DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

Finding That the Democratic People's Republic of Korea Is a Jurisdiction of Primary Money Laundering Concern

AGENCY: The Financial Crimes Enforcement Network (“FinCEN”), Treasury.

ACTION: Notice of finding.

SUMMARY: This document provides notice that, pursuant to the authority contained in the USA PATRIOT Act, the Director of FinCEN found on May 27, 2016 that reasonable grounds exist for concluding that the Democratic People’s Republic of Korea (“DPRK” or “North Korea”) is a jurisdiction of primary money laundering concern.

FOR FURTHER INFORMATION CONTACT: FinCEN, (800) 949–2732.

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Provisions


Section 311 of the USA PATRIOT Act (“Section 311”) added 31 U.S.C. 5318A to the BSA, granting the Secretary of the Treasury (the “Secretary”) the authority, upon finding that reasonable grounds exist for concluding that a foreign jurisdiction, institution, class of transactions, or type of account is of “primary money laundering concern,” to require domestic financial institutions and financial agencies to take certain “special measures” against the primary money laundering concern. Section 311 identifies factors for the Secretary to consider and requires Federal agencies to consult before the Secretary may conclude that a jurisdiction, institution, class of transaction, or type of account is of primary money laundering concern. The statute also provides similar procedures, i.e., factors and consultation requirements, for selecting the specific special measures to be imposed against the primary money laundering concern. For purposes of the finding contained in this notice, the Secretary has delegated his authority under Section 311 to the Director of FinCEN.1

Taken as a whole, Section 311 provides the Secretary with a range of options that can be adapted to target specific money laundering and terrorist financing concerns most effectively. Through the imposition of various special measures, the Secretary can gain more information about the jurisdictions, institutions, transactions, or accounts of concern; can more effectively monitor the respective jurisdictions, institutions, transactions, or accounts; or can prohibit U.S. financial institutions from involvement with jurisdictions, institutions, transactions, or accounts that pose a money laundering concern.

Before making a finding that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is required to consult with both the Secretary of State and the Attorney General. The Secretary is also required by Section 311, as amended,2 to consider “such information as the Secretary determines to be relevant, including the following potentially relevant factors,” which extend the Secretary’s consideration beyond traditional money laundering concerns to issues involving, inter alia, terrorist financing and the proliferation of weapons of mass destruction (“WMD”) or missiles:

- Evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of WMD or missiles, have transacted business in that jurisdiction;
- The extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;
- The substance and quality of administration of the bank supervisory and counter- money laundering laws of that jurisdiction;
- The relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;
- The extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by

1 Therefore, references to the authority and findings of the Secretary in this document apply equally to the Director of FinCEN.
credible international organizations or multilateral export groups;

- Whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

- The extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

If the Secretary determines that reasonable grounds exist for concluding that a jurisdiction is of primary money laundering concern, the Secretary is authorized to impose one or more of the special measures in Section 311 to address the specific money laundering risks. Section 311 provides a range of special measures that can be imposed individually, jointly, and in any sequence. Before imposing special measures, the statute requires the Secretary to consult with appropriate federal agencies and other interested parties and to consider the following specific factors:

- Whether similar action has been or is being taken by other nations or multilateral groupings;

- Whether the imposition of any particular special measures would create significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;

- The extent to which the action or the timing of the action would have a significant adverse systemic impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction; and

- The effect of the action on U.S. national security and foreign policy.

B. Democratic People’s Republic of Korea

As set out in detail below, North Korea continues to advance its nuclear and ballistic missile programs in violation of international treaties, international censure and sanctions measures, and U.S. law. North Korea does this using an extensive overseas network of front companies, shell companies, joint ventures, and opaque business relationships. North Korea conducts almost no banking in true name in the formal financial system given that many of its outward facing agencies and financial institutions have been sanctioned by the United States, the United Nations, or both.

While none of North Korea’s financial institutions maintain correspondent accounts with U.S. financial institutions, North Korea does have access to the U.S. financial system through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions. We assess that these deceptive practices have allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts.

Moreover, although U.S. and international sanctions have served to significantly isolate North Korean banks from the international financial system, the North Korean government continues to access the international financial system to support its WMD and conventional weapons programs. This is made possible through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and North Korean embassy personnel which support illicit activities through banking, bulk cash, and trade. Front company transactions originating in foreign-based banks have been processed through correspondent bank accounts in the United States and Europe. Further, the enhanced due diligence required by United Nations Security Council Resolutions (UNSCRs) related to North Korea is undermined by North Korean-linked front companies, which are often registered by North Korean citizens, and which conceal their activity through the use of indirect payment methods and circuitous transactions disassociated from the movement of goods or services.


Since 2005, North Korea has been sanctioned repeatedly for its proliferation of WMD and the development of nuclear and ballistic missile programs. Between June 2006 and 2016, the United Nations (UN) Security Council issued five UNSCRs—1718, 1874, 2087, 2094, and 2270—restricting North Korea’s financial and operational activities related to its nuclear and missile programs and conventional arms sales. In addition, the President of the United States has issued Executive Orders (“E.O.s”) 13466, 13551, 13570, 13687, and 13722 to impose sanctions on North Korea pursuant to the International Emergency Economic Powers Act, and the Department of the Treasury has designated North Korea targets for asset freezes pursuant to other E.O.s, such as E.O. 13382, which targets WMD proliferators worldwide. A designation under any one of the targeting E.O.s generally blocks the designated person’s interests in property in the United States or in the possession or control of a U.S. person of a designated person, and prohibits U.S. persons from engaging in transactions with, or dealing in property interests of, a designated person.

On June 28, 2005, the President issued E.O. 13382, “Blocking Property of Weapons of Mass Destruction Proliferators and Their Supporters,” which orders certain measures to be taken to address the threat posed to the United States by the proliferation of

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1 Available special measures include requiring:
(1) Recordkeeping and reporting of certain financial transactions; (2) collection of information relating to beneficial ownership; (3) collection of information relating to certain payable-through accounts; (4) prohibition or conditions on the opening or maintaining of correspondent or payable-through accounts. 31 U.S.C. 5318A(b)(2)(B).

2 Section 5318A(a)(4)(A) requires the Secretary to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate agency, the Secretary of State, the Securities and Exchange Commission (“SEC”), the Commodity Futures Trading Commission (“CFTC”), the National Credit Union Administration (“NCUA”), and, in the sole discretion of the Secretary, “such other agencies and interested parties as the Secretary may find to be appropriate.” The consultation process must also include the Attorney General if the Secretary is considering prohibiting or imposing conditions on domestic financial institutions opening or maintaining correspondent account relationships with the targeted entity.


4 See IAEA and DPRK: Chronology of Key Events,” (https://www.iaea.org/newscenter/focus/dprk/chronology-of-key-events).


WMD and their means of delivery. The following two North Korean entities were sanctioned in the Annex to E.O. 13382: Korea Mining Development Trading Corporation (KOMID), North Korea’s primary arms export agent; and Tanchon Commercial Bank (TCB), the financial arm of KOMID. As noted further below, additional North Korean financial institutions, including Korea Kwangson Banking Corporation (KKBC), Foreign Trade Bank (FTB), and Daedong Credit Bank (DCB), were subsequently designated pursuant to E.O. 13382.

On June 26, 2008, the President issued E.O. 13466, “Continuing Certain Restrictions With Respect to North Korea and North Korean Nationals,” declaring a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the existence and risk of the proliferation of weapons-usable fissile material on the Korean peninsula.

On August 30, 2010, the President issued E.O. 13551, “Blocking Property of Certain Persons with Respect to North Korea,” which authorized asset blockings against those determined, among other things, to have engaged in the importation or transportation of North Korean arms or the transportation to North Korea of luxury goods.

On April 18, 2011, the President issued E.O. 13570, “Prohibiting Certain Transactions with Respect to North Korea,” which authorized asset blockings against those determined, among other things, to have engaged in the importation or transportation of North Korean arms or the transportation to North Korea of luxury goods.

On January 2, 2015, the President issued E.O. 13687, “Imposing Additional Sanctions with Respect to North Korea,” which blocks the property of persons who are determined

to be officials, agencies, instrumentalities, or controlled entities of the Government of North Korea or the Workers’ Party of Korea.

On March 15, 2016, the President issued E.O. 13722, “Blocking Property of the Government of North Korea and the Workers’ Party of Korea, and Prohibiting Certain Transactions with Respect to North Korea,” which, among other things, blocks the property and interests in property of the Government of North Korea and the Workers’ Party of Korea and authorizes further asset blockings against persons determined to be operating in industries of the North Korean economy determined by the Secretary of the Treasury, in consultation with the Secretary of State, to be subject to the measure. To date those industries include the transportation, mining, energy and financial services industries. Additionally, FinCEN issued advisories in 2005, 2009, and 2013 regarding the threat posed by the North Korean government to U.S. and international financial institutions. Specifically, these advisories have urged caution when dealing with North Korean financial institutions due to their use of front companies and other deceptive financial practices.

Numerous North Korean individuals, financial institutions, and other entities facilitating financial transactions in support of North Korea’s proliferation of WMD or ballistic missiles have been listed in or designated pursuant to these UNSCRs or E.O.s. In many cases, these sanctions have targeted front companies or the individual representatives of sanctioned entities who operate outside of North Korea.

II. Analysis of Factors

Based upon a review of information available to FinCEN, consultations with relevant federal agencies and departments, and in consideration of the factors enumerated in Section 311 of the USA PATRIOT Act, the Director of FinCEN has determined that reasonable grounds exist for concluding that North Korea is a jurisdiction of primary money laundering concern. While FinCEN has considered all potentially relevant factors set forth in Section 5318A, a discussion of those most pertinent to this finding follows. FinCEN has determined that North Korea (A) uses state-controlled financial institutions and front companies to conduct international financial transactions that support the proliferation of WMD and the development of ballistic missiles in violation of international and U.S. sanctions; (B) is subject to little or no bank supervision or anti-money laundering or combating the financing of terrorism (”AML/CFT”) controls; (C) has no mutual legal assistance treaty with the United States; and (D) relies on the illicit and corrupt activity of high-level officials to support its government.

A. Evidence That Organized Criminal Groups, International Terrorists, or Entities Involved in the Proliferation of Weapons of Mass Destruction or Missiles, Have Transacted Business in That Jurisdiction

North Korea uses state-owned entities and banks to conduct transactions in support of North Korea’s proliferation of WMD or ballistic missiles. The United States and United Nations have identified Korea Mining Development Trading Corporation (KOMID), Tanchon Commercial Bank (TCB), Korea Kwangson Banking Corporation (KKBC), and Daedong Credit Bank (DCB) as entities that conduct financial transactions in support of North Korea’s proliferation of WMD or ballistic missiles; the United States has also sanctioned Foreign Trade Bank (FTB) for this activity. Directing business from North Korea, these state-owned entities and banks use front companies or covert representatives to obfuscate the true originator, beneficiary, and purpose of transactions. Doing so has allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts. Entities in North Korea involved in the proliferation of WMD or ballistic missiles conduct business in, from, or through North Korea, or at the direction of the North Korean government, have evaded the prohibitions set forth in relevant UNSCRs and E.O.s.
The Korea Mining Development Trading Corporation

The President subjected the Korea Mining Development Trading Corporation (KOMID) to an asset blocking by listing it in the Annex of E.O. 13382 in June 2005, 16 and the Department of the Treasury designated KOMID pursuant to E.O. 13687 in January 2015 17 for being North Korea’s primary arms dealer and its main exporter of goods and equipment related to ballistic missiles and conventional weapons.18 The UN Security Council also listed KOMID under UNSCR 1718 in April 2009, subjecting it to a worldwide asset blocking.19 Further, between 2013 and 2016, the Department of the Treasury designated a number of individuals under E.O. 13382 or E.O. 13687 for their roles acting on behalf of KOMID in, or as KOMID representatives to, Burma, China, Egypt, Iran, Namibia, Russia, Sudan, and Syria.20

Despite the sanctions placed on KOMID and its network, North Korea continues to sell weapons abroad. Between 2001 and 2007, North Korean weapons manufacturers marketed or exported North Korean weapons to Angola, Cuba, Iran, Iraq, Pakistan, Uganda, United Arab Emirates, and Yemen. As recently as 2015, KOMID marketed or exported North Korean ballistic missiles or conventional

16 See E.O. 13382.
23 See UNSCR 1718.
24 See E.O. 13382; see also Footnote 28.
under E.O. 13382 in June 2013 for managing millions of dollars of transactions in support of the North Korean regime’s nuclear proliferation and missile-related activities. The UN listed DCB under UNSCR 2270 in March 2016. DCB has demonstrated through its activity that it is willing to facilitate transactions at the direction of, and in coordination with, the government of North Korea. Since at least 2007, DCB has facilitated hundreds of financial transactions worth millions of dollars on behalf of designated actors, KOMID and TCB. Some of these transactions involved deceptive practices that include the use of front companies located outside of North Korea to process cross-border payments. DCB also directed a front company, DCB Finance Limited, to carry out international financial transactions as a means to avoid scrutiny by financial institutions. DCB Finance Limited has conducted transactions through correspondent accounts at U.S. banks. Based upon the information above, the North Korean government, three high entities and financial institutions based in North Korea, facilitates financial transactions in support of the proliferation of WMD and ballistic missiles in violation of UNSCR 1718. Additionally, by creating and using front companies with the intent to obfuscate the true originator, beneficiary, or purpose of transactions, these state-owned entities and financial institutions have engaged in a pattern of deceptive financial activity to evade international sanctions, circumvent U.S. sanctions and AML controls, and penetrate the U.S. financial system when such activity would otherwise be prohibited. This activity represents a direct threat to the integrity of the U.S. financial system.

B. The Substance and Quality of Administration of the Bank Supervisory and Counter-Money Laundering Laws of That Jurisdiction

The Financial Action Task Force (FATF) is an inter-governmental body that sets international standards and promotes the implementation of legal, regulatory, and operational measures for combatting money laundering, terrorist financing, WMD proliferation financing, and other related threats to the integrity of the international financial system. The FATF monitors the progress of its members in implementing necessary measures, reviews money laundering and terrorist financing techniques and countermeasures, and promotes the adoption and implementation of appropriate measures globally. In collaboration with other international stakeholders, the FATF works to identify national-level vulnerabilities with the aim of protecting the international financial system from misuse. Due to North Korea’s ongoing failure to address its AML/CFT deficiencies, the FATF has publicly identified substantial money laundering and terrorist financing risks emanating from the jurisdiction and has identified North Korea as one of only two jurisdictions in the world subject to FATF counter-measures since 2011.

In FATF’s Public Statement dated February 19, 2016, the FATF reiterated its concern about North Korea’s failure to address the significant deficiencies in its AML/CFT regime, and the serious threat such deficiencies pose to the integrity of the international financial system. The FATF called on its members and urged all jurisdictions to advise their financial institutions to give special attention to business relationships and transactions with North Korea, including North Korean companies and financial institutions. The FATF also warned that jurisdictions should protect against correspondent relationships being used to bypass or evade countermeasures and risk mitigation practices, and take into account AML/CFT risks when considering requests by North Korean financial institutions to open branches and subsidiaries in their jurisdiction. While steps may have been taken by North Korea to engage with the FATF, including becoming an observer to the Asia Pacific Group, a FATF-style regional body, North Korea lacks basic AML/CFT controls and has failed to address the deficiencies in its AML/CFT regime identified by FATF.

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C. Whether the United States Has a Mutual Legal Assistance Treaty With That Jurisdiction, and the Experience of U.S. Law Enforcement Officials and Regulatory Officials in Obtaining Information About Transactions Originating in or Routed Through or to That Jurisdiction

The United States and North Korea do not have diplomatic relations. North Korea has no mutual legal assistance treaty with the United States and does not cooperate with U.S. law enforcement officials and regulatory officials in obtaining information about transactions originating in, or routed through to, North Korea.38

D. The Extent To Which That Jurisdiction Is Characterized by High Levels of Official or Institutional Corruption

The North Korean government has long demonstrated institutional and official corruption. According to Transparency International’s Corruption Perceptions Index, which ranks countries and territories based on how corrupt their public sectors are perceived to be, North Korea ranks 167 out of 168.39 As noted above, UNSCRs 1718, 2094, and 2270 require UN member states to prohibit the provision to North Korea of luxury goods, which are used by North Korean leaders to consolidate power and appease members of the political elite by increasing their personal wealth. North Korea has also utilized Office 39 of the Korean Workers’ Party (KWP) to influence and maintain the support of North Korea’s elite citizens.40 Office 39 was listed for an asset blocking by the President in the Annex to E.O. 13551 in August 2010,41 and is the branch of the North Korean Government that provides illicit economic support to North Korean leadership, including managing slush funds for North Korean government officials.42 The UN listed Office 39 under UNSCRs 1718 and 2270 in March 2016.43

Examples of Office 39 activity include collecting a significant portion of loyalty funds paid by DPRK officials to the regime annually, and using deceptive financial practices such as smuggling U.S. dollars into North Korea.

To support its efforts, Office 39 controls Korea Daesong Bank (KDB), which is used to facilitate financial transactions supporting the procurement of luxury goods. Treasury designated KDB under E.O. 13551 in November 2010 as an instrumentality of Office 39.44 In spite of its designation, KDB continues to conduct illicit transactions on behalf of the regime, including by operating front companies on behalf of organizations such as Office 39 abroad; by using an overseas branch office to both pay a number of overseas companies that provide labor and services on behalf of North Korea, and to remit funds to Pyongyang; and by utilizing KDB representatives abroad to make payments for goods imported into North Korea.

Jamal El-Hindi,
Acting Director, Financial Crimes Enforcement Network.

[FR Doc. 2016–13038 Filed 6–1–16; 8:45 am]
BILLING CODE 4810–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 3520

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts.

DATES: Written comments should be received on or before August 1, 2016 to be assured of consideration.

ADDRESSES: Direct all written comments to Tuawana Pinkston, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Sara Covington, at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at Sara.L.Covington@irs.gov.

SUPPLEMENTARY INFORMATION: Title: Annual Return To Report Transactions With Foreign Trusts and Receipts of Certain Foreign Gifts. OMB Number: 1545–0159. Form Number: Form 3520.

Abstract: U.S. persons who create a foreign trust or transfer property to a foreign trust must file Form 3520 to report the establishment of the trust or the transfer of property to the trust. Form 3520 must also be filed by U.S. persons who are treated as owners of any part of the assets of a trust under subpart E of Part I or subchapter J of Chapter 1; who received a distribution from a foreign trust; or who received large gifts during the tax year from a foreign person.

Current Actions: There is no change in the paperwork burden previously approved by OMB. This form is being submitted for renewal purposes only.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses and other for-profit organizations.

Estimated Number of Respondents: 1,320.

Estimated Time per Respondent: 54 hours 35 minutes.

Estimated Total Annual Burden Hours: 71,742.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of