

CHINA INTRODUCES ANTI-FOREIGN SANCTIONS LAW

The PRC Anti-Foreign Sanctions Law (**AFSL**) was promulgated on 10 June 2021 and took effect on the same date. Comprised of 16 articles, the AFSL sets out an overarching framework for further developing a legal toolkit for China to resist foreign sanctions. This is an effort to systematise the *ad hoc* sanctions imposed by the PRC government on foreign individuals and organisations, and in furtherance of the Blocking Statute and the Provisions on the Unreliable Entity List promulgated by the PRC Ministry of Commerce (**MOFCOM**) in January 2021 and September 2020 respectively. In this briefing, we highlight the key issues arising under the AFSL.

WHAT FOREIGN SANCTIONS ARE TARGETED BY THE AFSL?

According to Article 3(2) of the AFSL: "*If any foreign country violates international law and the basic principles of international relations, contains or suppresses China based on various pretexts or its own laws, takes discriminatory restrictive measures against Chinese citizens or organisations, or interferes with China's internal affairs, China is entitled to take corresponding countermeasures.*"

As explained by the Legal Affairs Commission of the Standing Committee of the National People's Congress, the AFSL is enacted primarily to counter foreign sanctions imposed on Chinese state organs, organisations and officials for the purpose of interfering with China's internal affairs.¹

That being said, the language of the AFSL is broad and leaves room for expansive regulatory and enforcement actions. For example, Articles 13 and 15 state that the law also targets "*conduct that endangers China's national sovereignty, security and development interests.*"

This is in contrast to the Blocking Statute promulgated by MOFCOM earlier this year (see our briefing [here](#)), which appears to primarily target secondary sanctions.

Key issues

- The AFSL sets out China's overall legal framework for countering foreign sanctions.
- It establishes a "Counter List", which is to some extent similar to the Specially Designated Nationals list in the US.
- It provides that countermeasures may be taken against individuals or organisations on the Counter List or their associated individuals or organisations.
- The AFSL potentially has extraterritorial effect.

¹ <http://www.npc.gov.cn/npc/kgfb/202106/90e92a915d5241468daa089a29cf08d3.shtml>

WHO MIGHT BE SUBJECT TO COUNTERMEASURES UNDER THE AFSL?

Article 4 of the AFSL provides that relevant PRC government departments may designate individuals and organisations that are "*directly or indirectly involved in the formulation, decision-making, and implementation of the discriminatory restrictive measures provided for in Article 3*" in a Counter List (which is to some extent similar to the Specially Designated Nationals (**SDNs**) list in the US).

Furthermore, Article 5 provides that relevant government departments may impose countermeasures on individuals and organisations associated with those on the Counter List, including the spouse and direct lineal family members of designated individuals; senior executives or actual controllers of designated organisations; organisations in which the designated individuals serve as senior executives; and organisations which designated individuals or organisations actually control or in which they participate in the establishment and operations. It does not appear that countermeasures will automatically be imposed on individuals and organisations associated with those on the Counter List; instead, this will be decided on a case-by-case basis by the PRC government.

Prior to the promulgation of the AFSL, the PRC Ministry of Foreign Affairs (**MOFA**) announced sanctioned parties from time to time, though the full list is not publicly available. With the AFSL coming into effect, we anticipate that the PRC government may publish more thorough and detailed lists of sanctioned parties and applicable countermeasures, which will provide clearer guidance for compliance.

WHAT COUNTERMEASURES MIGHT BE IMPOSED UNDER THE AFSL?

The AFSL incorporates countermeasures that have been adopted by MOFCOM and MOFA in practice. Specifically, Article 6 sets out the menu of countermeasures that relevant PRC government departments may adopt with regard to the individuals and entities on the Counter List and their associated individuals and entities, including:

- refusing to issue and invalidating visas, banning entry into China and deportation;
- sealing up, seizing and freezing movable, immovable and other types of property in China;
- prohibiting or restricting organisations and individuals within the territory of China from conducting transactions, cooperation or other activities with them; and
- other necessary measures.

WHO IS OBLIGATED TO COMPLY WITH THE COUNTERMEASURES?

Article 11(1) explicitly provides: "Organisations and individuals within the territory of China shall implement the countermeasures adopted by the relevant departments of the State Council." (emphasis added) Article 11(2) further provides that relevant PRC government departments may prohibit or restrict the activities of any organisation or individual that breaches Article

11(1). The content, effects of and procedures for imposing such prohibitive and restrictive measures are yet to be promulgated.

In contrast, Article 14 provides more generally that "Any organisation or individual who fails to implement or cooperate in implementing any countermeasures shall be held liable in accordance with the law." (emphasis added)

Since individuals and organisations referred to in Article 11 are expressly limited to those within the territory of China, whereas those in Article 14 are not so limited, it appears those outside the territory of China are also covered under Article 14. We expect further clarification as to how the obligations and corresponding liabilities for non-compliance of those within the territory of China differ from those outside China.

It is also worth noting that, unlike the Blocking Statute promulgated by MOFCOM earlier this year, the AFSL has not provided for any mechanism for exemption from compliance with the countermeasures, which may be addressed in future implementation measures.

WHAT OTHER OBLIGATIONS ARE IMPOSED BY THE AFSL?

Separately from compliance with countermeasures, Article 12(1) provides: "Any organisation and individual shall not implement or assist in the implementation of discriminatory restrictive measures taken by any foreign country against any Chinese citizen or organisation." (emphasis added) Similar to Article 14, Article 12(1) also seems to apply to parties no matter whether they are within the territory of China, and thus potentially has extraterritorial effect.

This provision is similar to that provided for the Blocking Statute but is broader in that it does not seem to be premised on any prohibition order issued by the PRC government over a particular discriminatory restrictive measure.

As to the legal consequence of violating this obligation, the AFSL provides only for civil liability, but not administrative penalties. If a party infringes upon the legitimate rights and interests of any Chinese citizen or organisation by implementing or assisting in the implementation of "discriminatory restrictive measures taken by any foreign country against any Chinese citizen or organisation", the relevant Chinese citizen or organisation may sue such party before a PRC court to claim damages and request cessation of the infringement. Like the Blocking Statute, the AFSL does not address how this provision will be implemented in practice, including whether the PRC Court will exercise jurisdiction over this type of dispute if the relevant contracts contain a dispute resolution clause providing for arbitration or foreign court jurisdiction. More detailed guidance from the PRC Court is expected.

CONCLUSION

For the first time, China has set out its overall legal framework for countering foreign sanctions by way of the AFSL. Given its overarching nature, it is expected that there will be more detailed guidance and clarification by relevant government agencies and courts. Both Chinese entities, and foreign entities

having a nexus with China, should closely watch for further developments, and be prepared to adjust their compliance practices accordingly.

CONTACTS

Shanghai/Beijing



Lei Shi
Partner

T +86 21 2320 7377
E lei.shi
@cliffordchance.com

Hong Kong



Feifei Yu

Senior Associate
T +852 2825 8052
E feifei.yu
@cliffordchance.com

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One Connaught Place, Hong Kong

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