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China Sanction Legal Framework

Introduction

China has established a comprehensive legal framework for sanctions and countersanctions to safeguard its national sovereignty, security, and development interests, and deter discriminatory and restrictive measures against Chinese citizens, enterprises, or other organizations.

On January 14, 2025, China's Ministry of Commerce (MOC) added seven U.S. companies, including Inter-Coastal Electronics, System Studies & Simulation, IronMountain Solutions, Axient, Anduril Industries, etc. to the Unreliable Entity List, over their involvement in arms sales to China's Taiwan region. In response, strict sanctions were imposed. These companies are now barred from China - related import/export activities and new investments in China. Moreover, their senior executives are prohibited from entering China. Their work permits, visitor and residential status in China are revoked, and any relevant applications they submit will be denied.

1. Legal Framework

- **Anti-Foreign Sanctions Law ("AFSL")**
- **Provisions on the Unreliable Entity List (the "Entity List")**
- **Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures (the "Blocking Rules")**

In September 2020 and January 2021, China's Ministry of Commerce (MODCOM) successively issued the "Provisions on the Unreliable Entity List" (the "Entity List") and the "Rules on Counteracting Unjustified Extra-Territorial Application of Foreign Legislation and Other Measures" (the "Blocking Rules"). As departmental regulations, these two provisions provide guidance for the implementation of anti-sanction measures.

The "Entity List" states that under the prescribed circumstances, China may put the foreign entity in the Unreliable Entity List and impose sanctions on those entities included.

The "Blocking Rules" dictates that if there exists unjustified extra-territorial application of foreign legislation and other measures, China may issue a prohibition order, declaring that the relevant foreign legislation and other measures will not be accepted, executed, or observed ("prohibition order").

On June 10, 2021, China's legislator, the Standing Committee of the National People's Congress ("SCNPC"), promulgated "Anti-Foreign Sanctions Law" ("AFSL"), which grants Chinese government authorities to impose counter-sanctions on foreign individuals and organizations. Under the AFSL, individuals and organizations who have certain involvement in foreign sanctions imposed on Chinese persons may themselves be included in a countermeasure list and subjected to Chinese sanctions.

2. Decision Makers of Sanctions: Working Mechanism

These three regulations all prescribe establishing the working mechanism to decide on the sanctions.

According to the AFSL, China has set up a co-ordination mechanism for anti-foreign sanctions work. Relevant departments of the State Council may decide, suspend, modify, and remove the countermeasure list and countermeasures, which shall be announced by an order issued by the Ministry of Foreign Affairs (MFA) or any other relevant department of the State Council.

Pursuant to the "Entity List", China has established a working mechanism composed of relevant central departments, responsible for organizing and implementing the unreliable entity list system. The Office of Work Mechanism is located in the competent commerce department of the State Council.

According to the "Blocking Rules", the working mechanism is to be led by the department of commerce of the State Council, with the specific matters thereof handled by the competent department of commerce in conjunction with the department of development and reform and other relevant departments of the State Council.

The Ministry of Commerce (MODCOM) is responsible for the supervision of foreign trade and economic cooperation, including the development and implementation of export controls and unreliable entity lists related to sanctions. The Ministry of Foreign Affairs (MFA) is responsible for announcing and interpreting China's sanctions decisions.

3. Targets of Sanctions

Targets of sanctions means who might be included in the Unreliable Entity List, what kind of behavior might be blocked, or who might be taken countermeasures.

The "Entity List" targets at foreign entities, including enterprises, other organizations, and individuals of a foreign country.

The "Blocking Rules" targets at "extra-territorial application of foreign legislation and other measures".

The AFSL targets at foreign countries, organizations and individuals.

The individuals include:

- (1) Individuals included in the countermeasure list;
- (2) Spouses and immediate family members of individuals included in the countermeasure list;
- (3) Senior executives or actual controllers of organizations included in the countermeasure list.

The organizations include:

- (1) Organizations included in the countermeasure list;
- (2) Organizations where individuals included in the countermeasure list serve as senior executives;
- (3) Organizations that are actually controlled by individuals and organizations included in the countermeasure list or of which the said individuals and organizations participate in the formation or operation.

4. Applicable situations

These three regulations prescribe under what circumstances the working mechanism may decide to take counter-sanctions measures.

The AFSL uses general description to define "discriminatory restrictive measures":

- (1) Violating international law and basic norms of international relations;
- (2) Containing or suppressing China under various pretexts or pursuant to a foreign country's laws;
- (3) Using discriminatory restrictive measures against any Chinese citizen or organization;
- (4) Interfering with China's internal affairs.

The AFSL stipulates 3 different situated categories, each with different implications:

- (1) Individuals and organizations who "directly or indirectly participate in the formulating, deciding and adopting" of the discriminatory restrictive measures. These entities could be put on a "countermeasures list" by the Chinese government and be subjected to a series of countermeasures.
- (2) Individuals and organizations who "carry out or assist with carrying out" discriminatory restrictive measures. This category covers individuals and companies who did not participate in the initiation of the discriminatory restrictive measures but comply with them. Companies and individuals in this category would not be subjected to the "countermeasures", but instead would be liable to Chinese individuals and organizations who suffered damages that are proven in civil litigation in a Chinese court.
- (3) Individuals and organizations who fail to carry out or comply with the Chinese government's countermeasures. Organizations and individuals within China are obligated to comply with the countermeasures decided by the relevant departments. This category of individuals and organizations would bear liabilities for violating the Chinese government's countermeasures.

The "Entity List" and "Blocking Rules" regulate mainly 2 categories of situations:

- (1) Endangering China's national sovereignty, security and development interests;
- (2) Causing serious damage to the legitimate rights and interests of the enterprise, other organization, or individual of China:

- i. Suspending normal transactions with an enterprise, other organization, or individual of China which violates normal market transaction principles.
- ii. Applying discriminatory measures against an enterprise, other organization, or individual of China.

The “Entity List” and “Blocking Rules” also prescribe the factors that need to be taken consideration when the working mechanism decide to take countermeasures:

- (1) Whether violating international law, the basic principles of international relations, or internationally accepted economic and trade rules;
- (2) The degree of danger to national sovereignty, security or development interests of China;
- (3) The degree of damage and potential impact on the legitimate rights and interests of enterprises, other organizations, or individuals of China;
- (4) Other factors that shall be considered.

5. Types of the Sanctions

The specific types of the countermeasures stipulated by these three regulations can be divided into 4 categories:

1. Restrictions on entry and exit

- (1) Refusing to issue a visa, denying entry, canceling a visa, or deportation;
- (2) Restricting or prohibiting the relevant personnel or means of transportation from entering into China;
- (3) Restricting or revoking the relevant personnel's work permit, status of stay or residence in China;

2. Asset seizure

- (1) Placing under seal, impounding, or freezing the relevant individuals and organizations’ movables, immovables, and other types of property in the territory of China;

3. Trade and transactions restrictions

- (1) Prohibiting or restricting organizations and individuals in the territory of China from carrying out relevant transactions, cooperation, and other activities with targets;
- (2) Restricting or prohibiting the targets from engaging in China-related import or export activities;
- (3) Restricting or prohibiting the targets from investing in China;

4. Fine

- (1) A fine of the corresponding amount according to the severity of the circumstances;

5. Other necessary measures.

6. Delisting Circumstances

The countermeasure decisions made by the relevant departments of the State Council are final.

However, the “unreliable entity list”, “prohibition order” and “countermeasure list” stipulated by these three regulations can be dynamically adjusted according to the circumstances.

The “Entity List” states 3 circumstances for foreign entities to be removed from the Unreliable Entity List:

- (1) Changes in the facts upon which a foreign entity is included in the “Unreliable Entity List”, the working mechanism may decide to remove the entity from the list.
- (2) The relevant foreign entity rectifies its actions within the time limit specified in the announcement and takes measures to eliminate the consequences of its actions, the working mechanism shall make a decision to remove it from the list.
- (3) The foreign entity may apply for its removal from the Unreliable Entity List, the working mechanism shall decide whether to remove it based on actual circumstances.

The “Blocking Rules” and the AFSL also stipulate that the working mechanism may suspend or withdraw the prohibition order or suspend, modify, remove the countermeasure list and countermeasures, based on actual circumstances.

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