

The Proposed Anti-Foreign Sanctions Law in Hong Kong—Current Status and What You Need to Know

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Introduction. The possibility of an Anti-Foreign Sanctions Law being implemented in Hong Kong has recently attracted significant attention in the region. The precise scope and ambit of the contemplated law is currently unclear, as is the proposed timing for its implementation. Whilst we await the details, it is nevertheless prudent for businesses in Hong Kong to begin to consider the potential operational and legal implications that might arise.

For these purposes, it is helpful to understand some of the background to the law and its possible provisions. As such, this briefing note summarises:

- the implementation of the Anti-Foreign Sanctions Law in the PRC and its jurisdictional scope;
- the proposals for implementing a similar law in Hong Kong; and
- the current status.

The PRC Anti-Foreign Sanctions Law. On 10 June 2021, the PRC government implemented the Anti-Foreign Sanctions Law (AFSL). Comprising 16 Articles¹, the AFSL provides a framework that further enhances the legislative toolkit available to the PRC government for responding to the increased sanctions against the PRC by foreign states².

On 23 July 2021, in response to the U.S. State Department's publication of a Hong Kong Business Advisory, the PRC Ministry of Foreign Affairs announced its first use of the AFSL to impose counter-sanctions against certain U.S. individuals who and a U.S. entity that were added to the Countermeasure List pursuant to Article 4 of the AFSL³. The

¹ For a more detailed overview of the AFSL please see our previous briefing [here](#).

² The existing legal framework includes: the MOFCOM Order 1 (Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures) and the List of Unreliable Entities.

³ Please see the list of sanctioned persons and entity in the press release by the PRC Ministry of Foreign Affairs [here](#).

extent to which the PRC government continues to exercise its powers under the AFSL remains to be seen⁴.

Jurisdictional Scope of the AFSL? The implementation of the AFSL in the PRC prompted businesses in Hong Kong to question whether the AFSL applies in Hong Kong. The countermeasures provided under Article 6 of the AFSL (e.g. denial of visas, seizure of assets, prohibition/restriction of relevant transactions) appear to apply to property and persons located within the “mainland territory”. Similarly, the private right of action under Article 12 of the AFSL available to PRC citizens and organisations against parties that infringe the prohibition on implementing or assisting in the implementation of discriminatory restrictive foreign measures appears actionable only in the Mainland courts. Accordingly, based on the text of the AFSL, it would appear that the PRC law does not apply to property and persons in Hong Kong.

The Proposed Incorporation of the AFSL into Hong Kong Law. However, following an announcement on 27 July 2021, it appeared that any uncertainty regarding the applicability of the AFSL in Hong Kong would be removed. In that announcement, the PRC government stated that it would consider amendments to Annex III of the Hong Kong Basic Law⁵ at the 30th meeting of the Standing Committee of the National People’s Congress (NPCSC) on 17 August 2021. Widespread speculation followed that the law in consideration would be the AFSL. This seemed to be confirmed by comments made by Hong Kong government officials around that time. Various Hong Kong officials (including the Secretary for Justice and Chief Executive) expressed their support for implementing the AFSL into Hong Kong law, and Mr Tam Yiu-Chung (Hong Kong’s sole delegate to the NPCSC) said that the NPCSC had described the implementation of AFSL in Hong Kong as “*urgent and necessary*”, and he predicted that such a resolution was very likely to be approved during the NPCSC session. In the event, as the 30th meeting closed, the NPCSC decided to defer the proposal for the amendments to Annex III, but noted that the matter would be considered further in the future.

On 24 August 2021, despite the deferral, the Chief Executive of Hong Kong reiterated her support for the proposal to implement the AFSL into Hong Kong law, noting: “*as the HKSAR is an inalienable part of China and the foremost target affected by foreign*

⁴ It should be noted that, even prior to the enactment of the AFSL, China previously sanctioned a number of U.S. senators and officials in August 2020, stating that it was in direct response to an earlier decision by the U.S. government to impose sanctions on 11 Chinese and Hong Kong officials, including the Chief Executive of Hong Kong.

⁵ Article 18 of the Basic Law states that national laws shall not be applied in Hong Kong except for those listed in Annex III to the Basic Law (“Annex III”). Annex III is confined to national law concerning defence and foreign affairs. The Mainland government is empowered to add or repeal laws in Annex III after consulting the HKSAR Basic Law Committee and the local government.

sanctions, I only have one stance to take: I will support incorporating [the law] into Annex III [of the Basic Law]. There is no other choice". The Chief Executive added that she had conveyed this opinion to the PRC government.

Current Position and Next Steps. It is unknown when the matter will be revisited by the NPCSC, although commentators and news reports suggest that a delay does not signal any retreat from the implementation of an AFSL in Hong Kong (while perhaps the precise approach is still being considered by the NPCSC). Assuming the matter will be revisited, there are two methods for implementing the AFSL into Hong Kong law:

- **Direct implementation.** In the case of the National Security Law (NSL), the NSL was added to Annex III via promulgation by the NPCSC on 30 June 2020 and gazetted into Hong Kong law on the same day; or
- **Local implementation.** Conversely, the National Anthem Law came into force in the Mainland in October 2017 and was added to Annex III in November 2017. The law was then implemented in Hong Kong via the local legislative process and the National Anthem Ordinance came into force in June 2020.

The Hong Kong government has indicated a preference for the AFSL to be implemented through the local legislative process. This process has the potential advantage of giving the Hong Kong government the opportunity to consider whether any amendments should be made to the local version of the law, so that it is possibly tailored to meet the needs of the international business community in this major financial hub.

In this context, many international businesses and financial institutions in Hong Kong have expressed concerns at the prospect of the AFSL being implemented in Hong Kong, given the operational and regulatory uncertainty that could arise. In particular, they are concerned that, as with any anti-sanctions law, it will become increasingly challenging for international companies to navigate through potentially conflicting situations where they are required to comply with foreign sanctions and regulations, but also be subject to the AFSL when implemented. Nonetheless, businesses in Hong Kong are using the delay to pro-actively consider how the AFSL could affect their operations and are taking steps to risk-manage the situation accordingly.

If you would like to discuss these types of issues, please contact any of the individuals on this bulletin.

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