



CLIENT ALERT /// July 16, 2020

## U.S. Takes Additional Measures to Respond to China's Policies on Hong Kong and Xinjiang

### Summary

On July 14, 2020, President Trump took additional actions to address China's policies regarding Hong Kong. These actions follow last week's designation of high-ranking Chinese officials for alleged human rights violations in the Xinjiang Autonomous Region ("Xinjiang") in western China and have potentially significant implications for corporations, financial institutions, and the global banking system.<sup>1</sup>

### Key Highlights and Considerations

- **President Trump issued an Executive Order ending U.S. preferential treatment for Hong Kong with respect to various trade and financial policies.**<sup>2</sup> Companies transacting with Hong Kong-based entities should understand how these changes may impact their day-to-day operations. For example, the U.S. Department of Commerce eliminated the availability of export license exceptions specifically for Hong Kong and further action is expected to eliminate preferential export treatment for Hong Kong.<sup>3</sup>
- **President Trump also signed into law the Hong Kong Autonomy Act ("HKAA"), a sanctions bill passed unanimously by Congress.**<sup>4</sup> The law creates a list-based sanctions program that requires the President to impose sanctions on those persons the administration identifies as contributing to China's erosion of the autonomy of Hong Kong. It also requires the President to impose sanctions on foreign financial institutions that knowingly conduct significant transactions with such persons. The administration has not yet made any designations under the HKAA. Aggressive imposition of these sanctions could be highly disruptive for the global banking system, which has relied on Hong Kong as an entry point for the Chinese market. If the United States pursues an expansive strategy of designations targeting systemically important actors, it could disrupt financial flows and future investments. Financial institutions that have clients or counterparties targeted under the HKAA could be exposed to legal risk.
- **These actions come at a time when there is growing international criticism of China's policies in Hong Kong.** The United Kingdom initially responded to China's imposition of the National Security Law by offering Hong Kong residents a path to British citizenship.<sup>5</sup> While its new autonomous human rights sanctions regime did not include an initial set of designations targeting Chinese entities, debate in the United Kingdom did focus on whether future designations would target government officials responsible for the imposition of the National Security Law, including Hong Kong Chief Executive Carrie Lam.<sup>6</sup> The European Union is discussing coordinated measures of its own, which could include



changes to its export control regime, extradition treaties with Hong Kong, and approval of visas for Hong Kong residents.<sup>7</sup>

- **Companies with exposure to China should understand the significantly growing tension in the U.S-China relationship.** Companies should expect further cycles of tit-for-tat coercive economic measures, particularly in the run-up to the U.S. presidential election and as China responds to the measures the United States and its partners have pursued. For example, the Trump administration may take certain steps to limit the ability of Chinese firms to list on U.S. stock exchanges due to the inability to effectively audit those companies.<sup>8</sup> Financial institutions should assess risks arising from potential retaliatory action by China against financial institutions or other companies that are viewed to be complying with U.S. sanctions.

### Executive Order on Ending Preferential Treatment for Hong Kong

- **The Executive Order on Hong Kong Normalization<sup>9</sup> (“EO”) ends the preferential treatment that the United States had accorded Hong Kong and also contains a new sanctions authority.** The EO suspends all “differential and preferential treatment” under U.S. law as it previously applied to Hong Kong.
  - Prior to this EO, the United States treated Hong Kong separately from the rest of China for the purposes of numerous economic and legal provisions, such as export controls, the application of customs duties on imports, extradition treaties, and travel restrictions.<sup>10</sup> The EO follows Secretary of State Pompeo’s determination that this treatment was no longer in the policy interests of the United States.
  - Within fifteen days, relevant federal agencies must adopt policies to enforce the provisions of the EO, including the suspension of the existing extradition treaties between the United States and Hong Kong, ending training assistance for Hong Kong security forces, termination of the Fulbright exchange program for China and Hong Kong, and a cessation of reciprocal tax exemption treatment. The EO allows for the reallocation of refugee admissions for Hong Kong residents due to humanitarian reasons.
- **The EO also gives both the Secretary of State and the Secretary of the Treasury authority to block the assets of non-U.S. persons determined to be involved in the enforcement of new National Security Law.** The sanctions authority extends to non-U.S. persons involved in a variety of anti-democratic activities, including human rights abuses and corruption.<sup>11</sup> To the extent that financial institutions may be providing significant material support to non-U.S. persons engaged in such activity, they could face legal jeopardy.



- **Secretary of State Pompeo separately announced visa restrictions on the employees of Chinese technology companies complicit in the provision of material support to regimes around the world responsible for human rights abuses.**<sup>12</sup> Secretary Pompeo highlighted Chinese telecommunications company Huawei, reiterating the administration's support for the United Kingdom's decision to bar Huawei from future deployment of 5G equipment.<sup>13</sup>

### Hong Kong Autonomy Act

**The HKAA requires the President to block the assets of and impose visa restrictions on persons that erode the rights and freedoms of Hong Kong and to impose a range of restrictions on foreign financial institutions that knowingly conduct significant transactions with them.** The exercise of this authority could have substantial impacts on global financial institutions and markets if the administration chooses to designate large Chinese banks, which are some of the largest financial institutions in the world when measured by assets.

- The Secretary of State has ninety days to identify those persons who contribute to the erosion of rights and freedoms of Hong Kong and submit a report to Congress.<sup>14</sup> Within one year or earlier, the President is required to impose blocking and visa sanctions on persons identified in the report who contribute to the erosion of rights and freedoms in Hong Kong.
- The administration must separately determine whether non-U.S. financial institutions have knowingly conducted significant transactions with those persons within an additional 60 days. For such non-U.S. financial institutions, the President must impose no fewer than five of the ten sanctions listed in the HKAA within one year. If a financial institution is identified by the President for a second year, the President must impose all ten sanctions.<sup>15</sup> These penalties vary but include asset blocking and correspondent account termination with U.S. financial institutions, and would limit access by the sanctioned foreign financial institution to the U.S. financial system.

### Xinjiang Designations

**Last week, the Trump administration imposed sanctions on high-ranking Chinese officials for internal repression in Xinjiang.** The international community, particularly human rights-focused non-governmental organizations have frequently highlighted human rights abuses occurring in Xinjiang.<sup>16</sup> The Trump administration and Congress have likewise grown increasingly concerned about China's treatment of religious minorities, particularly the Uyghurs, in Xinjiang. On July 9, 2020, the Treasury and State Departments took coordinated action against current and former Chinese government officials, as well as a Chinese government entity, responsible for forced labor practices, curtailment of religious freedom, and internment practices.

- Under Executive Order 13818, which implements the Global Magnitsky Human Rights Accountability Act, the Treasury Department blocked the assets of the following persons:



- Chen Quanguo, the Community Party Secretary for Xinjiang;
- Zhu Hailun, the former Deputy Party Secretary for Xinjiang;
- The Xinjiang Public Security Bureau (“PSB”), which acts as the internal security and police force for Xinjiang;
- Wang Mingshan, current Director of the PSB and Communist Party Secretary; and
- Huo LiuJun, the PSB’s former Director and Community Party Secretary.<sup>17</sup>

**The U.S. government also published an interagency advisory warning companies against the risks of doing business with entities based in Xinjiang.**<sup>18</sup> The advisory highlighted the credible reports of forced labor practices that occur in the region, and how many of the products manufactured there are sold in the United States.<sup>19</sup> It also warned U.S. companies about the risks of supplying Chinese state agencies in Xinjiang with the technology and goods needed to expand their high-tech surveillance capabilities. The advisory recommends that U.S. businesses implement due diligence measures to ensure supply chain integrity and highlights specific at-risk industries.

- Further action may follow, either through Global Magnitsky or other authorities. On June 17, 2020, President Trump signed into law the Uyghur Human Rights Policy Act of 2020.<sup>20</sup> The bill requires the President to impose sanctions on foreign individuals and entities responsible for human rights abuses in Xinjiang. It requires specific reports from the administration, including a classified report from the Director of National Intelligence to Congress about a range of human rights abuses.

## Chinese Reaction to Xinjiang Designations

**China announced retaliatory sanctions on Senator Marco Rubio and other U.S. political figures in response to the Xinjiang designations.** This tit-for-tat dynamic on sanctions is likely to continue, particularly in the run-up to the U.S. elections.

- The Chinese government announced that it was imposing sanctions on four U.S. officials: Sen. Marco Rubio, who introduced the Uyghur Human Rights Policy Act, Sen. Ted Cruz, Representative Chris Smith, and Sam Brownback, the Ambassador-at-Large for International Religious Freedom. It also targeted the Congressional-Executive Commission on China, an independent U.S. government agency that focuses on human rights and rule-of-law issues in the country.
- China also announced that it was imposing sanctions on U.S. companies, targeting Lockheed Martin after the United States announced the sale of military equipment to Taiwan. The exact measures were not identified.<sup>21</sup> Historically, China has not hesitated to retaliate against U.S. firms for foreign policy decisions made by the United States government, generally by restricting access to the Chinese market.<sup>22</sup>



---

## Endnotes

<sup>1</sup> K2-FIN published a previous policy alert on the Trump administration's determination that Hong Kong was not sufficiently autonomous to enjoy differential treatment under U.S. law. "U.S. Prepares Further Measures to Respond to China's Hong Kong Crackdown," K2-Financial Integrity Network, (June 1, 2020), available at

[https://www.finintegrity.com/uploads/8/7/8/0/87802750/hong\\_kong\\_status\\_policy\\_alert\\_2020.05.31.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/hong_kong_status_policy_alert_2020.05.31.pdf).

<sup>2</sup> "The President's Executive Order on Hong Kong Normalization," White House, (July 14, 2020), available at <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/>.

<sup>3</sup> United States Department of Commerce, "Statement from U.S. Secretary of Commerce Wilbur Ross on Revocation of Hong Kong Special Status," press release (June 29, 2020), available at <https://www.commerce.gov/news/press-releases/2020/06/statement-us-secretary-commerce-wilbur-ross-revocation-hong-kong>.

<sup>4</sup> Hong Kong Autonomy Act, H.R. 7440, 116<sup>th</sup> Congress, (2020), available at <https://www.congress.gov/116/bills/hr7440/BILLS-116hr7440enr.pdf>.

<sup>5</sup> Charlie Cooper, "U.K. triggers Hong Kong citizenship offer," *Politico*, (July 1, 2020), available at <https://www.politico.eu/article/uk-triggers-hong-kong-citizenship-offer-china-national-security-law/>.

<sup>6</sup> For the initial set of U.K. designations, see United Kingdom Foreign and Commonwealth Office, Export Control Joint Unit, and Office of Financial Sanctions Implementation, "Guidance: The UK sanctions list," (July 6, 2020) available at <https://www.gov.uk/government/publications/the-uk-sanctions-list>. For demands that the sanctions regime target Chinese entities, see George Packer, Andrew England, Henry Foy, and Michael Peel, "U.K. faces call to target China with new sanctions," *Financial Times*, (July 6, 2020), available at <https://www.ft.com/content/0453cdd8-fe47-47c6-8748-439c7f1abaa5>.

<sup>7</sup> Laurence Norman, "EU to Respond to China's Hong Kong Moves," *Wall Street Journal*, (July 13, 2020), available at <https://www.wsj.com/articles/eu-to-respond-to-chinas-hong-kong-moves-11594659442>.

<sup>8</sup> Humeyra Pamuk and Alexander Alper, "Trump administration to soon end audit deal underpinning Chinese listings," (July 13, 2020), available at <https://www.reuters.com/article/us-usa-china-stocks-exclusive/exclusive-trump-administration-to-soon-end-audit-deal-underpinning-chinese-listings-in-u-s-official-idUSKCN24E2XW>.

<sup>9</sup> "The President's Executive Order on Hong Kong Normalization," White House, (July 14, 2020), available at <https://www.whitehouse.gov/presidential-actions/presidents-executive-order-hong-kong-normalization/>.

<sup>10</sup> "U.S. Prepares Further Measures to Respond to China's Hong Kong Crackdown," K2-Financial Integrity Network, (June 1, 2020), available at [https://www.finintegrity.com/uploads/8/7/8/0/87802750/hong\\_kong\\_status\\_policy\\_alert\\_2020.05.31.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/hong_kong_status_policy_alert_2020.05.31.pdf).

<sup>11</sup> These activities include: undermining democratic processes or institutions in Hong Kong; threatening the peace, security, stability, or autonomy of Hong Kong; censoring, prohibiting, or limited the freedom of expression or assembly by citizens of Hong Kong, or limiting access to free media; arbitrarily detaining, extraditing, or torturing any person in Hong Kong, or violating the human rights of citizens of Hong Kong; leading an entity, government or otherwise, that engages in any of these activities; or having materially assisted, sponsored, or provided financial, material, or technical support for any individual or entity that engages in any of these activities.



<sup>12</sup> Michael R. Pompeo, “U.S. Imposes Visa Restrictions on Certain Employees of Chinese Technology Companies that Abuse Human Rights,” press statement, (July 15, 2020), available at <https://www.state.gov/u-s-imposes-visa-restrictions-on-certain-employees-of-chinese-technology-companies-that-abuse-human-rights/>.

<sup>13</sup> United States Department of State, “Welcoming the United Kingdom Decision To Prohibit Huawei From 5G Networks,” press release, (July 14, 2020), available at <https://www.state.gov/welcoming-the-united-kingdom-decision-to-prohibit-huawei-from-5g-networks/>.

<sup>14</sup> Per the statute, this includes any non-U.S. person who has materially contributed to (or attempted to materially contribute to) the failure of China to uphold its obligations under either the Joint Declaration between the United Kingdom and China returning Hong Kong, or the Basic Law, which provides Hongkongers many rights not enjoyed by mainland Chinese. Hong Kong Autonomy Act, Section 5.

<sup>15</sup> These measures include: prohibition on loans from United States financial institutions; prohibition on designation as primary dealer in U.S. government debt instruments; prohibition on service as a repository of government funds; prohibition on transactions in foreign exchange that are subject to the jurisdiction of the United States; prohibition on transfers of credits or payments between financial institutions subject to the jurisdiction of the United States; prohibition on transactions in property subject to the jurisdiction of the United States; restrictions on exports, reexports, and transfers of commodities, software, and technology subject to the jurisdiction of the United States; ban on investment in equity or debt instruments of the foreign financial institution; exclusion of corporate officers of such foreign financial institutions from entry into the United States; and imposition of sanctions on the principal executive officers of the foreign financial institution. Hong Kong Autonomy Act, Section 7.

<sup>16</sup> See, inter alia: United Nations Office of the High Commissioner for Human Rights, “U.N. experts call for decisive measures to protect fundamental freedoms in China,” press release, (June 26, 2020), available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26006&LangID=E>; and Human Rights Watch, “Eradicating Ideological Viruses: China’s Campaign of Repression Against Xinjiang’s Muslims,” (September 9, 2018), available at <https://www.hrw.org/report/2018/09/09/eradicating-ideological-viruses/chinas-campaign-repression-against-xinjiangs>.

<sup>17</sup> United States Department of the Treasury, “Treasury Sanctions Chinese Entity and Officials Pursuant to Global Magnitsky Human Rights Accountability Act,” press release, (July 9, 2020), available at <https://home.treasury.gov/news/press-releases/sm1055>.

<sup>18</sup> United States Department of State, Treasury, Commerce, and Homeland Security, “Xinjiang Supply Chain Business Advisory,” (July 1, 2020), available at [https://www.treasury.gov/resource-center/sanctions/Programs/Documents/20200701\\_xinjiang\\_advisory.pdf](https://www.treasury.gov/resource-center/sanctions/Programs/Documents/20200701_xinjiang_advisory.pdf).

<sup>19</sup> For a broader discussion of some of the illicit financing risks emanating from China, see “China Emerging as an Increasing Driver of Global Illicit Financial Risk,” K2-Financial Integrity Network, (August 30, 2019), available at

[https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.08.30\\_-\\_policyalert\\_-\\_china.pdf](https://www.finintegrity.com/uploads/8/7/8/0/87802750/2019.08.30_-_policyalert_-_china.pdf).

<sup>20</sup> Uyghur Human Rights Policy Act of 2020, Pub. L. 116-145, 134 STAT. 648-657 (June 17, 2020), available at <https://www.congress.gov/116/plaws/publ145/PLAW-116publ145.pdf>.

<sup>21</sup> Chun Han Wang, “China Threatens to Sanction Lockheed Martin Over Taiwan Arms Deal,” *Wall Street Journal* (July 14, 2020) available at <https://www.wsj.com/articles/china-to-sanction-lockheed-martin-over-taiwan-arms-deal-11594727908>.

<sup>22</sup> “China to impose sanctions on U.S. firms that sell arms to Taiwan,” *Reuters* (July 12, 2019) available at <https://www.reuters.com/article/us-usa-taiwan-sanction/china-to-impose-sanctions-on-us-firms-that-sell-arms-to-taiwan-idUSKCN1U71D5>.