

C L I F F O R D  
C H A N C E



NORTH KOREA: WHAT CAN HONG KONG BANKS DO TO  
MANAGE THEIR AML AND SANCTIONS RISKS?

CLIFFORD CHANCE PERSPECTIVES SERIES  
WENDY WYSONG, WILLIAM WONG, & NICK TURNER  
19 MARCH 2018

# INTRODUCING OUR TEAM



**Wendy Wysong**  
Foreign Legal Consultant,  
Hong Kong  
Partner, Washington DC



**William Wong**  
Consultant



**Nick Turner**  
Registered Foreign Lawyer

# INTRODUCING OUR TEAM



## **Peter Coney**

Head of Litigation & Dispute Resolution  
Tokyo

### **Expertise:**

Dispute Resolution, Employment and Regulatory practitioner

*Peter has assisted clients from both the private and public sectors in a wide array of industries including aviation, energy & resources, financial services, infrastructure and manufacturing.*





WHY NORTH KOREA? WHY NOW?



Has your organization received an information request about North Korean activity from the HKMA, US government, or another regulator in the past six months?

1. Yes

2. No

In your role, have you come across North Korea-related activity (real or suspected) in the past year?

1. Yes

2. No

Has your organization incorporated specialized North Korean typologies or controls into your AML/Sanctions compliance program?

1. Yes

2. No



# A PERFECT STORM



*“Hong Kong, of course, is an international financial hub and at the same time it has company formation and registration rules that we think need to be stronger . . . . We have also stressed here in Hong Kong the importance of having the appropriate mechanism in place to enforce UN Security Council resolutions and other regulations prohibiting activities that facilitate financial transactions with North Korea.”*

**Sigal Mandelker**  
US Treasury Under Secretary for  
Terrorism and Financial Intelligence  
January 2018

# RECENT TIMELINE OF NORTH KOREA SANCTIONS

UNSCR 2270	Executive Order 13722 (beginning of comprehensive US embargo)	OFAC designates Kim Jong-un and other officials	UNSCR 2321	OFAC designates individuals and entities for weapons proliferation
2 March 2016	16 March 2016	6 July 2016	30 Nov. 2016	Dec. 2 2016
Countering America's Adversaries through Sanctions Act (CAATSA)	OFAC designates Chinese shipping company and financier	UNSCR 2356	OFAC designates NK weapons agents and financial network	OFAC designates NK officials for human rights abuses and censorship
2 August 2017	29 June 2017	2 June 2017	31 March 2017	11 Jan. 2017
UNSCR 2371	OFAC designates Chinese and Russian NK Supporters	UNSCR 2375	Executive Order 13810 (allows for secondary sanctions)	OFAC designates NK banks and representatives
5 August 2017	22 August 2017	11 Sept. 2017	21 Sept. 2017	26 Sept. 2017
OFAC designates senior NK officials for weapons development	UNSCR 2397	OFAC designates shipping companies, trade, and labor organizations	FinCEN places Bank of Dandong on Section 311 List	OFAC designates officials for human rights abuses and censorship
26 Dec. 2017	22 Dec. 2017	11 Nov. 2017	2 Nov. 2017	26 Oct. 2017
OFAC designates shipping companies and overseas entities for NK support	FinCEN proposes adding ABLV Bank of Latvia to Section 311 List in part for NK-related transactions	OFAC announces "largest ever" NK sanctions package with 56 trading and shipping companies and vessels	US State Department imposes CBW Act (chemical weapons) sanctions	
24 Jan. 2018	13 Feb. 2018	23 Feb. 2018	6 March 2018	



## RELEVANT US LEGAL FRAMEWORK



# US NORTH KOREA SANCTIONS ARSENAL

	Purpose / Role	Examples	US Nexus Required
<b>50 USC § 1701</b>	<ul style="list-style-type: none"> <li>International Emergency Economic Powers Act (IEEPA)</li> <li>Allows for civil and criminal penalties (fines and imprisonment) for violations of US sanctions regulations</li> </ul>	<ul style="list-style-type: none"> <li>Dandong Hongxiang Industrial Development Co. Ltd. and its executives</li> </ul>	<ul style="list-style-type: none"> <li>US Persons,</li> <li>US financial system,</li> <li>US-origin goods</li> </ul>
<b>18 USC § 1956 (a)(2)(A), (h)</b>	<ul style="list-style-type: none"> <li>US federal money laundering statute</li> <li>Criminalizes financial transactions of proceeds of unlawful activity</li> </ul>	<ul style="list-style-type: none"> <li>Mingzheng International Trading Ltd</li> </ul>	<ul style="list-style-type: none"> <li>US financial system</li> </ul>
<b>EO 13722</b>	<ul style="list-style-type: none"> <li>Established a comprehensive US embargo of North Korea and blocks the property of the Government of North Korea and the Workers' Party of North Korea</li> </ul>	<ul style="list-style-type: none"> <li>Air Koryo</li> <li>Foreign Trade Bank of DPRK</li> <li>DPRK Central Bank</li> </ul>	<ul style="list-style-type: none"> <li>None required</li> </ul>
<b>EO 13810</b>	<ul style="list-style-type: none"> <li>Among other things, expanded the US embargo and authorized secondary sanctions against non-US financial institutions and persons engaged in any "significant transaction" with North Korea</li> </ul>	<ul style="list-style-type: none"> <li>Beijing Chengxing Trading Co. Ltd.</li> <li>Dandong Jinxiang Trade Co., Ltd.</li> <li>Agricultural Development Bank and other DPRK banks</li> </ul>	<ul style="list-style-type: none"> <li>None required</li> </ul>
<b>CAATSA</b>	<ul style="list-style-type: none"> <li>Grants the president additional authorities for sanctions against North Korea, including vessels</li> </ul>	<ul style="list-style-type: none"> <li>23 February 2018 designations of 56 entities and vessels</li> </ul>	<ul style="list-style-type: none"> <li>None required</li> </ul>
<b>PATRIOT ACT Sec. 311</b>	<ul style="list-style-type: none"> <li>Gives Treasury the authority to designate "primary money laundering concerns" and restrict access to the US financial system (e.g. correspondent accounts)</li> </ul>	<ul style="list-style-type: none"> <li>Bank of Dandong</li> <li>ABLV Bank</li> </ul>	<ul style="list-style-type: none"> <li>None required</li> </ul>
<b>PATRIOT ACT Sec. 319</b>	<ul style="list-style-type: none"> <li>Permits US authorities to seize funds from correspondent accounts of non-US financial institutions connected to money laundering of overseas customers</li> </ul>	<ul style="list-style-type: none"> <li>Mingzheng International Trading Ltd.</li> <li>Velmur Management Pte Ltd.</li> <li>Dandong Chengtai Trading Co. Ltd.</li> </ul>	<ul style="list-style-type: none"> <li>US financial system</li> </ul>
<b>NYDFS, CDBO, etc.</b>	<ul style="list-style-type: none"> <li>State banking regulators with oversight of US-based branches of overseas financial institutions</li> </ul>	<ul style="list-style-type: none"> <li>Agricultural Bank of China</li> <li>Mega Bank</li> </ul>	<ul style="list-style-type: none"> <li>State-regulated bank</li> </ul>



RELEVANT HONG KONG LEGAL FRAMEWORK



# PRIMARILY AN AML ISSUE FOR HONG KONG BANKS

## United Nations Sanctions (Democratic People's Republic of Korea) Regulation (537AE)

- Current version is as of **26 December 2014**
- Applies to Hong Kong persons
- Prohibits supply, sale, transfer, or carriage of specified items and luxury goods; procurement of specified items; certain financial transactions and making available of funds to designated persons; provision or acceptance of technical training or services to or from designated persons; and transit or entry of certain persons or vessels.
- Chief Executive issues periodic updates to UN sanctions list based on prior UNSC resolutions.

## Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap 615)

- Requires Authorized Institutions to establish and maintain an effective anti-money laundering compliance program, including know-your-customer and transaction monitoring controls
- Supplemented by the HKMA/SFC Guidelines on Anti-Money Laundering and Counter-Terrorist Financing

## Companies Ordinance (Cap 622)

- Amendments effective 1 March 2018 require Hong Kong companies to maintain a registry of ultimate beneficial owners available to law enforcement and the Companies Registry upon request



WHAT CAN HONG KONG BANKS DO TO MANAGE THEIR RISKS?



# FUNDAMENTALS

## Risk-based approach

- Incorporate North Korea typologies into periodic risk assessments
- Customers, geographies, product types (**USD transactions**)

## Policies, procedures, and training

- Updates to reflect legal baseline and risk tolerance
- Job-specific training and communications
- “Tone from the top”

## Information gathering and program updates

- Adverse media and regulatory advisories
- External parties (regulators, correspondent banks)

## Sanctions screening

- Risk-based screening of trade documents
- English and Chinese character screening
- Geographic terms
- Internal watchlists

## Investigations and Reporting

- Voluntary Self Disclosures (VSDs)
- Suspicious Transaction Reports (STRs)

FinCEN assesses that the public nature of these reports, advisories, and actions should have provided ABLV the necessary guidance to apply appropriate due diligence to accounts and transactions that fit the typologies described in these public documents. However, ABLV’s pursuit of high-risk shell company business and its failure to heed these public warnings and implement an appropriate riskmitigating CDD and KYC program enabled certain customers to exploit ABLV’s weaknesses to conduct transactions with parties connected to designated entities.

**Financial Crimes Enforcement Network (FinCEN), Proposal of Special Measure Against ABLV Bank, AS as a Financial Institution of Primary Money Laundering Concern - 16 February 2018**



# DUE DILIGENCE AND MONITORING

## North Korea typologies / techniques

- Related parties from high-risk locations (e.g., Dandong, Jinzhou, Shenyang)
- No online presence or apparent business marketing
- Shared addresses, phone numbers, emails
- Dormant accounts with sudden spikes in transactions
- Unusual counterparties or incongruent business lines
- Ship-to-ship transfers / deactivating automatic identification system (AIS)
- False names or PRC IDs with Korean names
- Proximity to embassies or consular facilities
- Trade in mining, agriculture, petroleum, luxury goods, etc.
- Digital currencies

### **See also:**

- FinCEN, *Advisory on North Korea's Use of the International Financial System* (Nov. 2017)
- OFAC, *State Department, Coast Guard, Sanctions Risks Related to North Korea's Shipping Practices* (Feb. 2018)



# UN PANEL OF EXPERTS

166. An analysis of documents submitted by financial institutions of the Democratic People's Republic of Korea and their representatives to open bank accounts showed **insufficient due diligence performed by financial institutions during the onboarding process**. For example, the due diligence conducted by a major European bank for an application for a euro denominated account by a representative of the Korea Daesong Bank showed **no independent review or verification of the answers given on the anti-money laundering questionnaire**. A due diligence checklist indicated that despite negative public information about applicants (including an entry in the Thomson Reuters World Check database), the fact that the bank's regulator was the Central Bank of the Democratic People's Republic of Korea and that no audited documentation was available, the bank's compliance department recommended that the application be accepted .

**UN Panel of Experts on North Korea final report pursuant to UNSC Resolution 2345 (2017)**  
5 March 2018 (published to the public 16 March 2018)

# INFORMATION REQUESTS

## Roles and Responsibilities

- Dedicated staff to receive and answer information requests
- Operations or Compliance?
- Legal review

## Procedures

- Mapping of data sources and systems access
  - Customer data versus transactional / monitoring data
- Supplemental due diligence
- Investigation of related parties
- Search terms
- Testing

## Structuring the Response

- Identify sources of data and legal vehicles
- Be specific

## Recordkeeping

- Retain search terms, results, and dispositions
- Incorporate into watchlists / monitoring

# LIKELY DEVELOPMENTS

## Amendments to the Hong Kong DPRK Regulations

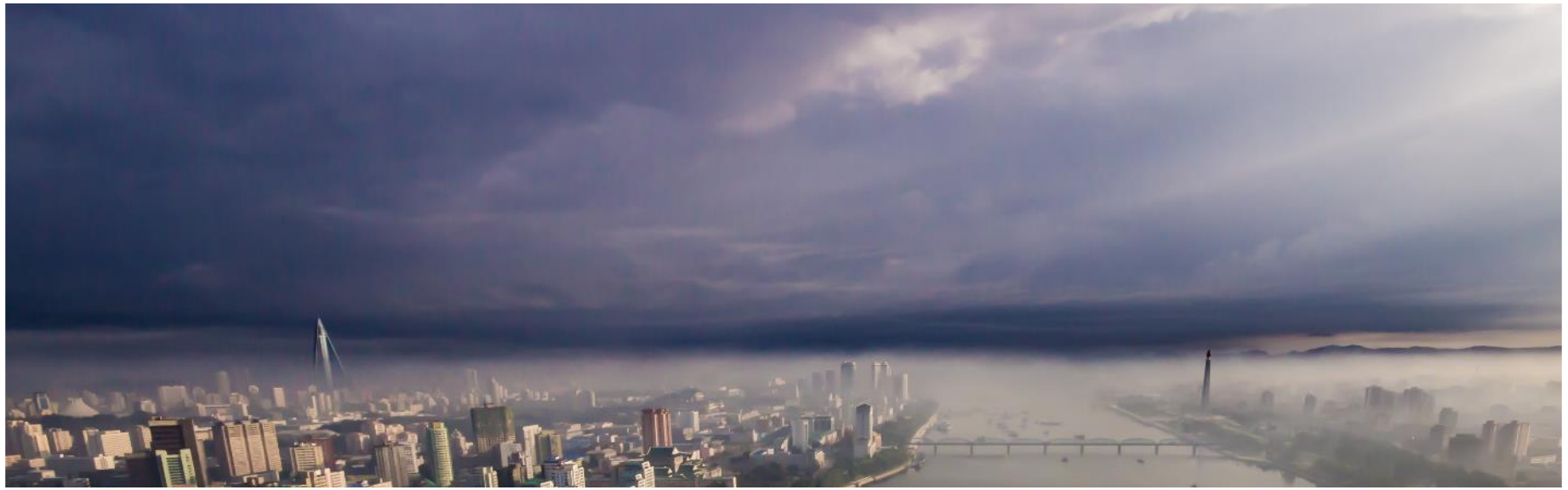
- Additional restrictions on trade, vessels, and financial transactions in accordance with recent UNSC resolutions
- Currently under review per central government

## Continued Information Sharing / Requests

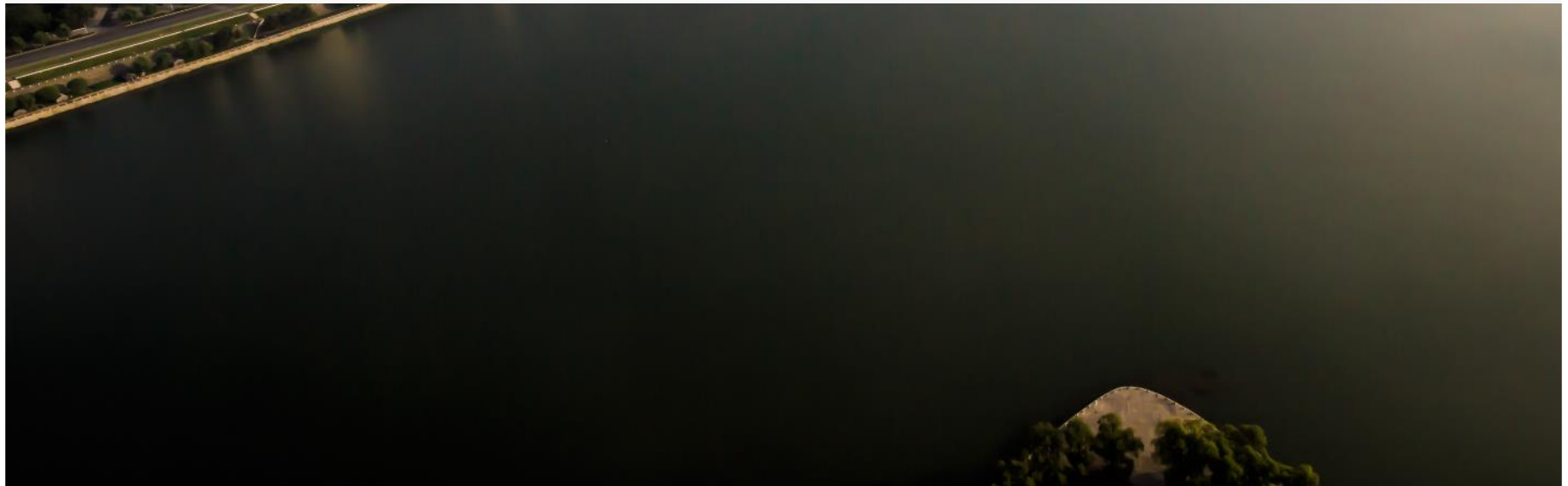
- Information requests (HKMA, US Government, Correspondent Banks)
- More frequent industry communication/forums/adverse media
- Typologies and case studies (e.g. UN Panel of Experts reports)
- *More information means higher expectations!*

## Enforcement Actions and Designations

- US enforcement agencies are increasingly focused on Chinese banks
- Hong Kong enforcement likely to focus on AML deficiencies
- Secondary sanctions or SSI-style sanctions against financial institutions



## QUESTIONS & ANSWERS / OPEN DISCUSSION



**C L I F F O R D**  
**C H A N C E**

Clifford Chance, 27th Floor, Jardine House, One Connaught Place, Hong Kong  
© Clifford Chance 2018  
Clifford Chance

[WWW.CLIFFORDCHANCE.COM](http://WWW.CLIFFORDCHANCE.COM)