

NEW EXECUTIVE ORDER ADDS CLARITY TO U.S. EXPORT CONTROL CHANGES TOWARDS HONG KONG

On July 14, 2020, the Trump Administration released Executive Order 13936 ("**EO 13936**"), which implements the policy changes announced in late-June 2020 regarding Hong Kong's treatment by the United States for export control purposes. See previous alert [here](#). President Trump explained in a July 14 press conference that the EO ends "U.S. preferential treatment for Hong Kong. Hong Kong will now be treated the same as mainland China: no special privileges, no special economic treatment, and no export of sensitive technologies."

REVOKING SPECIAL TREATMENT

Among other changes, the EO directs heads of federal agencies to begin within 15 days the formal process of eliminating policy exemptions under U.S. law that give Hong Kong differential treatment in relation to China. This includes suspending special treatment of Hong Kong under the Export Control Reform Act of 2018 and the Arms Export Control Act ("**AECA**").

REVOKING LICENSE EXCEPTIONS UNDER THE EAR

Under the EO, the U.S. Commerce Department is directed to take steps within 15 days of EO 13936 to enforce the new policy of ending differential treatment for Hong Kong. These include revoking license exceptions that allow for the export, re-export, or transfer (in-country) to Hong Kong of items subject to the Export Administration Regulations ("**EAR**") without the need of licenses that would be required if exporting, re-exporting, or transferring the same items to mainland China.

FURTHER CLARIFICATION FOR ITEMS UNDER THE ITAR

As noted above, EO 13936 requires that Hong Kong be treated as China under the AECA. However, in order "to support Hong Kong persons residing outside the Hong Kong Special Administrative Region or [China] who were previously authorized access to defense articles" subject to the International Traffic in Arms Regulations ("**ITAR**"), EO 13936 provides a carve-out for exports of defense articles to Hong Kong persons who are physically located outside of Hong Kong

and China and who were authorized to receive defense articles prior to July 14, 2020.

Further, the U.S. State Department's Directorate of Defense Trade Controls ("**DDTC**") issued a notice (the "**Notice**") on July 15, 2020 that included Frequently Asked Questions addressing EO 13936. In the Notice, DDTC stated that Hong Kong is now considered to be included in the entry for China under section 126.1(d)(1) of the ITAR and consequently "subject to a policy of denial for all transfers subject to the ITAR where a Hong Kong person is named as an end-user, licensee (signatory) or sublicensee, or where Hong Kong appears as a marketing, transfer, re-transfer, re-export, sales, or distribution territory."¹ The Notice further explains that the EO does not affect current, valid, non-exhausted authorizations naming Hong Kong as a transfer territory. While the DDTC Notice states that the State Department is currently not seeking to revoke or rescind previously approved authorizations to export defense articles or services to Hong Kong, the Notice does not fully assert that the State Department will not revoke or rescind such authorizations at a future time.

CONCLUSION

The EO and DDTC Notice provide additional clarity to the changes to U.S. export controls towards Hong Kong announced in late-June. Companies affected by these changes, especially regarding ITAR defense items, should analyze and integrate these newly announced clarifications into their compliance mechanisms to ensure proper due diligence and, if necessary, start the licensing process for transactions involving Hong Kong.

¹ In a Frequently Asked Question, DDTC states that "exports may continue to rely on available exemptions consistent with the provisions of ITAR § 126.1(a)."

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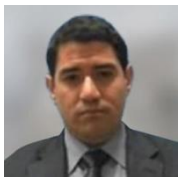
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