



USCBC Comments on Hong Kong Sanctions

October 2, 2020

Ms. Andrea Gacki
Director, Office of Foreign Assets Control
US Department of the Treasury

Dear Director Gacki,

The US-China Business Council (USCBC) represents over 220 American companies that operate in a diverse range of industries and employ millions of Americans. The American business community supports the administration's efforts to promote Hong Kong's autonomy and rule of law under the "one country, two systems" principle that has allowed the region to become a thriving international financial center. We understand that sanctions being considered under the *Hong Kong Autonomy Act* and the Executive Order on Hong Kong Normalization are aimed at achieving this goal.

However, our member companies have expressed concern that excessively broad or insufficiently flexible sanctions could disrupt financial services for companies in the region, impact employee safety, and create challenges surrounding compliance. We hope that sanctions can be scoped in a way that minimizes unnecessary harm to their competitiveness and business operations. Additional clarity on the scope of what is under consideration and how sanctions will be implemented will help US companies prepare to comply.

Broad Impact If Sanctions Extend to Financial Institutions

The *Hong Kong Autonomy Act* outlines how if a foreign financial institution conducts "significant transactions" with sanctioned entities, the foreign financial institution could also be subject to US sanctions. Sanctions on financial institutions would not only impact companies' operations in Hong Kong and Mainland China, but also throughout the Asia-Pacific. USCBC recommends that Treasury provide additional guidance on the scope of what may be considered a "significant transaction" to avoid unintended consequences from an overly broad interpretation.

Financial services provided by US and foreign firms operating in Hong Kong are essential for US firms to access credit and currency to make purchases, settle payments, and fund their operations in China and the Asia Pacific region. Sanctions on financial institutions would compromise this source of financing, making it difficult for US companies to conduct normal business transactions ranging from paying suppliers and accepting payments from customers to administering payroll.

Transition Period and License Availability

The combination of an insufficient transition period and a lack of general licenses has threatened to force some companies to exit the market in other jurisdictions even though this had not been the intention of policymakers. USCBC recommends allowing for a sufficient

transition period before sanctions take effect to allow US companies time to address any connections to sanctioned entities and, where appropriate, to apply for licenses. Before implementing sanctions, companies would like to be notified of whether general or special licenses will be available, under what circumstances companies can receive licenses, and what the licensing process will entail.

Contradictory Compliance Requirements in US and Chinese Law

Some members have voiced concern that contradictory legal requirements could require companies to choose between the safety of their employees, particularly those who are American citizens, and complying with US Office of Foreign Assets Control (OFAC) requirements. Article 29.4 of the *Hong Kong National Security Law* stipulates that anyone who conspires with a foreign country or institution to impose sanctions against Hong Kong or Mainland China will be guilty of an offence. Penalties for violation of Article 29 range from 3 years in prison to life imprisonment, and could be imposed even for normal compliance activities such as a financial institution identifying and blocking the transactions of a sanctions target.

US companies operating joint ventures with Chinese and other foreign financial institutions will face particular difficulty navigating these contradictory requirements. It is unclear whether such joint ventures will be able to continue under this new sanctions regime.

Erosion of US Influence in Hong Kong

All things considered, the prospect of more sanctions related to Hong Kong increases both political and business uncertainty, and could lead US companies to reconsider doing business there. This would run contrary to US policy goals, resulting in a greater withdrawal of Western influence in Hong Kong, further entrenchment of the Chinese government, and continued undermining of Hong Kong's autonomy.

USCBC appreciates your consideration of these comments, and hopes to serve as a resource on this issue.

Sincerely,



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