example, a branch of a foreign bank were allowed to open in North Korea, it could allow for an authorized channel for financial services related to humanitarian aid.

EXPORT LICENSING: The legislation requires an export license for sending to North Korea any goods or technology subject to U.S. dual use control laws, with a presumption of denial for such licenses. This requirement is consistent with preexisting restrictions already in place under the Export Administration Regulations administered by the Commerce Department’s Bureau of Industry and Security.

The legislation also requires the President to deny or revoke a license for any transaction that “lacks sufficient financial controls” to ensure that it will not facilitate any sanctioned activities.

NCNK Member James Min contributed to this Issue Brief.