

China Passes Anti-Foreign Sanction Law

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On July 10, 2021, the Standing Committee of the National People's Congress of the People's Republic of China (PRC or China) passed the Anti-Foreign Sanctions Law (AFSL), which came into effect on the same day. The AFSL provides general authorization for countersanctions against countries, organizations, and individuals for issuing and implementing sanctions against China and its companies and individuals. It is a hybrid sanction law, mainly operating as a list-based countersanction with the inclusion of a civil claim for damages resulting from the implementation of foreign sanctions.

The issuance of the AFSL comes on the heels of other legal and regulatory measures that have provisions to counteract foreign laws and sanctions:

- In September 2020, the Chinese Ministry of Foreign Commerce (MOFCOM) issued Provisions on the Unreliable Entity List, which will operate similarly to the U.S. Entity List. See our briefing [here](#).
- In October 2020, China passed its Export Control Law, which includes list-based controls for importers and end users. View the recording of our webinar [here](#).
- In January 2021, MOFCOM issued Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures, which was issued to counteract secondary sanctions by foreign countries. See our briefing [here](#).

The AFSL creates a direct approach to countersanctions and elevates the regime to the level of law rather than agency rules and provisions.

1. Responsible Agencies

According to the content of the AFSL and recent reporting, it appears that the two Chinese agencies with the most responsibility when it comes to implementing the AFSL will be MOFCOM and the Ministry of Foreign Affairs. What is interesting is that MOFCOM is the agency in charge of two other provisions, (1) Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures and (2) Provisions on the Unreliable Entity List, that bear some strikingly similar language to the AFSL. As a result, it may be beneficial for companies to consider these rules and provisions in conjunction with the AFSL.

2. Who Could Be Subject?

Under the AFSL, Chinese government agencies may add individuals and entities to a countersanctions list. The countersanctions list can include individuals and organizations that directly or indirectly participate in the formulation of, decision on, and implementation of sanctions against China as well as their spouses, immediate family members, senior managers or actual controllers of listed organizations, and organizations managed by or actually controlled by listed individuals. Organizations and individuals in China must implement any adopted countermeasures.

3. Authorized Countersanctions

The AFSL authorizes basic countersanctions, including visa refusals, denial of entry, visa cancellation, or deportation as well as attachment of property within China. In addition, the sanctioning agency may prohibit or restrict listed individuals or organizations from engaging in transactions with organizations and individuals in China or take other measures.

4. Civil Damages

The most challenging aspect of the AFSL is that it applies to compliance with foreign sanctions and creates a potential civil cause of action for that compliance. Specifically, the AFSL forbids organizations and individuals from implementing or assisting in the implementation of discriminatory foreign sanctions taken against Chinese citizens and organizations. Chinese citizens may file a suit in Chinese court requesting injunctive relief and compensation for damages. This is similar to language found in the MOFCOM-issued Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures. However, because the AFSL is considered a “law” in the hierarchy of Chinese law, it may be able to stand as a separate cause of action.

5. Example of the AFSL in Action

While the MOFCOM Provisions on the Unreliable Entities List and MOFCOM Rules on Counteracting Unjustified Extraterritorial Application of Foreign Legislation and Other Measures have not yet been used in practice, the AFSL has already been used. On July 23, 2021, the Chinese Ministry of Foreign Affairs announced sanctions against several individuals in response to a [Hong Kong Business Advisory](#). These individuals included members of the former Trump administration (including cabinet-level officials), heads and members of Congressional-Executive committees and commissions, and heads and members of private-research, political, and human-rights institutes.

Companies should stay up to date on actions by various Chinese agencies, particularly MOFCOM, to identify potential risks to compliance with sanctions that affect a Chinese party.

This briefing contains a general overview of Chinese laws and regulations and their application. We welcome you to contact us directly if you would like further information or assistance. Winston works closely with attorneys at the firm’s strategic alliance partner in China, Yuanda China Law Offices, who are qualified to practice Chinese law and provide comprehensive legal services across the full range of Chinese legal matters.

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