

CLIENT ALERT

Hong Kong Autonomy Act and Executive Order Establish New Sanctions Authorities Directed at China

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On July 14, 2020, the President issued Executive Order 13936 (“EO”) authorizing the imposition of new sanctions in response to China’s erosion of the autonomy of Hong Kong. The EO was issued to implement the Hong Kong Autonomy Act of 2020, which passed unanimously through both the House and Senate and authorizes sanctions on foreign persons that have been deemed to materially contribute to the Government of China’s failure to meet its obligations to maintain Hong Kong’s autonomy and foreign financial institutions knowingly conducting significant transactions with those persons. The EO expanded the sanctions authorized in the Hong Kong Autonomy Act of 2020 and provides the functional standard for how those sanctions will be implemented. It also directed U.S. government agencies to take the steps necessary to eliminate or terminate any preferential treatment for Hong Kong.

The statute and EO expand the authority of the U.S. Departments of State and the Treasury to impose sanctions on Chinese individuals and entities involved in the oppression of Hong Kong and could result in a significant expansion of the number of Chinese persons on the List of Specially Designated Nationals and Blocked Persons (“SDN List”).

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I. Sanctions Authorized by the EO

Specifically, the EO authorizes the secretaries of State and Treasury to impose blocking sanctions on, and the addition to the SDN List of, foreign persons who are determined to be or have been:

- Involved directly or indirectly, in the coercing, arresting, detaining, or imprisoning of individuals under the authority of, or to be or have been responsible for or involved in developing, adopting, or implementing, China's National Security Law;
- Engaged in actions or policies that undermine democratic processes or institutions in Hong Kong;
- Engaged in actions or policies that threaten the peace, security, stability, or autonomy of Hong Kong;
- Engaged in censorship or other activities with respect to Hong Kong that prohibit, limit, or penalize the exercise of freedom of expression or assembly by citizens of Hong Kong, or that limit access to free and independent print, online or broadcast media; or
- Engaged in the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong or other gross violations of internationally recognized human rights or serious human rights abuses in Hong Kong.

The EO further authorizes blocking sanctions against leaders or officials of an entity, including any government entity, and any foreign persons who have materially assisted, are owned or controlled by, or are board members or senior executive officers of entities who have engaged in the above-listed activities or entities whose property is blocked pursuant to the EO. The EO prohibits any transactions that are meant to evade, avoid, or violate the prohibitions in the EO and any conspiracies formed to violate the EO.

II. Suspending Preferential Treatment for Hong Kong

In addition to authorizing sanctions against foreign persons engaging in the activities detailed above, the EO suspends the preferential treatment for Hong Kong described in section 201(a) of the United States-Hong Kong Policy Act of 1992, as amended, as it applies to the Immigration Act of 1999, the Immigration and Nationality Act of 1952, the Arms Export Control Act, the Defense Production Act of 1950, the Export Control Reform Act of 2018, and the exemption to container marking requirements located at 19 USC § 1304. The EO also directs the heads of U.S. governmental agencies to amend specified regulations, revoke license exceptions, and suspend or terminate agreements, cooperation protocols, and guidance that provides preferential treatment for Hong Kong by July 29, 2020.

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III. Implementation of the EO and Strategies to Mitigate Sanctions Risk

While the Trump administration has been wary of legislation criticizing China or sanctioning Chinese officials in the past due to the potential for the sanctions to cause a breakdown in trade negotiations, the continued deterioration of relations between the United States and China during the COVID-19 pandemic and China's continued suppression of Hong Kong have led to a more aggressive stance. By contemporaneously signing the Hong Kong Autonomy Act of 2020 and issuing EO 13936, the administration has signaled an increased willingness to pursue sanctions against Chinese individuals and entities.

While it remains to be seen how the EO will be implemented, the likely result of both the political pressure to respond to China and these expanded authorities is that the Office of Foreign Assets Control ("OFAC") places more Chinese individuals and entities on the SDN List. In order to mitigate the sanctions risks associated with the administration taking a more aggressive stance on China, U.S. persons should continue screening their counterparties and partners in China against OFAC's SDN List and any entities owned 50 percent or more by any person on the SDN List. Screenings should be conducted on a regular basis in order to catch any additions to the SDN List.

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