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July 28, 2021

China Passes New Law to Counter Foreign Sanctions

The Law of the People's Republic of China on Countering Foreign Sanctions (Anti-Sanctions Law) was passed by the Standing Committee of the 13th National People's Congress on June 10, 2021. President Xi Jinping signed a presidential order to allow the new law to go into effect that day. This law is a mere fifteen provisions, but it complements the so-called "Unreliable Entity" list and related rules adopted by the Ministry of Commerce (MOFCOM) in September 2020 and MOFCOM's extraterritorial blocking rules adopted in January 2021.

Chinese academics and state media have described the Anti-Sanctions Law as a timely addition to Beijing's legal tool kit for resisting Western coercion, by establishing mechanisms for retaliating against foreign sanctions and mitigating their impact on Chinese entities and individuals. However, to address the concerns of the foreign business community, Foreign Ministry spokesman Wang Wenbin emphasized that "China always welcomes and supports foreign companies doing business and pursuing cooperation in China and protects their rights and interests in accordance with law."

This update answers the most frequently asked questions regarding the Anti-Sanctions Law such as the applicable parties of the Anti-Sanctions Law, the countermeasures against the parties, the regulator in charge, and the legal liabilities for violations of the Anti-Sanctions Law. It further provides a general guidance on the relations between the Anti-Sanctions Law and other similar rules including *the Provisions on the List of Unreliable Entities*, *the Export Control Law of the People's Republic of China* and *the Rules on Counteracting Unjustified Extra-territorial Application of Foreign Legislation and Other Measures*.

Who Is Subject to the Anti-Sanctions Law?

Pursuant to Article 3 of the Anti-Sanctions Law, the criteria for China to take corresponding countermeasures are as follows: (1) any foreign country that violates international law and the basic norms of international relations, (2) uses various pretexts or laws to contain or suppress China, (3) takes *discriminatory restrictive measures* against Chinese citizens or organizations, and (4) interferes in China's internal affairs.

Next, Article 4 of the Anti-Sanctions Law stipulates that such countermeasures are applicable to a list of the individuals and organizations who are directly or indirectly involved in the formulation, decision-making, and implementation of the *discriminatory restrictive measures* provided for in Article 3 of the Anti-Sanctions Law.

More broadly, Article 5 of the Anti-Sanctions Law also includes the following individuals and organizations on the countermeasure list:

- Spouses and immediate family members of individuals included on the countermeasure list;
- Senior management personnel or actual controllers of organizations included on the countermeasure list;
- Organizations in which individuals included on the countermeasure list serve as senior management personnel; and
- Organizations that are controlled by individuals or organizations included on the countermeasure list, or organizations in which individuals or organizations included on the countermeasure list have participated in establishment or operations of such organization.

Significantly, Article 15, which is the last provision of the Anti-Sanctions Law, states that "[r]elevant provisions herein shall be referred to where necessary countermeasures need to be taken against foreign countries, organizations or individuals for implementing, assisting or supporting acts that endanger China's sovereignty,

security and development interests."

With this in mind, except for a discriminatory restrictive measure taken by a foreign country, any activity conducted by a foreign organization and individual that may be considered as endangering China's sovereignty, security or development interests could trigger the countering measures under the Anti-Sanctions Law. Therefore, Article 15 appears to broaden the scope of the Anti-Sanctions Law beyond simply a "discriminatory restrictive measure" taken by a foreign country as provided under Article 3 of the Anti-Sanctions Law.

What Are the Countermeasures?

Article 6 of the Anti-Sanctions Law lists three types of countermeasures and they may be applied separately or simultaneously against the individuals and organizations from the countermeasure list. Such countermeasures include the following:

- Refusal of visa issuance, denial of entry, cancellation of visas, or deportation;
- Sealing up, seizing or freezing the movable assets, immovable property, and other various types of property of such individuals and organizations that are located within the territory of Mainland China;
- Prohibiting or restricting organizations and individuals within the territory of Mainland China from engaging in relevant transactions, cooperation, or other activities with such individuals and organizations; and/or
- Other necessary measures.

Notably, the decision to take one or more of the above countermeasures is made by relevant departments of the State Council depending on actual circumstances and such a decision is non-appealable and final once issued.

However, Article 8 of the Anti-Sanctions Law provides an exception that in the event of any change of the circumstances on which the applicable countermeasures are based, relevant departments of the State Council may suspend, modify, or lift relevant countermeasures. Correspondingly, the Ministry of Foreign Affairs or other relevant departments of the State Council will issue orders to promulgate the confirmation, suspension, modification or cancellation of the countermeasure list and countermeasures.

Who Is in Charge?

Uniquely, Article 10 of the Anti-Sanctions Law names the regulating department as "a coordination mechanism for anti-foreign sanctions work" as responsible for overall planning and coordination of relevant work.

Together with the coordination mechanism for anti-foreign sanctions work, relevant departments of the State Council are required to strengthen coordination and information-sharing, as well as determine and implement relevant countermeasures according to their respective responsibilities and division of tasks.

What Are the Legal Liabilities?

On the whole, the Anti-Sanctions Law calls for individuals and entities in China to assist with the implementation of the applicable countermeasures and to not cooperate with any discriminatory restrictive measure imposed by a foreign country. Specifically, if the individuals or entities, regardless of their nationality, cause damage to the Chinese citizen or entity who has been sanctioned by a foreign country, the affected Chinese citizen or entity is entitled to file a lawsuit at a Chinese court for a cease-and-desist order and

compensation for their loss.

The potential legal liabilities are as follows:

- First, organizations and individuals within the territory of Mainland China who fail to comply with the countermeasures will be punished by relevant departments of the State Council. Such punishment includes restrictions on, or prohibitions against, engaging in relevant activities. (Article 11 of the Anti-Sanctions Law)
- Second, organization or individual must not implement, or provide assistance for the implementation of, discriminatory restrictive measures taken by foreign countries against Chinese citizens and organizations. If an organization or individual violates this rule and infringes upon the legitimate rights and interests of a Chinese citizen or organization, the Chinese citizen or organization may file a lawsuit with the people's court in accordance with the law to claim infringement, obtain a cease-and-desist order, and seek compensation for their loss. (Article 12 of the Anti-Sanctions Law)
- Third, any organization or individual that fails to comply with or cooperate with the implementation of countermeasures shall be investigated for legal liabilities in accordance with the law. (Article 14 of the Anti-Sanctions Law)

Are There Similar Counteracting Laws in China?

The short answer is "yes."

MOFCOM issued the *Provisions on the List of Unreliable Entities*, effective on September 19, 2020. The "Unreliable Entity" list allows the MOFCOM to take corresponding measures against the following actions of foreign entities in international economic and trade and related activities: (1) endangerment of China's national sovereignty, security, and development interests; and (2) violation of the regular principles of market transactions, interruption of regular transactions with Chinese enterprises, other organizations or individuals, or taking of discriminatory measures against Chinese enterprises, other organizations or individuals, resulting in serious damage to the legitimate rights and interests of Chinese enterprises, other organizations or individuals.

Following that, the Standing Committee of the National People's Congress passed the [*Export Control Law of the People's Republic of China*](#), effective on October 17, 2020. It empowers the People's Republic of China, depending on the situation, to take reciprocal measures against any country or region whose abuse of export control measures endangers the national security and interests of the People's Republic of China.

Subsequently, MOFCOM released the *Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures*, effective on January 9, 2021. These rules allow the Chinese government to take necessary countermeasures based on actual circumstances and needs in response to unjustified extraterritorial application of foreign legislation and other measures.

Against this background, Article 13 of the Anti-Sanctions Law echoes the above legislation by stating that in addition to the Anti-Sanctions Law, relevant laws, administrative regulations and departmental rules may provide for the adoption of other necessary countermeasures against acts that endanger China's sovereignty, security and development interests. With this in mind, we may anticipate that it is possible that a foreign violator may be simultaneously subject to the "Unreliable Entity" list, the export control measures, the non-application of foreign laws, as well as the countermeasure list.

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