

Legal Commentary

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PRC Rules on Improper Extraterritorial Jurisdiction: Key Takeaways and Implications for Foreign-invested Banks

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Overview

On 7 April 2026, the State Council of the People's Republic of China promulgated the *Regulations of the PRC on Countering Improper Extraterritorial Jurisdiction by Foreign States* (the “**Regulations**”). As the first State Council–level administrative regulation specifically addressing foreign extraterritorial measures targeting Chinese entities and individuals, the issuance of the Regulations marks a significant evolution of China's response to foreign “long-arm jurisdiction”. These Regulations are intended to provide greater structural clarity for multinational enterprises navigating conflicts between PRC law and foreign sanctions, export controls, court orders, and other extraterritorial regulatory measures.

To facilitate the understanding of the Regulations, we set out below the key points of the Regulations and their practical implications for foreign-invested banks.

Key Takeaways

I. Scope of Application (*Articles 3, 6 and 8*)

The Regulations apply to the following actors:

1. **Foreign states** that implement improper extraterritorial jurisdiction measures which endanger China's sovereignty, security, development interests, or infringe upon the lawful rights and interests of Chinese citizens or organizations;
2. **Foreign organizations and individuals** that promote, or participate in the implementation of improper extraterritorial jurisdiction measures; and
3. **Organizations and individuals, whether inside or outside China**, that execute or assist in executing improper extraterritorial jurisdiction measures.

II. Types of Countermeasures (*Articles 7 and 8*)

The Regulations establish a dual-track countermeasure framework: (1) Article 7: at the state level – the Chinese authorities may take countermeasures and restrictive measures against relevant countries

in respect of diplomacy and foreign affairs, exit and entry, trade, investment, international cooperation, foreign aid and other areas; and (2) Article 8: at the organization/individual level, those foreign organizations/individuals that “promote or participate in the implementation” of improper extraterritorial jurisdiction measures, upon decision by the competent authorities, will be enlisted in the Malicious Entity List, and be subject to a broad range of countermeasures and restrictive measures, including but not limited to, entry bans or deportation, cancellations or restrictions on work or residence permits in China, seizure or freezing of assets within China, prohibitions or restrictions on data transfers from onshore entities to them, or on their conducting commercial transactions with Chinese entities, prohibitions or restrictions on import and export activities related to China, prohibitions or restrictions on investment within China, prohibition or restriction on the entry of their products, means of transportation and the like, and monetary fines. Importantly, such measures may also be extended to organizations actually controlled by, or established or operated with the participation of, the enlisted entities or individuals.

III. Identification Mechanism (*Articles 6 and 12*)

The Regulations establish a formal identification mechanism for determining whether a foreign law or measure constitutes an improper extraterritorial jurisdiction measure. Under this mechanism, the Ministry of Justice (“**MOJ**”), in coordination with other relevant PRC authorities, is responsible for making such determinations. In conducting the assessment, the authorities may consider, among other factors: (1) whether the measure violates international law and the basic norms governing international relations; (2) whether the conduct subject to the foreign jurisdiction has an appropriate connection to the foreign state concerned; (3) whether the measure endangers China’s sovereignty, security, and development interests, or harms the lawful rights and interests of Chinese citizens and organizations; and (4) other factors that should be considered. Once a foreign law or measure is identified and announced by MOJ to be an improper extraterritorial jurisdiction measure, any organization or individual shall not execute or assist in execution of such improper extraterritorial jurisdiction measure. Competent PRC authorities will be entitled to take measures such as on-site inspections, and consulting and copying relevant materials against organizations or individuals suspected of executing or assisting in executing improper extraterritorial jurisdiction measures under Article 12 of the Regulations.

IV. Prohibition Execution Order (*Articles 13 and 17*)

On the basis of the general prohibition that any organization or individual shall not execute or assist in execution of an improper extraterritorial jurisdiction measure as announced by MOJ under Article 6 of the Regulations, Article 13 further authorizes the MOJ to issue a Prohibition Execution Order, i.e., an order prohibiting the execution of improper extraterritorial jurisdiction measures by organizations or individuals that execute or assist in executing such measures. The violation of the aforementioned general prohibition will invite regulatory talks or order to correction by competent PRC authorities, and, upon decision by the MOJ, a Prohibition Execution Order. The violation of a Prohibition Execution Order will result in more severe penalties under Article 17, including but not limited to: restrictions or prohibitions on participation in government procurement and bidding; restrictions or prohibitions on the import and export, international trade in services, and other activities in relation to relevant goods and

technologies; restrictions or prohibitions on cross-border data transfers; restrictions or prohibitions on entry into, exit from, or residence in China; and monetary fines.

V. Exemption Applications (*Articles 6, 9 and 11*)

The Regulations provide for multiple exemption mechanisms to address situations where strict compliance with the prohibitions may give rise to undue hardship or unavoidable legal conflicts.

1. **Exemption for executing improper extraterritorial jurisdiction measures (Article 6):** Where PRC citizens or organizations, due to special circumstances, are genuinely required to execute an improper extraterritorial jurisdiction measure, they may apply to the MOJ for an exemption. We understand such applications should be supported by a detailed compliance impact assessment, addressing the implications of compliance or non-compliance on business operations, as well as the scope of measures that need to be executed or assisted in execution. Upon approval, the applicant may, within a specified scope and under prescribed conditions, be permitted to execute or assist in executing the relevant improper extraterritorial jurisdiction measure.
2. **Application for relief by parties subject to countermeasures or restrictive measures (Article 9):** Organizations or individuals subject to countermeasures or restrictive measures may apply for the suspension, modification, or revocation of such measures. The applicant is required to provide facts and justifications, including evidence of rectification of the relevant conduct.
3. **Exemption for transactions with parties subject to countermeasures or restrictive measures (Article 11):** Where an organization or individual has a genuine need, under special circumstances, to engage in otherwise prohibited or restricted activities with an entity or individual subject to countermeasures or restrictive measures, it may apply to the authority that imposed the relevant measures for approval. Upon approval, such transactions may be carried out.

VI. Remedies (*Article 14*)

Chinese citizens or organizations harmed by improper extraterritorial jurisdiction measures may file civil suits against the organizations or individuals that executed such measures and may seek cessation of the infringing conduct as well as compensation for losses in Chinese courts.

VII. Interaction with Other PRC Laws (*Article 19*)

Article 19 clarifies that where matters involving improper extraterritorial jurisdiction intersect with areas such as anti-corruption, anti-monopoly, unfair competition, export controls, data security, or judicial assistance, specific laws and regulations governing those areas shall prevail.

In addition, Article 19(2) of the Regulations provides that where a foreign country, in violation of international law and the basic norms of international relations, improperly prohibits or restricts Chinese citizens and organizations from engaging in normal economic, trade, and related activities with third countries (regions) and their citizens and organizations, such matters shall be handled in accordance with other relevant state provisions where applicable. Accordingly, the *Rules on Blocking Improper Extraterritorial Application of Foreign Laws and Measures* (“**Blocking Rules**”) shall still take priority in

addressing the blocking of improper extraterritorial application in the economic and trade area. It is worth noting that on May 2, 2026, the Ministry of Commerce, for the first time, issued a blocking order pursuant to the Blocking Rules, providing a reference for the subsequent application of the Regulations.

Practical Considerations for Foreign-Invested Banks

In light of the Regulations, foreign-invested banks operating in China, including PRC subsidiaries and branches of foreign banks, should consider the following actions:

I. Enhanced Due Diligence and Counterparty Screening

Foreign-invested banks shall integrate the new Chinese regulatory lists, namely the improper extraterritorial jurisdiction measures announcements, the Malicious Entity List and any Prohibition Execution Orders issued by the MOJ, into their automated screening systems, to ensure the banks will not execute or assist in the execution of the announced improper measures, not transact with any organization/individual on the Malicious Entity List or otherwise has any connection with such enlisted organization/individual, and not violate the Prohibition Execution Orders.

II. Contractual Modifications to Mitigate Compliance Conflicts

Foreign-invested banks may amend their standard contractual templates, including but not limited to, account opening forms, loan agreements, trade finance documents, derivatives documents, to address the conflict between foreign legal demands and Chinese blocking obligations. The most critical clause to include is a compliance conflict clause, which provides that the performance of any provisions relating to account closure, transaction restrictions, account or asset freezes, termination of agreements, and other related measures based on foreign sanctions shall be subject to compliance with PRC laws and regulations and the requirements of competent authorities. In addition, the contractual documentation should incorporate an exemption clause for compliance with the Regulations - where a bank's performance of contractual obligations would result in a violation of the Regulations (e.g., the counterparty is enlisted in the Malicious Entity List and the bank is prohibited from dealing with such counterparty), such non-performance shall not constitute a default. This clause should explicitly reference Chinese blocking laws (or specifically the Regulations) as a force majeure event or a legal prohibition that excuses performance.

The banks should also consider the allocation of regulatory and compliance risk when the counterparty invokes the improper extraterritorial measures as a force majeure or change in law event to try to exempt itself from performing the obligations, the banks may consider excluding the MOJ identified improper extraterritorial measures as the basis for invoking force majeure or change in law event.

III. Proactive Use of the Exemption Mechanism

The exemption pathway under the Regulations is the bank's primary tool for navigating direct legal conflicts between Chinese law and foreign long-arm measures. Whenever the bank faces a situation where compliance with a foreign demand is also prohibited under the Regulations, it should document the conflict and internally assess whether to apply to the MOJ for an exemption to avoid significant harm.

IV. Monitoring the Application and Enforcement Trends of the Regulations

Banks should continuously monitor the subsequent developments and enforcement approaches of the MOJ and other related authorities in applying the Regulations, including whether further rules or guidance will be issued in relation to the Regulations, as well as practical examples of how the Regulations interact and coordinate with other Chinese laws.

Important Announcement

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