

Insights

UPDATES ON U.S. SANCTIONS AFFECTING PARTIES IN HONG KONG AND CHINA - DECEMBER 2020

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INTRODUCTION

Following our recent [Client Alert](#) published in October 2020 on the release of the Section 5(a) Report under the Hong Kong Autonomy Act of 2020 (“[HKAA](#)”), there have now been some further updates in relation to U.S. sanctions affecting parties in Hong Kong and China which we discuss below.

TRUMP ADMINISTRATION IDENTIFIES FOUR ADDITIONAL CHINESE ENTITIES AS MILITARY COMPANIES

On 3 December 2020, the U.S. Department of Defense [released the names of four additional “Communist Chinese Military Companies” \(“CCMC”\)](#). This list is required to be compiled and reported to the U.S. Congress. In addition to the companies already on the list from designations in June and August of this year, the four companies added in December are (i) high-tech state-owned enterprise group, China Construction Technology Co. Ltd. (CCTC); (ii) an engineering consulting business, China International Engineering Consulting Corp. (CIECC); (iii) China’s top chipmaker, Semiconductor Manufacturing International Corp. (SMIC); and (iv) China’s largest offshore oil and gas producer, China National Offshore Oil Corporation (CNOOC). Separately, President Trump issued an [Executive Order on 12 November 2020 on Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies \(“EO 13959”\)](#). Under the EO 13959, from 11 January 2021, transactions by U.S. persons in (i) publicly traded securities of CCMCs already listed as of 12 November 2020; (ii) derivatives of such securities; or (iii) securities that are designed to provide investment exposure to such securities, are prohibited. U.S. persons are prohibited from engaging in the same types of transactions for CCMCs listed after 12 November 2020 as of the date that is 60 days after designation as a CCMC. For the four entities designated as CCMCs on 3 December 2020, these transactions will be prohibited for U.S. persons to undertake as of 1 February 2021.

The latest designations bring the total number of entities that the U.S. Department of Defense has identified as CCMCs to thirty five (35). An [initial list of CCMCs](#) was published in June 2020 and an [additional list](#) was issued in August 2020.

FOURTEEN CHINESE OFFICIALS SANCTIONED IN THE LATEST ROUND OF SANCTIONS

On 7 December 2020, fourteen (14) Chinese officials were added to the [Specially Designated Nationals and Blocked Persons List \(“SDN List”\)](#) of the U.S. Treasury Department’s Office of Foreign Assets Control (“[OFAC](#)”) pursuant to the [President’s Executive Order on Hong Kong Normalization \(“EO 13936”\)](#). The fourteen sanctioned Chinese officials are members of the National People’s Congress Standing Committee (“[NPCSC](#)”), which on 30 June 2020, voted unanimously to pass the National Security Law in Hong Kong. A [statement by the U.S. Department of State](#) expressed that the latest round of sanctions are to “hold accountable” these members of the NPCSC for “neuter[ing] the ability of the people of Hong Kong to choose their elected representatives.”

The designated individuals, or the SDNs, and their immediate family members, will be barred from travelling to the U.S. In addition, their assets within the U.S. or in the possession or control of U.S. persons will be blocked, and U.S. persons are generally prohibited from dealing with them. The sanctions imposed on the Chinese officials this time around are similar to ones imposed on the eleven (11) Hong Kong officials on 7 August 2020, except no travel ban was previously placed on the sanctioned Hong Kong officials.

SECTION 5(B) REPORT UNDER THE HKAA RELEASED

On 11 December 2020, the U.S. Department of the Treasury submitted a [report to Congress](#) pursuant to [Section 5\(b\) of the HKAA](#). Under the HKAA, the Treasury had until the deadline of 13 December 2020 to identify foreign financial institutions (“[FFI](#)”) (“[Section 5\(b\) Report](#)”) that have knowingly conducted a significant transaction with a foreign person identified by the Secretary of State in the [Section 5\(a\) Report](#) released on 14 October 2020.

In the [Section 5\(b\) Report](#), it was announced that at this time, Treasury has not identified any such FFI. The Treasury has stated that it will continue to monitor the situation and will update the [Section 5\(b\) Report](#) in an ongoing manner. It intends to submit relevant updates with the annual report under section 301 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5731). The next annual report for 2021 is expected to be released in Q1 – Q2 of 2021.

NEXT STEPS

The recent updates from the Department of Defense and OFAC in relation to designating new CCMCs and sanctioning additional individuals were relatively unexpected. Going forward, relevant stakeholders should stay updated on the developing nature of the sanctions between the U.S., China and Hong Kong under the Trump administration. President-elect Joe Biden, who takes office on 20 January 2021, has also indicated that he will take a tough line against China. As with all U.S. sanctions placed on Hong Kong and China thus far, the breadth and potential implications of the sanctions are wide. Any transactions with a U.S. nexus run the risk for breaching the sanctions. Transactions without U.S. nexus could still result in parties being targeted by secondary sanctions.

To mitigate risks of either of these occurrences, it is important to have measures in place to mitigate risks and identify transactions that warrant further review.

This article was co-written with Trainee Stephanie Cheung.

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