

ALERTS

North Korea-Related Supply Chain Risks Highlighted By Multi-Agency Advisory

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A new multi-agency advisory underscores the hidden risks of non-compliance with North Korea-related sanctions and forced labor laws and regulations, as well as other import laws. Primarily, these include the risk that a company may inadvertently source goods, services, or technology from North Korea, or that North Korean laborers may be present in a company's supply chain that involves third-country suppliers. Businesses and importers – particularly those in high-risk industries or sourcing from high-risk countries, such as Russia or China – should carefully review this advisory and consider examining their supply chains and amending their compliance and due diligence policies, practices, and procedures, as necessary.

High-Risk Countries and Industries and Red Flags

The U.S. Department of State, U.S. Department of the Treasury's Office of Foreign Assets Control, and U.S. Department of Homeland Security's Customs and Border Protection and Immigration and Customs Enforcement jointly published the advisory on July 23. Key takeaways from this document are as follows:

- **High-Risk Industries:** Industries facing a high risk of North Korean labor issues include, but are not limited to, apparel, construction, footwear manufacturing, hospitality, IT services, logging, medical, pharmaceuticals, restaurant, seafood processing, textiles, and shipbuilding.
- **High-Risk Countries:** While China and Russia are the primary countries hosting North Korean laborers, the advisory identifies many other countries that engage in such practices. Businesses should carefully study the advisory's Annex 3, which identifies high-risk countries associated with particular industries.
- **Red Flags:** The advisory identifies several potential indicators that North Korean labor may be involved in overseas operations or that certain goods, services and technology may have a North Korean nexus. For example, certain joint ventures may require close scrutiny because North Korea is engaged in various joint ventures with China and other countries. Businesses should review the list of known joint ventures set out in Annex 2 of the advisory and also exercise due diligence with suppliers, particularly in China and other high-risk countries.

Legal Background

A variety of U.S. laws and regulations target North Korea. Primarily, these include U.S. sanctions and export controls laws which, among other things, broadly prohibit virtually all transactions involving North Korea, whether directly or indirectly, by U.S. persons or involving U.S. jurisdiction

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(e.g., U.S.-origin goods or payments routed through a U.S. bank). Moreover, U.S. secondary sanctions target further North Korea-related transactions, even by non-U.S. businesses operating outside of U.S. jurisdiction. Complementing U.S. sanctions, the United Nations imposes a robust set of sanctions targeting North Korea, which its members are obliged to implement.

In addition to sanctions laws, other provisions of U.S. law prohibit, for example, the entry of goods into the U.S. that were produced in whole or in part in a foreign country by forced labor (e.g., convict labor and indentured labor) and require importers to exercise “reasonable care” in their import transactions. Enacted last year, the Countering America's Adversaries Through Sanctions Act establishes a rebuttable presumption that significant goods produced in whole or in part by the labor of North Korean nationals or citizens – even in third countries – are prohibited under the forced labor law and barred from entry into the U.S. In other words, even if a good was not produced with forced labor, businesses and importers should be ready to substantiate such a claim.

As a result of these laws, manufacturers, suppliers, importers, buyers, service providers, and other members of the supply chain could be exposed to compliance risks if they are not familiar with high-risk areas and potential indicators of a North Korean nexus.

Companies Should Consider Re-Evaluating Supply Chain Due Diligence and Compliance Policies

The advisory signals a particular focus by U.S. authorities on North Korean labor and other services, goods, and technology. Accordingly, it is advisable for companies, especially those dealing with high-risk countries or industries, to consider whether to re-evaluate their compliance policies, practices, and procedures.

Depending on the size, nature, and key risk areas of your business, companies should consider augmenting their documented due diligence policies and procedures. Additional measures may include:

- Clearly communicating sanctions and forced labor-related obligations to partners
- Monitoring your shipping documents for references to North Korea and/or the known joint ventures with North Korea
- Issuing questionnaires to, requiring certifications from, or using similar methods to evaluate suppliers and vendors
- Examining your supply chain, from raw materials to finished goods
- Monitoring and periodically reporting on areas of risk
- Conducting internal audits for indices of forced labor
- Hiring third-party auditors to conduct unannounced audits of your supply chain

The advisory confirms that such policies, practices, and procedures may be considered mitigating factors in the event of an enforcement action.

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