

June 15, 2021

China Sanctions Update

New Executive Orders Modify Restrictions on Purchases of Securities of “Chinese Military-Industrial Complex Companies,” and Direct New Measures to Protect U.S. Personal Data; China Enacts New Anti-Foreign Sanctions Law

SUMMARY

On June 3, 2021, the Biden administration issued Executive Order (“E.O.”) 14032, which replaces the ban on transacting in securities of Chinese military companies that was established by the Trump administration in E.O. 13959. The basis for designating sanctions targets has been revised; rather than targeting “Communist Chinese Military Companies” identified by the Department of Defense under the statutory requirements of Section 1237 of the National Defense Authorization Act for Fiscal Year 1999, as amended, the revised framework gives the Treasury Department primary authority to designate companies operating in China’s defense or surveillance technology sectors, termed “Chinese Military-Industrial Complex” or “CMIC” companies, as subject to the transaction ban. In addition, a new list of covered CMIC entities has been issued which includes some, but not all, of the entities previously designated, while adding a limited number of companies not previously designated. While the previous version of these trading sanctions covered entities with a name that “closely matched” a listed name, the new prohibitions only apply to securities of entities that are specifically identified and listed. Along with the publication of E.O. 14032, the Office of Foreign Assets Control (“OFAC”) issued important guidance regarding the scope of the restrictions.

On June 9, 2021, the Biden administration issued E.O. 14034 that revoked three Trump administration E.O.s targeting Chinese software applications, including TikTok and WeChat, and, in their place, established new criteria for identifying software that potentially could threaten United States persons’ personal information and proprietary business information. E.O. 14034 also directs the Department of Commerce to take steps to address the risks posed by information and communications technology and

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services (“ICTS”) transactions involving software applications that are designed, developed, manufactured or supplied by persons that are owned or controlled by, or subject to the jurisdiction of, a foreign adversary, including the People’s Republic of China, that may present an undue or unacceptable risk to the national security of the United States and the American people.

Whether or not specifically in response to these measures, on June 10, 2021, the Standing Committee of the National People’s Congress of China enacted the Anti-Foreign Sanctions Law (“AFSL”), which gives government departments under China’s State Council the ability to impose restrictions on individuals and entities involved in the issuance and implementation of restrictive measures against China. This law is in addition to blocking rules adopted by China’s Ministry of Commerce in January 2021 that, among other things, could prohibit Chinese parties from taking certain actions or transacting with certain parties in response to sanctions targeting China.

BACKGROUND

A. PRIOR ACTIONS ON CHINESE MILITARY COMPANIES

On November 12, 2020, [President Trump issued E.O. 13959](#), putting in place prohibitions under the International Emergency Economic Powers Act (“IEEPA”) on certain transactions by U.S. persons in publicly traded securities of Communist Chinese military companies (“CCMCs”).¹ This E.O. allowed for the Defense and Treasury Departments to designate CCMCs, as defined by Section 1237 of the National Defense Authorization Act of 1999 (the “1999 NDAA”), as amended.² On December 28, 2020, [OFAC issued the Non-SDN Communist Chinese Military Companies List](#) (the “NS-CCMC List”), which included companies listed by the Department of Defense and the names of related issuers of securities, and published five Frequently Asked Questions (“FAQs”) addressing ambiguities in E.O. 13959, offering guidance on how it would identify covered CCMCs, define covered securities, and treat subsidiaries of CCMCs, and on the scope and reach of the prohibitions.³ On January 8, 2021, OFAC added certain subsidiaries of previously listed companies to the NS-CCMC List.⁴ The restrictions under Executive Order 13959 became effective on January 11, 2021 for the entities listed in the Annex to E.O. 13959.

President Trump amended the CCMC framework on January 13, 2021, issuing E.O. 13974, which, among other things, added a prohibition on U.S. persons holding covered securities beyond the permitted divestment period.⁵ On January 14, 2021, the Department of Defense listed additional companies as CCMCs pursuant to its Section 1237 authority.⁶

During the Biden administration and prior to the June 3, 2021 changes to the E.O. 13959 framework, OFAC issued licenses and FAQs offering guidance about which affiliates of designated companies would be subject to restrictions,⁷ and about the applicability of the prohibitions to companies that successfully challenged their designations in court.⁸

B. PRIOR ACTIONS ON THE INFORMATION AND COMMUNICATIONS TECHNOLOGY SUPPLY CHAIN

In a parallel set of actions, the U.S. government also took steps to defend the ICTS supply chain.⁹ On May 15, 2019, the Trump administration issued E.O. 13873, which declared a national emergency with respect to threats to the “security, integrity, and reliability” of U.S. ICTS and prohibited transactions involving ICTS that raise national security concerns.¹⁰ President Trump subsequently issued E.O.s 13942,¹¹ 13943,¹² and 13971¹³ prohibiting transactions with the parent companies of Chinese mobile applications TikTok and WeChat and with Chinese “connected software applications,” respectively. E.O.s 13942 and 13943 both faced implementation delays. The Department of Commerce postponed the implementation of E.O. 13942 while consideration of a potential transaction between TikTok’s parent company ByteDance and certain U.S. parties was ongoing. Additionally, federal courts preliminarily enjoined the implementation of the TikTok and WeChat measures, finding that they raised concerns under the First Amendment,¹⁴ IEEPA¹⁵ and the Administrative Procedure Act (“APA”).¹⁶

NEW EXECUTIVE ORDER AND FAQs ON CHINESE MILITARY-INDUSTRIAL COMPLEX COMPANIES

E.O. 14032 maintains the overall focus of E.O. 13959 on transactions in securities of targeted issuers, but while E.O. 13959 is technically “amended” by E.O. 14032 (“Amended E.O. 13959”), the amendments effected by E.O. 14032 effectively replace all of the prior prohibitions with a new framework.¹⁷ Amended E.O. 13959 introduces new criteria to be applied by the Treasury Department when deciding which companies to designate and reduces the role of the Department of Defense in identifying targeted issuers for this program. Amended E.O. 13959 also lays out a new timeline for the phase-in of the CMIC measures. Additionally, Amended E.O. 13959 contains an Annex identifying companies subject to the CMIC measures. Many—but not all—of these companies were previously designated as CCMCs. Finally, concurrent OFAC FAQs further clarify the scope of the prohibitions and the ongoing obligations and responsibilities of U.S. persons dealing with covered securities.

A. INCLUSION ON THE NS-CMIC LIST

Amended E.O. 13959 simplifies the process and criteria for designation of targeted Chinese companies. Under the earlier iteration of E.O. 13959, entities designated by the Department of Defense as CCMCs using the criteria in Section 1237 of the 1999 NDAA, which defines a CCMC as any person “owned or controlled by, or affiliated with, the People’s Liberation Army or a ministry of the government of the People’s Republic of China [or] owned or controlled by an entity affiliated with the defense industrial base of the People’s Republic of China,”¹⁸ would be included by OFAC as designated CCMCs on the NS-CCMC list. The Treasury Department also could designate entities using these criteria, but, as a practical matter, most of the NS-CCMC list was populated by entities designated by the Department of Defense (and related parties). Courts preliminarily enjoined the transactional restrictions as applied to two Chinese companies

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on the grounds that the Department of Defense had violated the APA by providing an inadequate explanation for its designations, by basing its decision on insufficient evidence, and by choosing targets that did not fulfill the “statutory criteria to be designated a CCMC under Section 1237.”¹⁹

Amended E.O. 13959 employs a different listing process that no longer relies on the Section 1237 criteria.²⁰ The new listing criteria primarily empower the Secretary of the Treasury to determine the covered issuers, after “consultation with the Secretary of State, and, as the Secretary of the Treasury deems appropriate, the Secretary of Defense.”²¹ Amended E.O. 13959 now is focused on the identification of CMICs—any party determined to “operate or have operated” or “to own or control, or to be owned or controlled by, directly or indirectly, a person who operates or has operated” in “the defense and related matériel sector or the surveillance technology sector of the economy of the PRC”—as opposed to Communist Chinese Military Companies. In an FAQ, OFAC defines persons in the “surveillance technology sector” as those who “have included or supported, (1) surveillance of persons by Chinese technology companies that occurs outside of the PRC; or (2) the development, marketing, sale, or export of Chinese surveillance technology that is, was, or can be used for surveillance of religious or ethnic minorities or to otherwise facilitate repression or serious human rights abuse.”²²

B. THE NON-SDN CHINESE MILITARY-INDUSTRIAL COMPLEX COMPANIES LIST

In furtherance of implementing Amended E.O. 13959, OFAC has created a new list, the Non-SDN Chinese Military-Industrial Complex Companies List (the “NS-CMIC List”). As of June 4, 2021, the NS-CMIC List contains the 59 entities identified in the Annex to Amended E.O. 13959. The NS-CMIC List replaces the NS-CCMC List,²³ and, though the lists overlap, they are not identical.²⁴ For a comparison between the NS-CCMC List and the NS-CMIC List, see the attached Annex.

There will be a transition period between the immediate revocation of the CCMC restrictions and the full implementation of the new CMIC framework. The restrictions on U.S. persons’ purchase and sale of securities of NS-CMIC-listed entities is effective on August 2, 2021. (Prohibitions on subsequent additions to the NS-CMIC List will become effective 60 days after listing.) Thus, there is an approximately two-month window where there are no restrictions on transactions in either NS-CCMC- or NS-CMIC-listed securities, even for an issuer on both lists.

C. COVERED CMICS

A new OFAC FAQ offers greater certainty about the effects of inclusion of an entity on the NS-CMIC List on its subsidiaries and affiliates. The Annex to the original E.O. 13959 had included company names that in some cases were not specific entities. The NS-CCMC List and concurrent OFAC guidance provided some clarification by listing additional information about the covered companies (such as related issuer names and equity tickers), but also noted that the prohibitions applied to the publicly traded securities of “an entity with a name that exactly or closely matches” an identified CMCC, without specifying a process for identifying close matches, despite the fact that the concept of a “closely matching” name was

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unprecedented in prior OFAC practice and posed significant implementation challenges for affected industry participants. Through a general license, OFAC had temporarily deferred the application of the trading restrictions to the securities of companies whose name “closely” but not “exactly” matched NS-CCMC-listed companies.²⁵

A new FAQ about the NS-CMIC List explains that “[o]nly entities whose names exactly match the names of the entities on the NS-CMIC List are subject to the prohibitions in Amended E.O. 13959.”²⁶ Therefore, unlisted subsidiaries or other affiliates of companies on the NS-CMIC list will not be subject to the prohibitions of Amended E.O. 13959, even if they have names similar to a listed company. OFAC further notes in the FAQs that the 50% Rule does not apply to entities solely designated pursuant to E.O. 13959.²⁷

D. SCOPE OF TRADING RESTRICTIONS

The original E.O. 13959, as amended by E.O. 13974, prohibited any “transaction in publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities, of any Communist Chinese military company.” It then defined “transaction” as “the purchase for value, or sale, of any publicly traded security.”²⁸ Amended E.O. 13959 prohibits “the purchase or sale of any publicly traded securities” of CMICs, without referring to transactions or purchases for value.²⁹ An FAQ notes that other forms of transactions with covered entities, such as the purchase and sale of goods and services, continue to be allowed.³⁰

Amended E.O. 13959 allows the sale of covered securities by U.S. persons for the purpose of divestment. U.S. persons will have until June 3, 2022 to divest from entities listed in the Annex to Amended E.O. 13959, and 365 days following the date of listing for subsequently added entities.³¹ Neither Amended E.O. 13959 nor the FAQs prohibit the holding of covered securities following the divestment period, suggesting that U.S. persons may hold these securities after the wind-down period as long as they do not attempt to sell them or purchase more without authorization from OFAC. Thus, U.S. holders of NS-CMIC-listed securities past the divestment period, while not in violation of Amended E.O. 13959, may find themselves unable to dispose of them. OFAC’s approach to holding CMIC securities after the divestment period marks a change from the earlier CCMC framework, which specifically required divestment during the allowed window and prohibited the holding of any listed security after the divestment period.

E. COVERED SECURITIES

Amended E.O. 13959 updates the definition of “security” for the purposes of the prohibition. Like its predecessor, Amended E.O. 13959 adopts the definition used by the Securities Exchange Act of 1934, as amended.³² However, the definition no longer includes “currency or any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance of not exceeding 9 months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.”³³

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As noted above, the prohibitions cover “publicly traded securities that are derivative of such securities or are designed to provide investment exposure” to NS-CMIC-listed securities.³⁴ For example, once the prohibitions are effective, a U.S. person could not purchase a publicly traded exchange-traded fund that owns a CMIC security (except to the extent that the fund is in the process of divesting its prohibited securities within the allowed window).³⁵

In its definition of the scope of “securities that are derivative of [CMIC] securities or are designed to provide investment exposure” to CMIC securities, Amended E.O. 13959 appears to differ from its predecessor. The earlier iteration of E.O. 13959 stated that the prohibitions applied to “publicly traded” securities as well as any “securities” that were “derivative of, or are designed to provide investment exposure to [CCMC] securities.”³⁶ Amended E.O. 13959 and an accompanying FAQ suggest that if the security providing exposure to an NS-CMIC-listed security is not itself publicly traded, it would not be covered.³⁷ At the same time, language in another FAQ raises some ambiguity about the narrowed scope of the restrictions.³⁸ Moreover, OFAC’s broad definition of “publicly traded” suggests that the restrictions on securities that are derivative of or designed to provide investment exposure to NS-CMIC-listed securities might not be significantly narrower.

Consistent with OFAC guidance issued in relation to the original E.O. 13959,³⁹ the Amended E.O. 13959 defines “publicly traded” securities as those trading on an exchange or over-the-counter. Because the Executive Order does not provide a specific definition of “over-the-counter,” the restrictions on “publicly traded securities that are derivative of such securities or are designed to provide investment exposure” to NS-CMIC-listed securities could potentially be interpreted to encompass securities not generally believed to be publicly traded, if deemed to trade “over-the-counter” for purposes of Amended E.O. 13959.⁴⁰

F. PERMITTED ACTIVITIES BY U.S. PERSONS

Several of the FAQs issued on June 3 clarify certain activities related to covered securities that U.S. persons may continue to conduct in connection with the trading activity of non-U.S. persons. U.S. persons are permitted to provide “investment advisory, investment management, or similar services to a non-U.S. person . . . in connection with the non-U.S. person’s purchase or sale of a covered security, provided that the underlying purchase or sale would not otherwise violate E.O. 13959, as amended.”⁴¹ Similarly, U.S. persons employed by non-U.S. entities may facilitate transactions in covered securities “on behalf of their non-U.S. employer,” as long as the purchases themselves do not violate E.O. 13959, as amended. For example, a U.S. person working for a non-U.S. asset manager could purchase a covered security on behalf of the asset manager.⁴² U.S. persons may also continue to provide “clearing, execution, settlement, custody, transfer agency, back-end services, as well as other such support services” for covered securities, to the extent that such services do not support U.S. persons engaging in prohibited transactions.⁴³ In allowing such activities by U.S. persons, OFAC’s approach under the CMIC framework can be distinguished from other OFAC-administered sanctions programs where such activities would likely be viewed as

prohibited facilitation by the U.S. person. Finally, an FAQ also makes clear the level of due diligence expected of U.S. persons. When determining whether a purchase or sale is prohibited, U.S. persons “may rely upon the information available to them in the ordinary course of business.”⁴⁴

The June 3 FAQs also clarify the obligations and responsibilities of certain U.S. persons during the divestment period. U.S. market intermediaries, “including market makers, and other participants,” may facilitate divestment of the covered securities during the relevant wind-down periods.⁴⁵ Intermediaries may also “engage in activities that are necessary to effect divestiture,” such as the “conversion of American depositary receipts (ADRs) of a CMIC into underlying securities of the CMIC on the foreign exchange where the underlying securities are listed.”⁴⁶ U.S. securities exchanges may similarly facilitate the divestment of prohibited securities during the allowed window.⁴⁷

NEW EXECUTIVE ORDER ON THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AND SERVICES SUPPLY CHAIN

E.O. 13873 and subsequent related E.O.s established both a focus on the strategic importance of the ICTS sector to the United States and targeted specific companies and transactions related to this sector. E.O. 14034 confirms the goals of the original E.O. 13873 while putting in place new authorities to achieve these goals.

First, E.O. 14034 revokes E.O.s 13942, 13943, and 13971, alluding to legal challenges faced by these measures.⁴⁸ Second, it “directs the use of a criteria-based decision framework” to counter risks posed by “ICTS transactions involving software applications that are designed, developed, manufactured, or supplied by persons that are owned or controlled by, or subject to the jurisdiction of a foreign adversary, including the People’s Republic of China.”⁴⁹ Specifically, E.O. 14034 highlights the following potential risk indicators:

- “ownership, control, or management by persons that support a foreign adversary’s military, intelligence, or proliferation activities”;
- “use of the connected software application to conduct surveillance that enables espionage, including through a foreign adversary’s access to sensitive or confidential government or business information, or sensitive personal data”;
- “ownership, control, or management of connected software applications by persons subject to coercion or cooption by a foreign adversary”;
- “ownership, control, or management of connected software applications by persons involved in malicious cyber activities”;
- “a lack of thorough and reliable third-party auditing of connected software applications”;
- “the scope and sensitivity of the data collected”;
- “the number and sensitivity of the users of the connected software application”; and
- “the extent to which identified risks have been or can be addressed by independently verifiable measures.”

Third, E.O. 14034 requires further action to protect the personal data of U.S. persons. It mandates the Secretary of Commerce, in consultation with other Executive Branch officials, to develop recommendations “to protect against harm from the unrestricted sale of, transfer of, or access to United States persons’ sensitive data, including personally identifiable information, personal health information, and genetic information, and harm from access to large data repositories by . . . a foreign adversary.”⁵⁰ Finally, E.O. 14034 directs the Secretary of Commerce to furnish additional recommendations to address dangers associated with foreign adversaries’ connected software applications, and to monitor transactions in this space that pose risks to the U.S. digital economy, its ICTS, its critical infrastructure, and its national security. These provisions suggest that the Biden administration will soon take further action in the ICTS sector to fulfill the directives of E.O. 14034.

NEW CHINESE ANTI-FOREIGN SANCTIONS LAW

On June 10, 2021, the Standing Committee of the National People’s Congress of China enacted the Anti-Foreign Sanctions Law, which empowers government departments under the State Council to designate persons involved in developing, issuing, or implementing another country’s sanctions targeting China. The new law permits extensive countermeasures, including visa bans, the freezing or seizure of property, and transaction restrictions. It charges persons in China with implementing the countermeasures.

The AFSL also provides for broad targeting. Senior managers of listed entities and the families of listed individuals may be subject to countermeasures. Additionally, the AFSL is broad in its geographic reach; it covers Hong Kong and Macao and may apply extraterritorially. The new law represents a significant expansion of Chinese efforts to push back against U.S. sanctions, and goes beyond the January 9, 2021 Rules on Blocking Unjustified Extraterritorial Application of Foreign Legislation and Other Measures issued by the Ministry of Commerce of the People’s Republic of China (or “MOFCOM”). The MOFCOM rules to date only establish a legal framework, but among other things, could be implemented to prohibit Chinese parties from taking certain actions or transacting with certain parties in response to sanctions targeting China. The new measures could be implemented to impose restrictions on sanctioning parties, and parties helping to implement those sanctions. The new law also mandates that the State Council create a centralized mechanism to coordinate countermeasures across Chinese government departments. Although the full scope and effect of these countermeasures is not yet known, it is clear that international companies may be at risk in the future of being caught between competing U.S. and Chinese demands, and developments in this area will need to be closely monitored.

CONCLUSIONS

E.O. 14032 and its accompanying FAQs effectively replace the CCMC framework, and the new CMIC framework and rewriting of E.O 13959 eliminate ambiguities that had arisen under the preceding program and lay a foundation for future CMIC actions over the course of the Biden administration, while reducing

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the potential for future legal challenges to individual designations. E.O. 14034 on the information and communications technology and services supply chain addresses the legal challenges faced by the Trump administration's measures while setting the stage for further action by the Department of Commerce under a broader mandate. These actions, taken together, demonstrate that the Biden administration will continue to focus on threats to national security from China and other adversaries, and that the "whole of government" approach to these issues that the Trump administration followed will remain in place, although the Biden administration's focus and deliberations may differ. China's response with the new Anti-Foreign Sanctions Law will warrant further monitoring, as more specific guidance and implementation will be necessary to define the broadly-drafted legislation's ultimate scope and importance.

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Annex

COMPARATIVE ANALYSIS: NS-CCMC/DEPARTMENT OF DEFENSE DESIGNATIONS VS. NS-CMIC LIST

A. PREVIOUSLY LISTED ENTITIES THAT DO NOT APPEAR ON THE NS-CMIC LIST

The following companies were previously subject to EO 13959 prohibitions as Communist Chinese Military Companies (“CCMCs”) but are not identified as Chinese Military-Industrial Complex (“CMIC”) companies under the amended order. * denotes companies designated as CCMCs by the Department of Defense, as part of the January 14, 2021 Tranche 5 designations, but that were never specifically added to the NS-CCMC List and are not included in the new NS-CMIC List.

1. DAWNING INFORMATION INDUSTRY CO (SUGON)
2. CHINA STATE CONSTRUCTION GROUP CO LTD (CSECCZ)
3. CHINA CONSTRUCTION TECHNOLOGY CO LTD (CCTC)
4. CHINA INTERNATIONAL ENGINEERING CONSULTING CORP. (CIECC)
5. CHINA NATIONAL CHEMICAL CORPORATION (CHEMCHINA)
6. CHINA NATIONAL CHEMICAL ENGINEERING GROUP CO., LTD. (CNCEC)
7. CHINA THREE GORGES CORPORATION LIMITED
8. SINOCHEM GROUP CO LTD
9. CRRG CORP.
10. ADVANCED MICRO-FABRICATION EQUIPMENT INC. (AMEC)*
11. LUOKUNG TECHNOLOGY CORP. (LKCO)^{51*}
12. XIAOMI CORPORATION^{52*}
13. BEIJING ZHONGGUANCUN DEVELOPMENT INVESTMENT CENTER*
14. GOWIN SEMICONDUCTOR CORP GRAND CHINA AIR CO. LTD. (GCAC)*
15. GLOBAL TONE COMMUNICATION TECHNOLOGY CO. LTD. (GTCOM)*
16. CHINA NATIONAL AVIATION HOLDING CO. LTD. (CNAH)*
17. COMMERCIAL AIRCRAFT CORPORATION OF CHINA, LTD. (COMAC)*

B. THE NS-CMIC LIST

Below are the 59 companies listed as CMICs. † indicates newly designated companies, i.e., companies not included on the NS-CCMC list or identified by DoD and that are not subsidiaries of previously NS-CCMC-listed companies.⁵³ †† indicates previously unlisted subsidiaries of parent companies that were included in the NS-CCMC List. U.S. persons screening for prohibited securities may have already taken action in regard to the parent company or subsidiary.

1. AERO ENGINE CORPORATION OF CHINA
2. AEROSPACE CH UAV CO., LTD††
3. AEROSPACE COMMUNICATIONS HOLDINGS GROUP COMPANY LIMITED††
4. AEROSUN CORPORATION††
5. ANHUI GREATWALL MILITARY INDUSTRY COMPANY LIMITED†
6. AVIATION INDUSTRY CORPORATION OF CHINA, LTD.
7. AVIC AVIATION HIGH-TECHNOLOGY COMPANY LIMITED††
8. AVIC HEAVY MACHINERY COMPANY LIMITED††
9. AVIC JONHON OPTRONIC TECHNOLOGY CO., LTD. ††
10. AVIC SHENYANG AIRCRAFT COMPANY LIMITED††
11. AVIC XI'AN AIRCRAFT INDUSTRY GROUP COMPANY LTD.††

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12. CHANGSHA JINGJIA MICROELECTRONICS COMPANY LIMITED†
13. CHINA ACADEMY OF LAUNCH VEHICLE TECHNOLOGY
14. CHINA AEROSPACE SCIENCE AND INDUSTRY CORPORATION LIMITED
15. CHINA AEROSPACE SCIENCE AND TECHNOLOGY CORPORATION
16. CHINA AEROSPACE TIMES ELECTRONICS CO., LTD.††
17. CHINA AVIONICS SYSTEMS COMPANY LIMITED††
18. CHINA COMMUNICATIONS CONSTRUCTION COMPANY LIMITED
19. CHINA COMMUNICATIONS CONSTRUCTION GROUP (LIMITED)
20. CHINA ELECTRONICS CORPORATION
21. CHINA ELECTRONICS TECHNOLOGY GROUP CORPORATION
22. CHINA GENERAL NUCLEAR POWER CORPORATION
23. CHINA MARINE INFORMATION ELECTRONICS COMPANY LIMITED††
24. CHINA MOBILE COMMUNICATIONS GROUP CO., LTD.
25. CHINA MOBILE LIMITED
26. CHINA NATIONAL NUCLEAR CORPORATION
27. CHINA NATIONAL OFFSHORE OIL CORPORATION
28. CHINA NORTH INDUSTRIES GROUP CORPORATION LIMITED
29. CHINA NUCLEAR ENGINEERING CORPORATION LIMITED
30. CHINA RAILWAY CONSTRUCTION CORPORATION LIMITED
31. CHINA SATELLITE COMMUNICATIONS CO., LTD.††
32. CHINA SHIPBUILDING INDUSTRY COMPANY LIMITED††
33. CHINA SHIPBUILDING INDUSTRY GROUP POWER COMPANY LIMITED††
34. CHINA SOUTH INDUSTRIES GROUP CORPORATION
35. CHINA SPACESAT CO., LTD.
36. CHINA STATE SHIPBUILDING CORPORATION LIMITED
37. CHINA TELECOM CORPORATION LIMITED
38. CHINA TELECOMMUNICATIONS CORPORATION
39. CHINA UNICOM (HONG KONG) LIMITED
40. CHINA UNITED NETWORK COMMUNICATIONS GROUP CO., LTD.
41. CNOOC LIMITED
42. COSTAR GROUP CO., LTD.†
43. CSSC OFFSHORE & MARINE ENGINEERING (GROUP) COMPANY LIMITED††
44. FUJIAN TORCH ELECTRON TECHNOLOGY CO., LTD.†
45. GUIZHOU SPACE APPLIANCE CO., LTD.††
46. HANGZHOU HIKVISION DIGITAL TECHNOLOGY CO., LTD.
47. HUAWEI INVESTMENT & HOLDING CO., LTD.
48. HUAWEI TECHNOLOGIES CO., LTD.††
49. INNER MONGOLIA FIRST MACHINERY GROUP CO., LTD.††
50. INSPUR GROUP CO., LTD.
51. JIANGXI HONGDU AVIATION INDUSTRY CO., LTD.††
52. NANJING PANDA ELECTRONICS COMPANY LIMITED
53. NORTH NAVIGATION CONTROL TECHNOLOGY CO., LTD.††
54. PANDA ELECTRONICS GROUP CO., LTD.
55. PROVEN GLORY CAPITAL LIMITED††
56. PROVEN HONOUR CAPITAL LIMITED††
57. SEMICONDUCTOR MANUFACTURING INTERNATIONAL CORPORATION
58. SHAANXI ZHONGTIAN ROCKET TECHNOLOGY COMPANY LIMITED††
59. ZHONGHANG ELECTRONIC MEASURING INSTRUMENTS COMPANY LIMITED††

ENDNOTES

- 1 Executive Order 13959, 85 Fed. Reg. 73185 (Nov. 17, 2020).
- 2 Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 [NDAA FY1999], Pub. L. No. 105-261 § 1237, 112 Stat. 1920, 2160 (1998); as amended by Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 [NDAA FY2001], Pub. L. No. 106-398 § 1233, 114 Stat. 1654, 1654A-330 (2000); Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 [NDAA FY2005], Pub. L. No. 108-375 § 1222, 118 Stat. 1811, 2089 (2004).
- 3 United States Dep't of the Treasury, Office of Foreign Assets Control, Publication of Communist Chinese Military Companies Frequently Asked Questions and Related List (Dec. 28, 2020), *available at* <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20201228>.
- 4 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 879 (Jan. 27, 2021), *available at* <https://web.archive.org/web/20210318120328/https://home.treasury.gov/policy-issues/financial-sanctions/faqs/879>.
- 5 Executive Order 13974, 86 Fed. Reg. 4875 (Jan. 19, 2021).
- 6 Dep't of Def., DOD Releases List of Additional Companies, In Accordance with Section 1237 of FY99 NDAA (Jan. 14, 2021), *available at* <https://www.defense.gov/Newsroom/Releases/Release/Article/2472464/dod-releases-list-of-additional-companies-in-accordance-with-section-1237-of-fy/>.
- 7 United States Dep't of the Treasury, Office of Foreign Assets Control, General License 1A – Authorizing Transactions Involving Securities of Certain Communist Chinese Military Companies (Jan. 26, 2021), *available at* <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210127>; United States Dep't of the Treasury, Office of Foreign Assets Control, General License 1B – Authorizing Transactions Involving Securities of Certain Communist Chinese Military Companies (May 18, 2021), *available at* https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210518_33.
- 8 See United States Dep't of the Treasury, Office of Foreign Assets Control, Publication of Frequently Asked Questions related to Xiaomi Corporation (Mar. 14, 2021), *available at* <https://web.archive.org/web/20210507011709/https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210314>; United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 893 (May 6, 2021), *available at* <https://web.archive.org/web/20210506211829/https://home.treasury.gov/policy-issues/financial-sanctions/faqs/893>; United States Dep't of the Treasury, Office of Foreign Assets Control, Publication of Frequently Asked Question related to Xiaomi Corporation and removal of existing FAQ (May 27, 2021), *available at* https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210527_43.
- 9 Executive Order 13873, 84 Fed. Reg. 22689 (May 17, 2019).
- 10 *Id.*
- 11 Executive Order 13942, 85 Fed. Reg. 48637 (Aug. 11, 2020); *see also* Department of Commerce, Identification of Prohibited Transactions to Implement Executive Order 13942 and Address the Threat Posed by TikTok and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain (Sept. 18, 2020), *available at* <https://www.federalregister.gov/documents/2020/10/02/2020-21897/identification-of-prohibited-transactions-to-implement-executive-order-13942-and-address-the-threat>.
- 12 Executive Order 13943, 85 Fed. Reg. 48641 (Aug. 11, 2020); *see also* Department of Commerce, Identification of Prohibited Transactions to Implement Executive Order 13943 and Address the Threat Posed by WeChat and the National Emergency with Respect to the Information and Communications Technology and Services Supply Chain (Sept. 18, 2020), *available at* <https://www.commerce.gov/files/identification-prohibited-transactions-implement-executive-order-13943-and-address-threat>.

ENDNOTES (CONTINUED)

- 13 Executive Order 13971, 86 Fed. Reg. 1249 (Jan. 8, 2021).
- 14 *U.S. WeChat Users All. v. Trump*, 488 F. Supp. 3d 912, 930 (N.D. Cal. 2020).
- 15 *Tiktok Inc. v. Trump*, No. 20-cv-02658 (CJN), 2020 U.S. Dist. LEXIS 232977, at *44-45 (D.D.C. 2020); *Marland v. Trump*, 498 F. Supp. 3d 624 (E.D. Pa. 2020).
- 16 *Tiktok Inc. v. Trump*, No. 20-cv-02658 (CJN), 2020 U.S. Dist. LEXIS 232977, at *44-45 (D.D.C. 2020).
- 17 Executive Order 14032, 86 Fed. Reg. 30145 (June 7, 2021).
- 18 NDAA FY99 § 1237(b)(4)(B)(i).
- 19 *Xiaomi Corp. v. Dep't of Def.*, No. 21-cv-280, 2021 U.S. Dist. LEXIS 46496, at *9 (D.D.C. Mar. 12, 2021); *Luokung Tech. Corp. v. Dep't of Def.*, No. 21-cv-583, 2021 U.S. Dist. LEXIS 86378, at *45 (D.D.C. May 5, 2021).
- 20 Section 1237 is still an effective law, and the Department of Defense's prior identifications are still in place, except for those designations enjoined by court order. Identification by the Defense Department as a CCMC, although no longer relevant for purposes of restrictions on transactions in securities issued by those parties, may still impact these companies' ability to transact with companies participating in the U.S. government supply chain or have other implications.
- 21 Executive Order 14032, 86 Fed. Reg. 30145 § 6 (June 7, 2021).
- 22 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 900 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/900>.
- 23 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 899 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/899>.
- 24 The NS-CMIC list includes both companies that had not appeared on the NS-CCMC list, such as Anhui Greatwall Military Industry Company Limited, and previously unlisted subsidiaries of NS-CCMC-listed parent companies, such as AVIC Aviation High-Technology Company Limited, a subsidiary of Aviation Industry Corporation Of China (AVIC). The new list also excludes certain companies that were on the NS-CCMC List, such as China National Chemical Corp. Ltd. (ChemChina), as well as some that were on the Department of Defense's Section 1237 List, such as the Commercial Aircraft Corporation of China, Ltd. (COMAC).
- 25 United States Dep't of the Treasury, Office of Foreign Assets Control, General License 1A – Authorizing Transactions Involving Securities of Certain Communist Chinese Military Companies (Jan. 26, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210127>; United States Dep't of the Treasury, Office of Foreign Assets Control, General License 1B – Authorizing Transactions Involving Securities of Certain Communist Chinese Military Companies (May 18, 2021), available at https://home.treasury.gov/policy-issues/financial-sanctions/recent-actions/20210518_33.
- 26 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 899 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/899>.
- 27 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 857 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/857>.
- 28 Executive Order 13599, 85 Fed. Reg. 73185 § 4(d) (Nov. 17, 2020).
- 29 Executive Order 14032, 86 Fed. Reg. 30145 (June 7, 2021).
- 30 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 905 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/905>.
- 31 Executive Order 14032, 86 Fed. Reg. 30145 § 1(c) (June 7, 2021).

ENDNOTES (CONTINUED)

- 32 The Securities Exchange Act of 1934, as amended, defines a security as “any note, stock, treasury stock, security future, bond, debenture, certificate of interest or participation in any profit-sharing agreement or in any oil, gas, or other mineral royalty or lease, any collateral-trust certificate, preorganization certificate or subscription, transferable share, investment contract, voting-trust certificate, certificate of deposit for a security, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or in general, any instrument commonly known as a ‘security’; or any certificate of interest or participation in, temporary or interim certificate for, receipt for, or warrant or right to subscribe to or purchase, any of the foregoing; but shall not include currency or any note, draft, bill of exchange, or banker’s acceptance which has a maturity at the time of issuance of not exceeding nine months, exclusive of days of grace, or any renewal thereof the maturity of which is likewise limited.” 15 U.S.C. § 78c(a)(10).
- 33 Executive Order 13959, 85 Fed. Reg. 73185 § 4(d) (Nov. 17, 2020).
- 34 Executive Order 14032, 86 Fed. Reg. 30145 § 1(a) (June 7, 2021).
- 35 United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 865 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/865>.
- 36 Executive Order 13959, 85 Fed. Reg. 73185 § 1(a)(i) (Nov. 17, 2020).
- 37 Executive Order 14032, 86 Fed. Reg. 30145 § 1(a) (June 7, 2021); United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 860 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/860>.
- 38 FAQ 861 asks, “Does Executive Order (E.O.) 13959, as amended, prohibit U.S. persons from investing in U.S. or foreign funds, such as exchange-traded funds (ETFs) or other mutual funds, that hold publicly traded securities of a Chinese Military-Industrial Complex Company (CMIC)?” The response begins with a simple “Yes.” An explanation follows, noting that “[u]nder E.O. 13959, as amended, any purchase or sale of publicly traded securities, or any publicly traded securities that are derivative of such securities or are designed to provide investment exposure to such securities, of any CMIC listed on the NS-CMIC List is prohibited, regardless of such securities’ share of the underlying index fund, ETF, or derivative thereof.” This explanation is consistent with the interpretation of E.O. 14032 that holds that securities that are derivative of or are designed to provide investment exposure to NS-CMIC-listed securities must be publicly traded in order to be covered. However, the unqualified “Yes” at the beginning of the FAQ response suggests a potentially broader range of covered securities because it responds to a question about “U.S. or foreign funds,” not publicly traded “U.S. or foreign funds.” If the FAQ had asked about “publicly traded U.S. or foreign funds” or the response had begun with “Yes, if such funds are publicly traded securities” there might be less ambiguity regarding the scope of covered securities. To be sure, the subsequent explanation seems to clarify that the restrictions apply only to publicly traded funds, but the simple “Yes” at least raises an interpretive question.
- United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 861 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/861>.
- 39 United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 859 (Dec. 28, 2020) (amended June 3, 2021), available at <https://web.archive.org/web/20210321064406/https://home.treasury.gov/policy-issues/financial-sanctions/faqs/859>.
- 40 Executive Order 14032, 86 Fed. Reg. 30145 § 3(c) (June 7, 2021); United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 859 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/859>.
- 41 United States Dep’t of the Treasury, Office of Foreign Assets Control, FAQ 902 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/902>.

ENDNOTES (CONTINUED)

- 42 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 903 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/903>.
- 43 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 863 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/863>.
- 44 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 901 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/901>.
- 45 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 865 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/865>.
- 46 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 904 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/904>.
- 47 United States Dep't of the Treasury, Office of Foreign Assets Control, FAQ 871 (June 3, 2021), available at <https://home.treasury.gov/policy-issues/financial-sanctions/faqs/871>.
- 48 Executive Order 14034, 86 Fed. Reg. 31423 (June 11, 2021); see also White House, FACT SHEET: Executive Order Protecting Americans' Sensitive Data from Foreign Adversaries (June 9, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/09/fact-sheet-executive-order-protecting-americans-sensitive-data-from-foreign-adversaries/>.
- 49 White House, FACT SHEET: Executive Order Protecting Americans' Sensitive Data from Foreign Adversaries (June 9, 2021), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2021/06/09/fact-sheet-executive-order-protecting-americans-sensitive-data-from-foreign-adversaries/>.
- 50 Executive Order 14034, 86 Fed. Reg. 31423 (June 11, 2021).
- 51 Implementation enjoined.
- 52 Company removed from list following litigation.
- 53 See, e.g., U.S. Dep't of State, Communist Chinese Military Companies Listed Under E.O. 13959 Have More Than 1,100 Subsidiaries (Jan. 14, 2021), <https://2017-2021.state.gov/communist-chinese-military-companies-listed-under-e-o-13959-have-more-than-1100-subsidiaries/index.html>.

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