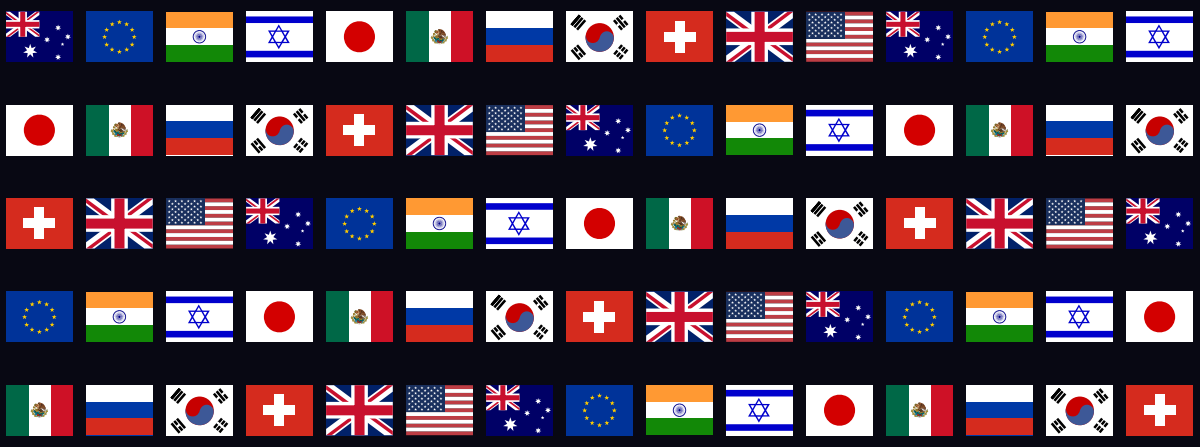
SANCTIONS

South Korea



LEXOLOGY
Getting The Deal Through

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Quick reference guide enabling side-by-side comparison of local insights into economic, financial and trade sanctions including national and international regimes; types of sanction imposed; targeted countries, entities and individuals; scope of application and competent authorities; business compliance and reporting requirements; asset freezes; exemptions; reporting of violations; investigations, penalties and recent enforcement actions; and other emerging trends.

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GENERAL FRAMEWORK

Legislation

What domestic legislation enables economic, financial and trade sanctions to be implemented in your jurisdiction?

Korea has implemented international economic, financial and trade sanctions as required by the United Nations Security Council Resolutions (UNSCR) and other international treaties to which it is a party. Korea has also incorporated into its domestic regime, as it deemed necessary, certain sanctions regimes of its main allies such as the United States (US) and the European Union (EU) with legislative intents to contribute to the international effort to maintain international peace and security.

There is a great deal of domestic legislation for international sanctions applicable to several economic sectors. For instance, the Foreign Trade Act is mainly applicable to trade sanctions, the economic and financial sanctions are governed mostly by the Foreign Exchange Transactions Act and the Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (CFT/WMD Act) . Additionally, the Immigration Act , Customs Act , Coast Guard Affairs Act , Act on Arrival and Departure of Ships , and Aviation Safety Act govern other types of sanctions such as travel bans, aviation bans and maritime sanctions.

Law stated - 01 January 2023

Autonomous versus international regimes

Does the domestic legislation empower your government to implement an autonomous sanctions regime or are only those sanctions adopted by international institutions and organisations imposed?

Although the domestic legislation empowers the Korean government to implement an autonomous sanctions regime, the Korean government mostly takes the approach to implement sanctions imposed by international organisations such as the United Nations (UN) or its allies such as the US and the EU, by incorporating these sanctions into their domestic sanction regimes.

Law stated - 01 January 2023

Types of sanction imposed

What types of sanction are imposed in your jurisdiction?

Korea imposes, among others, trade sanctions (including arms embargoes; economic and financial sanctions (including asset freeze); travel bans; and aviation bans and maritime sanctions.

Law stated - 01 January 2023

Countries subject to sanctions

Which countries are currently the subject of sanctions or embargoes in your jurisdiction?

The countries subject to sanctions in Korea include Russia, Belarus, Iraq, Somalia, Democratic Republic of the Congo, Republic of the Sudan, Lebanon, Libya, Syria, North Korea, Central African Republic and Yemen.

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Korean versions of the main public notices embracing the sanctioned countries and entities can be found at:

- The Public Notice on Export and Import of Strategic Materials;
- The Public Notice on Special Trade Measure for Implementation of Obligation for Maintaining International Peace and Security (Effective 18 November 2021, Public Notice of the Ministry of Trade, Industry and Energy No. 2019-57, partly amended on 18 November 2021) (Public Notice on Special Trade Measure);
- The Guidance on Approval for Payment and Receipt of Payment for Implementation of Obligation for Maintaining International Peace and Security (Effective 3 January 2018, Public Notice of the Ministry of Economy and Finance No. 2017-39, partly amended on 28 December 2017) (Guidance on Approval for Payment and Receipt of Payment); and
- The Regulation on Designation and Revocation of Designation of Financial Transaction Restricted Persons (Effective 17 December 2020, Public Notice of Financial Services Commission No. 2020-55, partly amended on 17 December 2020) (Financial Transaction Restricted Persons Regulation).

Law stated - 01 January 2023

Non-country specific regimes

What other sanctions regimes are currently in force in your jurisdiction which are not country specific?

Korea implemented the rough diamond trade controls under the Kimberley Process. In a nutshell, the Kimberley Process is an international commitment to eliminate conflict diamonds supply. As a participant in the Kimberley Process, Korea has required all importers of rough diamonds to be in possession of a Kimberley Process certificate showing that the diamonds are conflict free and all exporters of rough diamonds must obtain an export licence so that the rough diamonds shall not be traded with non-participants in the Kimberley Process.

Law stated - 01 January 2023

Counter-terrorism sanctions

What sanctions and prohibitions are imposed in your jurisdiction in relation to terrorist activities?

The CFT/WMD Act and the Financial Transaction Restricted Persons Regulation (FTRPR) designate the individuals and entities related to terrorist activities as ‘financial transaction restricted persons’, which would be automatically subject to restrictions on financial or other types of commercial transactions. Such financial transaction restricted persons must obtain approval from the Financial Services Commission (equivalent to the US Securities and Exchange Commission) in order to engage in financial and other types of transaction, which in effect operates as an asset freeze.

Additionally, certain individuals and entities who were designated by the UNSCR as being a threat to international peace and security, or by the US or the Council of the EU as being related to terrorist activities, may also be subject to the approval requirement of the Bank of Korea for their foreign exchange transactions pursuant to the Foreign Exchange Transactions Act and the Ministry of Economy and Finance’s Guidance on Approval for Payment and Receipt of Payment. Such persons are known as ‘financial sanctioned persons’. The scope of financial sanctioned persons is generally broader than that of financial transaction restricted persons.

Law stated - 01 January 2023

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Anti-boycott laws

Are any blocking or anti-boycott laws in place in your jurisdiction?

No.

Law stated - 01 January 2023

Scope of application

Who must comply with sanctions imposed in your jurisdiction? Do sanctions have extra-territorial effect?

In general, Korean laws apply to Korean nationals and those within the Korean territory. However, sanctions may also apply to foreign nationals under the general criminal law principle that foreign nationals who commit crimes against Korean nationals or the Korean government in other countries, and foreign exchange transactions involving a Korean element such as one of the parties being a Korean resident or Korean currency.

Law stated - 01 January 2023

Competent sanctions authorities

Which government authorities in your jurisdiction are responsible for implementing and administering sanctions?

Trade sanctions (including arms embargoes) pursuant to the Foreign Trade Act are mostly administered by the Ministry of Trade, Industry and Energy (concerning most of the 'dual-use' items) and the Korean Security Agency of Trade and Industry , and also are partly administered by the Nuclear Safety And Security Commission (concerning dual-use materials relevant to nuclear activities) and the Defense Acquisition Program Administration (for military materials as well as dual-use materials imported for military purposes).

Economic and financial sanctions (including asset freeze) pursuant to the Foreign Exchange Transactions Act and CFT/WMD Act are administered by the Ministry of Economy and Finance , the Financial Services Commission and the Bank of Korea.

Other types of sanctions, such as travel bans, aviation bans and maritime sanctions are administered by the Ministry of Justice , the Ministry of Land, Infrastructure and Transport , the Ministry of Oceans and Fisheries and the Ministry of Unification .

Law stated - 01 January 2023

Business compliance

Are businesses in your jurisdiction required to put in place any systems or controls in order to ensure compliance with sanctions?

Financial companies are required to put in place a compliance system for the purpose of anti-money laundering, which includes sanction-related compliance programmes to a certain extent. The companies in other industrial sectors are not required to establish such internal controls or compliance systems in order to ensure the adequate compliance of sanction programmes. However, in practice, many Korean companies have established and maintained internal

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controls and systems for the compliance of sanction programmes, especially for those businesses dealing with high-risk areas of geographic locations or sensitive technology or items. Such companies may enjoy favourable treatment by the government in receiving export permission, to the extent that they would be designated a trader with a voluntary compliance system and, therefore, are entitled to a general export permission effective for a certain period of time without a need to apply for specific permission for individual items to be exported.

Law stated - 01 January 2023

Guidance

Has your government issued any guidance on compliance with the sanctions framework in your jurisdiction?

The Korean Security Agency of Trade and Industry provides a useful guide on its website that introduces the sanction programmes of the Korean government against many other countries including North Korea. As for North Korea sanctions, a private entity called South-North Korea Exchanges and Cooperation Support Association publishes very comprehensive guidance for the economic sanction programmes directed at North Korea and promulgated by all the major countries and international organisations, including the UN, the US and the Korean government.

Law stated - 01 January 2023

ECONOMIC AND FINANCIAL SANCTIONS

Asset freezes

In what circumstances may a person become subject to asset freeze provisions in your jurisdiction? What dealings do asset freeze provisions generally restrict in your jurisdiction?

The Financial Services Commission may designate individuals and entities related to terrorist activities as financial transaction restricted persons who would be subject to restrictions of financial and other transactions, which in effect operates as an asset freeze. Currently, such persons are mainly those designated by the United Nations Security Council Resolutions (UNSCR) in relation to the economic sanctions against North Korea, or other terrorist groups such as the Taliban and Al Qaida.

Also, certain individuals and entities who were designated by the UNSCR as being a threat to international peace and security, or by the US or the Council of the EU as being related to terrorist activities, may also be designated as financial sanctioned persons, which would be subject to the approval requirement of the Bank of Korea for their foreign exchange transactions.

Law stated - 01 January 2023

General carve-outs and exemptions

Are there any general carve-outs or exemptions to the asset freeze provisions in your jurisdiction?

No.

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List of targeted individuals and entities

Do the competent sanctions authorities in your jurisdiction maintain a list of individuals and entities blocked under asset freeze restrictions?

Yes. The list of financial transaction restricted persons can be found in the Financial Transaction Restricted Persons Regulation . The list of financial sanctioned persons is updated from time to time by the Ministry of Economy and Finance and the most recent update was on 11 December 2017.

Law stated - 01 January 2023

Other restrictions

What other restrictions apply under the economic and financial sanctions regime in your jurisdiction?

None.

Law stated - 01 January 2023

Exemption licensing – scope

Are the competent sanctions authorities in your jurisdiction empowered to issue a licence to permit activities which would otherwise violate economic and financial sanctions? If so, what is the extent of their licensing powers and in what circumstances will they issue a licence?

Financial transaction restricted persons under the Financial Transaction Restricted Persons Regulation may consummate the transaction if the Financial Services Commission approves. Additionally, financial sanctioned persons under the Ministry of Economy and Finance's Guidance on Approval for Payment and Receipt of Payment may engage in a foreign exchange transaction upon approval by the chairperson of the Bank of Korea.

However, the laws and the subordinate regulations do not provide specific criteria or circumstances by which such approval is granted. In practice, such approval would rarely be granted.

Law stated - 01 January 2023

Exemption licensing – application process

What is the application process for an exemption licence? What is the typical timeline for a licence to be granted?

Since the approval for the transaction with financial transaction restricted persons and the approval for the foreign exchange transaction involving financial sanctioned persons would rarely be utilised, there are no publicly available laws and regulations detailing the application process for such approval. That said, however, with respect to the foreign exchange transaction for financially sanctioned persons, the Bank of Korea advises that the applicant should prepare for the application documents, visit the Foreign Exchange Review Team at the Bank of Korea's headquarters and have a meeting with the responsible officer. The decision for approval will be rendered within 20 days.

Law stated - 01 January 2023

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Approaching the authorities

To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on economic and financial sanctions compliance?

Access to the competent sanctions authorities are generally open to the public. One can generally contact the responsible officers to discuss licence applications or queries on economic and financial sanctions compliance.

Law stated - 01 January 2023

Reporting requirements

What reporting requirements apply to businesses who hold assets frozen under sanctions?

None.

Law stated - 01 January 2023

TRADE SANCTIONS

General restrictions

What restrictions apply in relation to the trade of goods, technology and services?

According to the Foreign Trade Act and the Public Notice on Export and Import of Strategic Materials , any person who intends to export strategic items (military equipment and dual-use items, including technologies) shall obtain permission from the Korean government ('export permission'); and any person who intends to export any goods or technologies that do not fall within the category of any strategic items but have a high potential of being appropriated for manufacturing, developing, using, or storing weapons of mass destruction or missiles as carriers of such weapons shall also obtain permission from the Korean government ('situational permission'), if the person becomes aware that the importer or the end user of the goods has intent to appropriate the goods for manufacturing, developing, using, or storing weapons of mass destruction, or suspects that there is probably such intent.

Law stated - 01 January 2023

General exemptions

Do any exemptions apply to the general trade restrictions?

According to the Foreign Trade Act and the Public Notice on Export and Import of Strategic Materials , the Korean government may exempt exporters from export permission or situational permission, in cases such as that where an exporter exports public commodities to be used for overseas diplomatic or consular missions, armed forces of the Republic of Korea dispatched overseas, diplomatic envoys, etc; where an exporter exports machinery, instruments, components, etc used for emergency repair to ensure the safe navigation of ships or aircraft; or exports of public goods used for diplomatic establishments abroad.

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Targeted restrictions

Have the authorities in your jurisdiction imposed any trade sanctions against dealing with any particular individuals or entities?

No. There are no trade sanctions against dealing with any particular individuals or entities except that the situational permissions shall be required to export any items to certain individuals or entities who were designated by the United Nations Security Council Resolutions (UNSCR) as being a threat to international peace and security.

Law stated - 01 January 2023

Exemption licensing – scope

In what circumstances may the competent sanctions authorities in your jurisdiction issue a licence to trade in goods, technology and products that are subject to restrictions?

Export permission or situational permission may be granted when the relevant goods or technologies shall be used for a peaceful purpose; exportation of the relevant goods or technologies shall not affect international peace, safety maintenance, and national security; the importer or end user of the relevant goods or technologies shall be properly qualified for the relevant transactions, and trust the purpose of use of such goods or technologies.

Law stated - 01 January 2023

Exemption licensing – application process

What is the application process for a licence? What is the typical timeline for a licence to be granted?

If anyone applies for export permission or situational permission, it will be reviewed by the Korean government and the decision for the application should be rendered within 15 days of application. However, given that the time incurred for the following processes is not counted into the 15-day period, it would generally take around two months for the applicant to receive the final decision. These processes are: a separate technical review for the relevant items; a discussion on the export of the items between relevant government agencies; a discussion on the relevant items with the related state; a field investigation relating to the product; a supplement of documents regarding the review for the export permission of the items; and a consultation with the member states or international organisations of a trade control regime applicable to the relevant items (including the approval processes).

Law stated - 01 January 2023

Approaching the authorities

To what extent is it possible to engage with the competent sanctions authorities to discuss licence applications or queries on trade sanctions compliance?

Access to the competent sanctions authorities is generally open to the public. One may contact the responsible officers in the authorities to discuss licence applications or queries on trade sanctions compliance.

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ENFORCEMENT AND PENALTIES

Reporting violations

Is there a requirement to report violations to the authorities (either to self-report or to report others)? If reporting is not obligatory, is it encouraged in any event?

The Act on Prohibition against the Financing of Terrorism and Proliferation of Weapons of Mass Destruction (CFT/WMD Act) provides that the financial companies must report to the investigative authorities if it finds that assets received from a financial transaction are funds for terrorist activity or for the proliferation of weapons of mass destruction, or the other party to a transaction is making a transaction, or disbursing or receiving the payment without proper approval. Otherwise, there is no legal obligation to self-report in relation to the sanctions enforcement.

The Criminal Code of Korea generally allows favourable treatment in terms of sentencing if the plaintiff cooperates during the investigation, including self-reporting. The benefits of self-reporting could be considered by companies in making a decision as to how to respond to the potential enforcement action.

Law stated - 01 January 2023

Investigations

Which authorities are responsible for investigating sanctions violations? What is the extent of their investigatory powers?

The responsible administrative authorities such as the Financial Services Commission and Financial Supervisory Services , the Korea Customs Service , the Korean National Police Service , the Korea Immigration Service as well as the Prosecution Service would investigate the violations. Such authorities would have full investigatory powers including search and seizure, and arrest pursuant to a warrant issued by a court with relevant jurisdiction.

Law stated - 01 January 2023

Penalties

What are the potential penalties for violation of sanctions?

Criminal liabilities including imprisonment and criminal fine and administrative sanctions as stringent as business suspension or the revocation of the relevant business licence may be imposed on the responsible employees and officers as well as the companies.

Law stated - 01 January 2023

Recent enforcement actions

Have there been any significant recent enforcement cases? What lessons can be learned from these cases?

Since March 2022, after Russia's invasion of Ukraine, the Korean government implemented sanctions against Russia, which involve (1) suspension of transactions with certain Russian financial companies, (2) suspension of investment in Russian sovereign debt, and (3) exclusion of certain Russian banks from SWIFT. Additionally, the Korean government strengthened export control of strategic items to Russia and Belarus. The Korean government stated that it would not

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grant approval on export of strategic items to Russia or Belarus, and would require situational approval on export of non-strategic items to Russia and Belarus.

While there were no significant recent enforcement cases for violation of the sanctions against Russia and associated export control, in the context of these measures the Korean government is closely monitoring compliance with export control regulations by exporters of strategic items and dual-use items. In line with this, Korean companies, and international companies carrying out business in Korea, should pay close attention to the Korean government's implementation of the sanctions and export control.

Law stated - 01 January 2023

UPDATE AND TRENDS

Emerging trends and hot topics

Are there any emerging trends or hot topics in sanctions law and policy in your jurisdiction?

After the US Department of Commerce implemented, in October 2022, new controls on export of advanced computing and semiconductor manufacturing items to China, it has been reported that the US government has requested Japan to collaborate in its effort to restrict China's ability to purchase and manufacture semiconductors, and it is possible that Korea will be the next partner to join. While the technologies pertaining to semiconductor manufacturing fall under the definition of national core technology and require Ministry of Trade, Industry and Energy clearance under the Prevention of Divulgence and Protection of Industrial Technology Act of Korea, it would be worthwhile to closely monitor the development of the Korean export control regime related to the semiconductor industry.

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Jurisdictions

Australia	Clyde & Co LLP
European Union	BLOMSTEIN
India	Lakshmikumaran & Sridharan
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