



The Bottom Line

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U.S. ISSUES WARNING ABOUT DOING BUSINESS IN HONG KONG

Summary

Companies operating in Hong Kong face potential regulatory, financial, legal, and reputational risks due to China's recently enacted National Security Law (NSL) in Hong Kong.

Background

Hong Kong's independent status within China is defined by two documents: the Joint Declaration signed by Britain and China in 1984, and the Basic Law promulgated by China in 1990. These documents formally establish the concept of "one country, two systems" under which Hong Kong is guaranteed a high degree of autonomy, except in foreign affairs and defense, and state that Hong Kong's social and economic system, lifestyle, and the rights and freedoms enjoyed by the Hong Kong people will remain unchanged for at least 50 years. The Hong Kong Policy Act of 1992 laid out American policy toward post-handover Hong Kong and established a preferential trade status for Hong Kong that depended on its continued autonomy from mainland China. The U.S. evaluates the city's autonomy by the degree to which "one country, two systems"—the policy laid out in the joint declaration—is upheld.

On June 30, 2020, China adopted a contentious national security law that allows Beijing to override Hong Kong's judicial system and target political opponents in the city, stripping the territory of autonomy promised under the 1997 handover agreement with Britain. Effective the same day, the U.S. Department of Commerce suspended regulations affording preferential treatment to Hong Kong over China and issued new export restrictions limiting exports of certain items to China, Russia and Venezuela. The administration had determined in late May of 2020 that Hong Kong no longer had significant autonomy under Chinese rule and promised to begin stripping away Hong Kong's privileged status with the United States if Beijing continued to crack down on civil liberties.

Current Status

More than 1,300 U.S. companies operate in Hong Kong, benefiting from proximity to China, as well as the city's independent judiciary and rule of law. A joint statement issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security warns that businesses, individuals, and other persons, including academic institutions, research service providers, and investors that operate in Hong Kong, should be aware of changes to Hong Kong's laws and regulations. This new legal landscape, including the Law of the People's Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (National Security Law, or NSL), could terrorist activities, and collusion with a foreign country or external elements to endanger national security. Individuals in Hong Kong have been arrested under the NSL for publishing newspaper articles, participating in routine democratic processes

expressing an opinion regarding the government or the Chinese Communist Party, and attending public gatherings. The NSL also states that it also applies to "an incorporated or unincorporated body such as a company or an organization which is set up in the Region if the person or the body commits an offence under this Law outside the Region."

Impact

Foreign nationals, including one U.S. citizen, have been arrested under the NSL. Those arrested may have travel documents confiscated and may be prevented from departing Hong Kong. Additionally, the Legislative Council passed an amendment to immigration law on April 28, effective August 1, which could potentially allow Hong Kong authorities to place exit bans on individuals seeking to depart the country, including non-residents. Businesses face risks associated with electronic surveillance without warrants and the surrender of data to authorities. The NSL introduced a heightened risk of PRC and Hong Kong authorities using expanded legal authorities to collect data from businesses and individuals in Hong Kong for actions that may violate "national security."

Individuals and entities should be aware of potential consequences of certain types of engagement with sanctioned individuals or entities. The United States has several sanctions authorities targeting certain conduct related to the situation with respect to Hong Kong. U.S. individuals and entities, including businesses, are prohibited from engaging in certain transactions with blocked persons absent a general or specific license from the Department of the Treasury's Office of Foreign Assets Control (OFAC) or other exemption. A failure to comply with U.S. sanctions can result in civil and criminal penalties under U.S. law.

Businesses operating in Hong Kong may face heightened risks and uncertainty related to PRC retaliation against companies that comply with sanctions imposed by the United States and other countries, including through enforcement of the Countering Foreign Sanctions Law. Rules issued by China's Ministry of Commerce (MOFCOM), the recently enacted Law of the People's Republic of China on Countering Foreign Sanctions, and the National Security Law indicate that PRC and Hong Kong authorities may seek to block sanctions imposed by the United States or other countries against PRC citizens or entities, and that individuals and companies may face legal repercussions for complying with such sanctions, however, failure to comply with U.S. sanctions can result in civil and criminal penalties under U.S. law.

RESOURCES

[Hong Kong Security Law: What is it and is it Worrying?](#) (BBC)

[Hong Kong Business Advisory](#) (Departments of State, Treasury, Commerce and Homeland Security)

[Dismantling a Free Society](#) (Human Rights Watch)

[Marking One Year of Hong Kong's National Security Law](#) (Department of State)