

US imposes new economic sanctions related to China and issues Executive Order on Hong Kong normalization status that will produce additional supply chain diligence responsibilities

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Executive summary

On 14 July 2020, United States (US) President Trump signed into law the *Hong Kong Autonomy Act* (HKAA)¹ and issued an Executive Order (EO) on Hong Kong Normalization.² The EO further implements parts of the HKAA and the *Hong Kong Human Rights and Democracy Act of 2019* (HKHRDA),³ which target foreign actors involved in the erosion of Hong Kong's autonomy and democratic processes with economic sanctions. On 17 June 2020, President Trump also enacted the *Uyghur Human Rights Policy Act of 2020* (Uyghur Act),⁴ which specifically targets gross human rights violations involving Uyghur and other Muslim minority groups in the Xinjiang region with economic sanctions. The passage of these legal authorities, and their anticipated implementation by the US Department of the Treasury's Office of Foreign Assets Control (OFAC), signal the introduction of a China-/Hong Kong-related sanctions program.

Detailed discussion

The HKAA, the HKHRDA, and the President's related *Executive Order on Hong Kong's Normalization*,⁵ are set to impose economic sanctions against certain foreign individuals, entities, and financial institutions engaging in conduct deemed unacceptable by the US Government in relation to the undermining of Hong Kong's autonomy and democratic institutions, and human rights violations

that occur with respect to its citizens. The Uyghur Act, enacted on 17 June 2020, also aims to impose economic sanctions on parties involved in gross human rights violations related to China, but with respect to Muslim minority groups in the country's Xinjiang Uyghur Autonomous Region.

In general, these three pieces of legislation require the President to impose sanctions and visa restrictions on foreign persons⁶ identified (in the President's periodic reports to Congress) as being involved in such misconduct, and the EO further details and expands on the sanctionable conduct outlined by Congress in the HKAA and the HKHRDA.

The types of sanctions to be imposed are limited essentially to the blocking (i.e., asset freezing) of all such foreign persons' property interests within the possession or control of a US person,⁷ and prohibiting transactions or dealings in such property (blocking sanctions). Penalties for engaging in any such prohibited transactions (ranging from hefty civil fines to criminal prosecution) are those provided under the *International Emergency Economic Powers Act* (IEEPA).⁸

Hong Kong-related sanctions authorities

In relevant part, the President's 14 July 2020 EO was issued in accordance with the HKAA, the HKHRDA, and the broad economic sanctions authorities under IEEPA. In view of China's recent contravention of its legal obligations under the Joint Declaration and the Basic Law with regard to the preservation of Hong Kong's autonomy,⁹ the HKAA directs the President to impose blocking sanctions (mandatory in certain instances) on foreign persons determined by the Secretary of State as materially contributing to the failure of the Government of China to meet such obligations and identify such foreign persons.¹⁰ The HKHRDA, enacted 27 November 2019, intended to preserve not only Hong Kong's high degree of autonomy, but also support the fundamental rights and freedoms of its people, requires the President to impose blocking sanctions against foreign persons responsible for: (1) the extrajudicial rendition, arbitrary detention, or torture of any person in Hong Kong; or (2) other gross violations of internationally recognized human rights in Hong Kong.

The EO further implements, and greatly expands on, the conduct set forth by Congress as being sanctionable under the HKAA and the HKHRDA. This includes, but is not limited to, foreign persons: (1) being involved in the coercion/arrest/imprisonment of individuals under the authority of the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Administrative Region,

or responsible for its development and implementation; (2) being responsible, complicit, or having engaged in actions or policies that undermine democratic processes or institutions in Hong Kong, threaten its peace, stability, or autonomy, or limit the exercise of freedom of expression or assembly of its citizens; (3) being responsible for gross violations of internationally recognized or serious human rights abuse in Hong Kong; or that (4) materially assist, sponsor, or provide financial, material, or technological support for, or goods or services to or in support of, any person whose is sanctioned pursuant to the EO.¹¹

Uyghur human rights-related sanctions authorities

The Uyghur Act requires the President to impose blocking sanctions on foreign persons determined to be responsible for gross human rights violations with respect to Uyghurs, other Muslim minority groups, and other persons in the Xinjiang Uyghur Autonomous Region of China. On 1 July 2020, several US government agencies jointly issued the *Xinjiang Supply Chain Business Advisory*, which directs that persons involved in human rights abuses or forced labor in the Xinjiang region of China may be targeted by OFAC with sanctions and related enforcement actions under either the Uyghur Act, or the existing Global Magnitsky sanctions program, which focuses on serious human rights abuses globally.¹² Businesses that have potential exposure in their supply chain to the Xinjiang Uyghur Autonomous Region or, to facilities outside Xinjiang that use labor or goods from that region, are specifically warned in the Advisory about potential sanction risks. Indeed, on 9 July 2020, OFAC sanctioned and designated on its list of Specially Designated Nationals and Blocked Persons (SDN), one Chinese government entity and four government officials in connection with serious human rights abuses in Xinjiang, pursuant to the Global Magnitsky Program.¹³

Implications and considerations for businesses

The President's 14 July EO, the HKAA, the HKHRDA, and the Uyghur Act make it apparent that the US Government intends to use blocking sanctions to target not only Chinese officials, but any foreign actors, involved in human rights abuses in China and/or the undermining of fundamental freedoms and autonomy with respect to Hong Kong. It is important that businesses assess their operations and conduct appropriate due diligence on their counterparties and supply chains, to

detect any involvement in sanctionable conduct that is being targeted by these legal authorities and terminate activity/relationships as appropriate. Proper due diligence measures include but are not necessarily limited to: (1) screening for parties formally identified on restricted party lists for such conduct; and (2) researching government, international organization, and non-governmental publications which can highlight additional individuals/entities suspected of involvement with human rights abuse and forced labor in China, or in undermining Hong Kong's autonomy.

Due diligence policies, procedures, and internal controls also should be proactively implemented as necessary to mitigate the risk of engaging in such conduct in the future, and in transactions with any parties that become the subject of sanctions under these authorities. It is recommended for businesses to audit their internal controls, including screening software and systems to ensure they are cognizant of: (1) new, amended, or updated OFAC sanctions programs and guidance issued through the enactment of such new legislation; and (2) relevant updates to OFAC sanctions lists.

Endnotes

1. H.R. 7440 – 116th Congress: *Hong Kong Autonomy Act*. See also <https://www.whitehouse.gov/briefings-statements/bill-announcement-071420/>.
2. The EO was issued pursuant to *United States-Hong Kong Policy Act of 1992* (Public Law 102-393), the *Hong Kong Human Rights and Democracy Act of 2019* (Public Law 116-76), the *Hong Kong Autonomy Act of 2020*, signed into law 14 July 2020; the *International Emergency Economic Powers Act* (50 U.S.C. 1701 et seq.) (IEEPA); and the *National Emergencies Act* (50 U.S.C. 1601 et seq.) (NEA), among others.
3. *Hong Kong Human Rights and Democracy Act of 2019*, Pub. L. No. 116-76, S. 1838, 116th Cong..
4. *Uyghur Human Rights Policy Act of 2020*, Pub. L. No. 116-145, S. 3744, 116th Cong..
5. <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization>.
6. See e.g. the HKHRDA and Uyghur Act, which define “foreign person” to mean a person that is not a United States person.
7. The 14 July 2020 Executive Order defines the term “United States person” to include any U.S. citizen, permanent resident alien, entity organized under the laws of the U.S. (including their foreign branches), or any person in the United States. The Uyghur Act shares a similar definition.
8. 50 U.S.C. § 1705. See also 85 Fed. Reg. 19,884. The civil penalty for IEEPA violations is currently set at a maximum of \$307,922 or twice the amount of the underlying transaction. Criminal violations are subject to 20 years imprisonment or up to \$1 million (or both).
9. The term “Joint Declaration” means the 19 December 1984 Joint Declaration of the Governments of Great Britain and the People’s Republic of China on the Question of Hong Kong, which were passed into the domestic law of China by the National People’s Congress under the “Basic Law.”
10. Depending on the frequency with which a foreign person is identified in periodic reports to Congress, the President will have discretion, or will be required to impose blocking sanctions against them, under the HKAA. The HKAA also requires the President to impose certain sanctions – to be selected from a proscribed menu of options (e.g., prohibiting loans from US financial institutions) – with respect to foreign financial institutions that knowingly conduct a significant transaction with foreign persons identified in the Secretary of State’s reports to Congress.
11. The blocking sanctions criteria of the 14 July 2020 Executive Order on Hong Kong Normalization are set forth in section 4 of that Order. See <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization>.
12. https://www.treasury.gov/resource-center/sanctions/Programs/Documents/20200701_xinjiang_advisory.pdf.
13. <https://home.treasury.gov/news/press-releases/sm1055>.

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