

Sanctions Regime in Hong Kong

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17th April 2023

Introduction

This explanatory note intends to provide an overview of the Hong Kong Special Administrative Region (“**Hong Kong**”) sanctions regime. It is worth noting that, other than the United Nations (“**UN**”) sanctions list (“**UN Sanctions List**”), Hong Kong does not follow other sanctions lists (e.g. the sanctions lists of the United States or the European Union).

Pursuant to the Charter of the UN (the “**Charter**”), the UN Member States (including the People’s Republic of China (“**PRC**”)) should apply measures (including imposing sanctions measures) decided by the UN Security Council (“**UNSC**”) to maintain or restore international peace and security. As part of the PRC, Hong Kong implements the UNSC sanctions list by enacting the relevant ordinances and regulations (please see below for further explanation) to honor Hong Kong’s international obligation.



Legal Basis of the UN Sanctions List

As a multilateral treaty ratified by 193 states, the Charter is one of the key sources of international law. The Preamble to the Charter states that a central goal of the UN is to “establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained”. One of the UN’s tools for achieving this goal is the deployment of international sanctions which is called the “sanctions list”.

Establishment of the UN Sanctions List

The UN Sanctions Lists are created by the passing of resolution of the UNSC. The UNSC consists of 15 UN members¹, comprising 5 permanent members (i.e. the PRC, France, Russian Federation, the United Kingdom and the United States) and 10 non-permanent members. Decisions of the UNSC are made by an affirmative vote of 9 members, with each member casting one vote. It should be noted, however, that resolutions of the UNSC may only be passed with the assent of all 5 permanent members. In other words, each of the permanent member has the “veto power” to the making of the decision of the resolution to implement the UN Sanctions Lists.

Types of UN Sanctions Measures

The most commonly used types of sanctions measures imposed at the UN level are as follows:-

1. asset freezes;
2. arms embargoes;
3. commodity interdictions;
4. travel bans; and
5. diplomatic sanctions.

The UNSC is at liberty to impose any combination of the above measures within the framework of an individual sanction regime.



¹ You may refer to the UN website for the list of 15 UN members:
<https://www.un.org/securitycouncil/content/current-members>

Implementation of UN Sanctions Lists

All resolutions passed by the UNSC to create sanctions lists are binding on all UN Member States. It follows that the PRC as one of the UN Member States and Hong Kong as part of the PRC, has mandatory obligation to implement the UN Sanctions Lists domestically. In Hong Kong, the UN Sanctions Lists are generally implemented by virtue of the provisions under the United Nations Sanctions Ordinance (Cap. 537) (the “UNSO”) and its subsidiary legislations. Pursuant to section 3(1) of the UNSO, the Chief Executive of Hong Kong shall make regulations to give effect to the UN Sanctions Lists. As an illustrative example, prohibition of the supply of aircrafts and ships to the North Korea were made by the United Nations Sanctions (Democratic People’s Republic of Korea) Regulation (Cap. 537AE), a subsidiary legislation of the UNSO. In this regard, Hong Kong’s governmental departments and bureaus have especially maintained a list of sanctioned individuals and entities as below:-

1. The Commerce, Industry and Tourism Branch of the Commerce and Economic Development Bureau establishes the following lists:
 - a) people subject to travel ban under the UNSO by country;
 - b) people and entities subject to financial sanctions under the UNSO by country;
and
 - c) people and entities subject to arms-related sanctions under the UNSO by country;
2. The Trade and Industry Department maintains a list of countries subject to the scope of the trade sanctions imposed; and
3. The Security Bureau maintains a list of names of persons designated as terrorists or terrorist associates by Committees of the UNSC.

Other Sanctions Regime

Some commercial organizations in Hong Kong may, on their own accord, consider adopting other sanctions lists compiled by the countries where they may have set up establishments to avoid that they will be subject to fine for failing to comply with those sanctions lists. It should be stressed that those sanctions lists are not mandatory in Hong Kong.

Consequences of Breach

Anyone who is in contravention or breach of the UNSO shall be punishable on either:-

1. on summary conviction by a fine not exceeding \$500,000 and imprisonment for a term not exceeding 2 years; or
2. on conviction on indictment by an unlimited fine and imprisonment for a term not exceeding 7 years.

