



THE
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Trade laws:

Using international sanctions to further political ends

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Distinctive Features of Hong Kong's constitutional and legal system

- 1) Under “One Country, Two Systems”, Hong Kong is part of China but retains its own systems and way of life.
- 2) The Basic Law is Hong Kong's constitutional document and gives effect to the “One Country, Two Systems” policy.
- 3) The Basic Law came into effect on 1 July 1997 with the establishment of the HKSAR.

Divided Sovereignty

- This concept of divided sovereignty has been instrumental in the creation of sovereign international blocks for the maintenance of peace and prosperity . If it is abused then it creates anarchy globally.
- Sovereign power ensures the application of domestic trade laws and treaty-based international trade law to international trade.

Lawyers' Obligations

- Lawyers experience difficulties in negotiating their way through domestic and international sanctions.
- Hong Kong lawyers are bound by Practice Direction P which imposes strict Anti-Money laundering provisions before acting for a client, which includes looking at the sanctions list as far as money laundering is concerned and also other sanctions to the extent that they apply to Hong Kong and other areas where the firm has offices and from which office legal services are provided to a client.

Lawyers' Obligations

- A lawyer continuing to act for a client or considering taking on a client who is Russian or Iranian or exposed to sanctions has to have regard to international treaties, Anti – Money laundering provisions, trade treaties, domestic laws, professional conduct codes, banking regulations and an assessment of the international political environment and domestic framework of laws and political framework.

The Superyacht Nord

- The superyacht Nord dropped anchor in Hong Kong after arriving on 5 October 2022.
- Nord was believed to belong to Russian oligarch Alexey Mordashov, Russia's third-richest person.
- Mordashov has been personally under sanctions in consequence of Russia's 2022 invasion of Ukraine.

Response of the HKSAR Government and the US State Department

- The HKSAR government released a statement on 9 October, stating that it “has all along been implementing and enforcing fully the sanctions imposed by the United Nations Security Council. We note that certain countries may impose unilateral sanction against certain places on the basis of their own considerations. The HKSARG does not implement, nor do we have the legal authority to take action on, unilateral sanctions imposed by other jurisdictions.”
- The US State Department:
“The possible use of Hong Kong as a safe haven by individuals evading sanctions from multiple jurisdictions further calls into question the transparency of the business environment. Hong Kong’s reputation as a financial centre depends on adherence to international laws and standards.”

The Chief Executive's Response

- “First of all, a particular country, because of that country’s own consideration, decides to take any measures against anything, that is that country’s decision. In Hong Kong, we respect the rule of law and we will do anything when there is a legal basis, when it is controlled by the law and the activities....But, we will comply with any United Nations resolution on sanctions because Hong Kong has the legal basis to enforce it. And we will comply with United Nations’ sanctions. That is our system. That is our rule of law. We cannot do and we will not do anything that has no legal basis.” (11 October 2022)
- Nord left Hong Kong waters on 20 October



WTO Goods of Origin Issue

Date	Action
11 August 2020	The US Customs and Border Protection (US Customs) announced that imported goods produced in Hong Kong may no longer be marked to indicate "Hong Kong" as their origin, but must be marked to indicate "China" after 25 September 2020.
16 September 2020	<p>The HKSAR Government formally took issue with US Government over the latter's new requirement.</p> <p>The Secretary for Commerce and Economic Development, Mr Yau reiterated that "Pursuant to Articles 116, 151 and 152 of the Basic Law, the HKSAR is a separate customs territory and may, using the name "Hong Kong, China", participate in international organisations such as the WTO and Asia-Pacific Economic Cooperation as a separate member, and develop mutually beneficial economic and trade relations with economies around the world."</p>

WTO Goods of Origin Issue

Date	Action
21 December 2022	The WTO DSB Panel ruled that the origin marking requirement imposed on Hong Kong products by the US is inconsistent with WTO rules.
30 January 2023	US decided to appeal against WTO panel report.

The HKSAR's Stance on Overseas Sanctions in General

- Under international law, sanctions should be brought only in very limited circumstances which constitute a threat to international peace and security, such as dealing with terrorism or nuclear proliferation, etc., and in an appropriate forum, which is the UN Security Council.
- Sanctions adopted “without the authorization of the UN Security Council, better described as unilateral coercive measures”, were contrary to international law and the UN framework, and violated the principle of non-intervention under international law.

Calling for Sanctions against HK Judges and prosecutors

- There have recently been calls by US politicians and bodies to sanction judges and prosecutors in Hong Kong.
- 3 May 2022: Seven US Congress representatives sent a letter to the US President, calling for sanctions against the Hong Kong judges and prosecutors designated to handle national security cases.
- 12 July 2022: The US Congressional-Executive Commission on China published a staff research report, naming the SJ and 15 prosecutors and detailing their involvement in the prosecution of some National Security Law and public order cases, and outlining sanctions on them as “policy options”.
- 28 February 2023: The Chairs of the Congressional-Executive Commission on China issued a statement, calling for the US President to “sanction the prosecutors and other officials responsible for the arrest and prosecution of the ‘Hong Kong 47’ and other democracy advocates”

Calling for Sanctions against HK Judges and prosecutors - Response

- The Law Society of Hong Kong (13 May 2022):
“Any attempt to exert pressure by the implementation of sanctions against a judge or prosecutor due to the type of case that he or she is assigned to handle is an affront to the rule of law and judicial and prosecutorial integrity.”
- The HKSAR Government (13 July 2022):
“This is clearly trampling on legal justice and attempting to threaten by way of hegemonism the HKSAR Government officials who have been discharging their due prosecution role dutifully with justice upheld. Such gross interference in Hong Kong matters constitutes a serious violation of fundamental principles of international law.”
- The HKSAR Government (1 March 2023):
“Making a statement with the intent to interfere with or obstruct the course of justice or engaging in conduct with the same intent may even constitute the offence of criminal contempt of court or of perverting the course of justice.”



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Calling for Sanctions against Hong Kong Judges and prosecutors - Basic Law Provision

- Article 63 of the Basic Law:

“The Department of Justice of the Hong Kong Special Administrative Region shall control criminal prosecutions, free from any interference.”

“Separation of powers” in Hong Kong

- The political structure of a state is entirely a matter within the sovereign right of that state
- The PRC is unitary state and all power comes from the Central Authorities
- The people’s congress system is China’s political system. The HKSAR was established by a Decision of the National People’s Congress (‘NPC’) under Article 31 of the Constitution of the PRC. The Basic Law was promulgated by the NPC in 1990 and applicable to HKSRA since 1997 when China resumed the exercise of sovereignty over Hong Kong.”
- The former Non-Permanent Judge of the Court of Final Appeal, Sir Anthony Mason:
“Judicial decisions on the separation of powers need to be treated with great care before they can be imported from one jurisdiction to another.”

Latimer Principles – Independence of the Judiciary

Latimer Principles	Features of the HKSAR System
<p>An independent, impartial, honest and competent judiciary is integral to upholding the rule of law, engendering public confidence and dispensing justice.</p>	<p>In Hong Kong, judicial independence is constitutionally guaranteed by Basic Law Articles 2, 19 and 85 which provide that an independent judicial power, including that of final adjudication, is exercised by the Judiciary, free from any interference.</p> <p>Article 92 also stipulates that judges may be recruited from other common law jurisdictions.</p>

Latimer Principles – Independence of the Judiciary

Latimer Principles	Features of the HKSAR System
<p>The function of the judiciary is to interpret and apply national constitutions and legislation, consistent with international human rights conventions and international law, to the extent permitted by the domestic law of each Commonwealth country.</p>	<p>Article 4 of the Basic law states that the HKSAR “shall safeguard the rights and freedoms of the residents and other persons in Hong Kong in accordance with law”.</p> <p>Article 39 states that the provisions of the ICCPR and the ICESCR “shall remain in force and shall be implemented through the laws of the [HKSAR]. The rights and freedoms set out in the Basic Law shall not be restricted “unless prescribed by law”.</p>



Latimer Principles – Independence of the Judiciary

Latimer Principles	Features of the HKSAR System
Court proceedings should, unless the law or overriding public interest otherwise dictates, be open to the public. Superior Court decisions should be published and accessible to the public and be given in a timely manner.	<p>Open court hearings and judgments with reasons is practiced in Hong Kong.</p> <p>As the CJ said at the Ceremonial Opening of the Legal Year 2022: “For those who are interested in finding out how the constitutional guarantee on judicial independence in Hong Kong is practiced on the ground, our court hearings are open to the public, our judicial decisions are publicly announced, and the courts’ reasons are published for everyone to study.”</p>

Latimer Principles - Judicial review

Latimer Principles	Features of the HKSAR System
<p>Best democratic principles require that the actions of governments are open to scrutiny by the courts, to ensure that decisions taken comply with the Constitution, with relevant statutes and other law, including the law relating to the principles of natural justice.</p>	<p>Article 35: “Hong Kong residents shall have the right to confidential legal advice, access to the courts, choice of lawyers for timely protection of their lawful rights and interests or for representation in the courts, and to judicial remedies. Hong Kong residents shall have the right to institute legal proceedings in the courts against the acts of the executive authorities and their personnel.”</p>



Latimer Principles – Oversight of Government

Latimer Principles

Steps which may be taken to encourage public sector accountability include:

The establishment of scrutiny bodies and mechanisms to oversee Government, enhances public confidence in the integrity and acceptability of government's activities. Independent bodies such as Public Accounts Committees, Ombudsmen, Human Rights Commissions, Auditors-General, Anti-corruption commissions, Information Commissioners and similar oversight institutions can play a key role in enhancing public awareness of good governance and rule of law issues, Governments are encouraged to establish or enhance appropriate oversight bodies in accordance with national circumstances.

Features of the HKSAR System

A Commission Against Corruption and A Commission of Audit, both functioning independently and being accountable to the CE, are guaranteed under Articles 57 and 58 of the Basic Law respectively.

There are other statutory bodies which play a role of enhancing public sector accountability, including the Equal Opportunities Commission, the Office of the Ombudsman, and the Office of the Privacy Commissioner for Personal Data.



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Thank You

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