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Hong Kong Sanctions Bill Passes Congress

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July 8, 2020 – On July 2, 2020, Congress passed the [Hong Kong Autonomy Act](#). Once signed by President Trump into law, the Act will require the Secretaries of State and Treasury to designate certain persons and financial institutions deemed responsible for eroding Hong Kong's autonomy and in turn require the President to sanction such designated parties.

The Act comes on the heels of Beijing's passage of a national security law that critics claim undermines the "One Country, Two Systems" framework that has been in place since the British handover of its former colony in 1997. Under the 1984 Joint Declaration between the U.K. and Chinese governments governing the terms of the handover, certain guarantees were required to be written into the Hong Kong Basic Law (i.e., the de facto Hong Kong constitution) to ensure certain political rights and the semi-autonomy of the territory from mainland China through at least 2047. The recently passed national security law is the latest in a string of moves by Beijing to more closely integrate Hong Kong with the mainland.

Summary of the Legislation

The Hong Kong Autonomy Act would require the Secretary of State to identify and report to Congress within 90 days persons providing or attempting to provide a material contribution "to the failure of the Government of China to meet its obligations under the Joint Declaration or the Basic Law." This is defined under the Act to include any person who "took action that resulted in the inability of the people of Hong Kong . . . to enjoy freedom of assembly, speech, press, or independent rule of law; or . . . to participate in democratic outcomes; or . . . otherwise took action that reduces the high degree of autonomy of Hong Kong." Once a report is made to Congress, the President is required to impose property blocking sanctions and visa restrictions on the identified parties within one year. The Act requires that the Secretary of State provide an unclassified assessment for imposition of such sanctions "so as to permit a clear path for the removal of economic penalties if the sanctioned behavior is reversed and verified by the Secretary of State."

Similarly, between 30 and 60 days from the Secretary of State's report, the Secretary of the Treasury would be required to identify and report to Congress "any foreign financial institution that knowingly conducts a significant transaction" with a foreign person identified by the Secretary of State. Within one year, the President must impose at least five of ten possible "menu-based" sanctions on the financial institution, which include, for example, restrictions on loans from U.S. financial institutions, restrictions on bank transfers subject to the jurisdiction of the United States, and/or asset blocking sanctions. Within two years, the President must impose all ten of the sanctions on the financial institution.

Both reports by the Secretary of State and Secretary of the Treasury must be unclassified and available to the public, although certain provisions would allow for the omission of information that would compromise an intelligence operation or subvert law enforcement activities. The reports are required to be updated no less frequently than annually.

Although the sanctions provisions are characterized in the Act as "mandatory," the Act also empowers the President with a high degree of discretion to remove identified persons or financial institutions or terminate existing sanctions under the Act if the President determines that the material contribution or significant transaction by the identified party:

- "does not have a significant and lasting negative effect that contravenes the obligations of China under the Joint Declaration and the Basic Law;"
- "is not likely to be repeated in the future;" and
- "has been reversed or otherwise mitigated through positive countermeasures taken by" the identified person or financial institution.

The President is required to notify Congress and provide a rationale when exercising this discretion. Further, the Act authorizes the President to waive the application of sanctions if the President "determines that the waiver is in the national security interest of the United States" and notifies Congress of the waiver and the rationale for doing so.

Context

Hong Kong has been rocked by mass protests since last summer, which were first sparked by a bill proposed in April 2019 that would allow extraditions to mainland China. The proposed law drew significant protests from critics who claim the bill would be contrary to the Joint Declaration because, among other things, it could be used to target political dissidents. Ultimately, Beijing withdrew the extradition bill in September 2019. However, while protests have subsided somewhat in the wake of the COVID-19 pandemic, they have persisted more or less continuously.

Notably, the Basic Law required Hong Kong to pass legislation to address national security, which the city has never done, despite some unsuccessful attempts. Citing Hong Kong's failure to enact its own national security legislation and the protestors' "collusion with external forces," on June 30, 2020, Beijing enacted its own national security law applicable to Hong Kong which, inter alia, criminalizes "secessionist, subversive or terrorist" activities with penalties of up to life in prison; empowers Beijing to deploy mainland security forces; and overrides the ability of local Hong Kong courts to interpret the law.

Likely Practical Effect

The Hong Kong Autonomy Act represents an escalation in tensions between the United States and China. However, because of the wide discretion granted to the President under the Act, the actual effect of the legislation is unclear for the time being. In particular, the Trump Administration reportedly attempted to delay passage of the

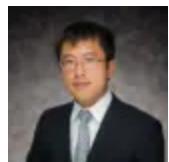
bill, and has thus far resisted imposing significant sanctions under a similar bill targeting China for alleged human rights abuses of minority Uighurs in order to salvage his trade deal with Beijing.

Because the Secretary of State must take the first action prior to set in motion any sanctions under the Act, the speed with which Secretary Pompeo makes the required designations will be a good indication of the Trump Administration's intent. Parties interested in potential sanctions under the Act should monitor the State Department for developments.

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