



Office of Financial Sanctions Implementation HM Treasury

Guidance for credit and financial institutions on Article 5a and 5c of Council Regulation (EC) 329/2007 concerning restrictive measures against the Democratic People's Republic of Korea (North Korea)

This guidance note provides an overview of the requirements for credit and financial institutions under the new measures in Article 5a and 5c of the amended Council Regulation (EC) 329/2007 ("the Regulation") introduced on 4 May 2016 and 29 May 2016.

This note does not constitute legal advice and you should consider the exact wording of the Regulation in relation to any specific transaction. Please note that the Regulation contains other prohibitions as well as these particular provisions and financial institutions should consider all of their other obligations carefully.

What does Article 5a require credit and financial institutions to do?

Article 5a of the Regulation requires credit and financial institutions to:

- refrain from opening new branches, offices, subsidiaries, or banking accounts in North Korea;
- close existing branches, subsidiaries or banking accounts in North Korea where the national Competent Authority (in the UK's case, HM Treasury) has determined that they could contribute to North Korea's illicit programmes;
- refrain from entering into new joint ventures, ownership interests, and correspondent banking relationships with North Korean banks, unless authorised to do so by a Treasury licence;
- terminate existing joint ventures, ownership interests and correspondent banking relationships with North Korean banks where the national Competent Authority (in the UK's case, HM Treasury) has determined that they could contribute to North Korea's illicit programmes.

In addition, where a UK credit or financial institution suspects that any activity that they participate in could contribute to North Korea's nuclear or ballistic missile programmes (or other activities prohibited by the Regulation), they are required to promptly inform the Office of Financial Sanctions Implementation (OFSI) of this. Credit and financial institutions should provide OFSI with the reasons why they suspect this activity might contribute to such actions. In practice, this means financial institutions should submit all the evidence that leads them to this suspicion.

Breaching these obligations may constitute a criminal offence.

What should financial institutions be looking for?

If you are unsure about what triggers you should be looking for when identifying activities relating to nuclear and ballistic activities, please refer to the Financial Action Task Force (FATF) Typologies Report on Proliferation Financing:

<http://www.fatfgafi.org/publications/methodsandtrends/documents/typologiesreportonproliferationfinancing.html>

How do I submit evidence?

Please use the following term in the subject line of your email to ensure that your application is allocated to the correct area within OFSI:

“DPRK SUSPECTED PROLIFERATION ACTIVITY”

Evidence should be submitted to: ofsi@hmtreasury.gsi.gov.uk.

What should financial institutions do once they have submitted the evidence to OFSI?

Credit and financial institutions are responsible for complying with sanctions. They should make a careful assessment of whether ongoing activities comply with the sanctions regime. This consideration should include all of the prohibitions in the Regulation, not just those in Article 5a. Financial institutions should bear in mind that breaching sanctions is a criminal offence.

OFSI will consider the evidence provided and will respond when it has completed its assessment.

What does Article 5c prohibit?

Article 5c of the Regulation prohibits transfers of funds to and from North Korea except where certain conditions are met. Specifically, credit and financial institutions are prohibited to enter into, or continue to participate in, any transactions with credit and financial institutions (including branches or subsidiaries) in North Korea unless the conditions are met. Breaching these restrictions constitutes a criminal offence.

The first condition is that the transfer must relate to type of a transaction that is set out in the Regulation. These transactions are:

- foodstuffs, healthcare, medical equipment, or for agricultural or humanitarian purposes;
- personal remittances;
- execution of the exemptions provided for in the Regulation;
- connected to a specific trade contract not prohibited in the Regulation;
- a diplomatic or consular mission;

- payment to satisfy claims against North Korea, its nationals, legal persons, entities or bodies.

The second condition is that transactions equivalent to EUR 15,000 or over have secured prior authorisation from OFSI. If your transaction is for a reason listed above and below EUR 15,000, you do not need prior authorisation from OFSI.

Please note that this includes a series of linked transactions where the total value is EUR 15,000 or over.

Please note that there is no provision for deeming an authorisation to have been granted after a certain time has elapsed.

My transaction(s) is below EUR 15,000, do I need to do anything?

If your transaction is for a reason listed above and is below EUR 15,000, you do not need to seek prior authorisation from OFSI. However, please note that Article 5c shall apply regardless of whether a transfer of funds is undertaken in a single transaction or in several transactions which appear to be linked. Transactions which appear to be linked include:

- A series of consecutive transfers from or to the same financial or credit institution or to the same North Korean person, entity or body which are made in connect with a single obligation to a transfer of funds, where each individual transfer falls below the relevant threshold (EUR 15,000) but which, in the aggregate, meets the criteria for authorisation.
- A single contract paid in instalments or an ongoing business relationship.
- A chain of transfers involving a different payment service provider or persons which effect a single obligation to make a transfer of funds e.g. multiple family members contributing towards a house purchase.

A transaction must be for a reason set out above in order to proceed.

Does my transaction involve a Designated Person or Entity?

If your proposed transaction involves a Designated Person on the [consolidated list of asset freeze targets](#), you cannot use the authorisation provisions but must seek a licence from OFSI for the transaction to proceed.

Timeframes

OFSI will endeavour to respond to authorisation requests within six weeks. However, if further checks are needed this may take longer.

If your authorisation is not granted within six weeks, you cannot assume that your transaction is authorised and you should not proceed.

How do I submit a request for authorisation?

The form for making authorisation requests can be found here:

<https://www.gov.uk/government/publications/ofsi-guidance-on-north-korea-democratic-peoples-republic-of-korea>

Please use the following term in the subject line of your email to ensure that your authorisation request is allocated to the correct area within OFSI:

“DPRK AUTHORISATION”

The form for making a licence application can be found here:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/512770/ofsi_generic_licence_application_form_march_2016.docx

Please use the following term in the subject line of your email to ensure that your application is allocated to the correct area within OFSI:

“DPRK LICENCE APPLICATION”

All requests for authorisation and licence applications should be submitted to ofsi@hmtreasury.gsi.gov.uk.

Where can I find further guidance?

OFSI’s Guide to Financial Sanctions can be found here:

<https://www.gov.uk/government/publications/financial-sanctions-faqs>

Information on the financial sanctions in place against North Korea can be found here:

<https://www.gov.uk/government/publications/financial-sanctions-north-korea-democratic-peoples-republic-of-korea>

The consolidated list of asset freeze targets can be found here:

<https://www.gov.uk/government/collections/financial-sanctions-regime-specific-consolidated-lists-and-releases>