

Insights

CHINA AND THE HONG KONG SAR ARE IN FOCUS FOR U.S. EXPORT CONTROLS AND SANCTIONS

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U.S. and multinational companies with business involving China should be on the alert given recent changes in U.S. export controls and sanctions. During the months of June and July this year, the U.S. government has taken multiple actions to implement new restrictions targeting parties engaged in certain activities in China and to designate additional parties under various sanctions and export control authorities. In addition, the U.S. government has issued two advisories: one for parties operating in the Hong Kong Special Administrative Region (“HKSAR”) and one for those with supply chains linked to the Xinjiang region in China.

The advisory for parties operating in the HKSAR emphasizes the importance of being aware of all requirements associated with activities in the HKSAR. The advisory identifies four principal areas of risk: risks for businesses in light of the implementation of the Law of the People’s Republic of China on Safeguarding National Security in the Hong Kong Special Administrative Region (the “NSL”), risks concerning data privacy, risks associated with access to information and lack of transparency, and risks associated with the conflict between compliance with U.S. sanctions and the NSL. The conflicts presented by the NSL with U.S. sanctions set the stage for difficult issues for companies operating in the area. The advisory notes that the risks for employees on the ground in the region are significant. A review of applicable business practices and compliance policies and procedures are warranted to ensure these new and evolving risks are addressed in the best way for your business.

In addition, some changes implemented this summer by the Biden Administration revoked certain measures imposed by the Trump Administration. However, those measures were not simply set aside; rather, they were promptly replaced with other measures. Issued June 3, 2021, Executive Order (“EO”) 14032 (Addressing the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China) superseded EO 13959, as amended by EO 13974, modifying the scope of the earlier orders, while keeping the bulk of the restrictions in place. The parties subject to the restrictions covered by EO 14032 were added as of June 3, 2021, to the Non-SDN Chinese Military-Industrial Complex Companies List (“NS-CMIC List”). The first of the restrictions under EO 14032 became effective August 2, 2021, limiting the ability of U.S. persons to purchase or sell investments in the listed entities. Furthermore, on June 23, 2021, the Department

of Commerce rescinded the restrictions previously sought to be imposed against TikTok and WeChat pursuant to EO 13942 and EO 13943 and the broader EO 13971 (Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies). In lieu of these prior EOs, the Biden Administration issued a new EO that established specific criteria for the U.S. to evaluate the risks associated with connected software applications that are affiliated with foreign adversaries. Not later than December 20, 2021 several senior executive officials are expected to set forth recommended actions based on a series of reports and assessments that are due in the interim.

Separately, some of the changes occurring over the last couple of months were of a more mundane nature, but no less important when needing to ensure continued compliance. The Bureau of Industry and Security (“BIS”) added five parties in the Xinjiang region of China to the Entity List on June 24, 2021. They followed that with additional designations on July 12, 2021, of more parties to the Entity List, as well as the addition of a party in Russia to the Military End User List.

Lest anyone think that all the changes involved the addition of restrictions, the Department of State did remove two parties from the SDN List effective June 10, 2021.

This series of changes demonstrates the current Administration’s continued focus on national security and China. For those with business activities involving China or the HKSAR, it is critical to stay current with these changes and to regularly assess whether your compliance policies and processes adequately address the evolving and sometimes competing risks. Our team is available to discuss the challenges and provide suggestions for addressing them.

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MEET THE TEAM



Megan A. Gajewski Barnhill

Washington

megan.barnhill@bclplaw.com

[+1 202 508 6302](tel:+12025086302)



Jennifer Kies Mammen

Washington

jennifer.mammen@bclplaw.com

[+1 202 508 6044](tel:+12025086044)

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