

Insights**U.S. ENACTS ADDITIONAL MEASURES TARGETING CHINA**

Dec 09, 2020

Over the course of this year, the U.S. government has enacted a number of new regulatory changes, including changes aimed at addressing national security concerns related to countries of interest, including China, Russia, and Venezuela. The year end and a forthcoming change in administration have not resulted in a moratorium on new export control and sanctions measures – the U.S. government is continuing to implement measures targeting such countries of interest, including China. Companies should continue to proactively monitor and review these changes to assess how the regulatory changes may affect their business and update their compliance programs accordingly.

New Sanctions Designations on Chinese and Hong Kong SAR Persons

The U.S. Treasury Department, Office of Foreign Assets Control has designated multiple additional SDNs in the past couple weeks. On December 7, 2020, OFAC designated as SDNs an additional 14 persons under Executive Order 13936 in connection with their involvement in recent actions undertaken by China related to Hong Kong SAR. In addition, on November 30, 2020, OFAC designated Chinese entity China National Electronic Import/Export Company (CEIEC) as an SDN pursuant to the U.S. sanctions against Venezuela in response to CEIEC's actions supporting the Maduro regime's efforts to undermine democracy. Concurrent with the designation of CEIEC, OFAC issued General License 38 authorizing, subject to certain restrictions, wind down activities involving CEIEC and entities in which CEIEC owns, directly or indirectly, a 50 percent or greater interest. That general license expires at 12:01 am on January 14, 2021.

Restrictions Related to Investment in Communist Chinese Military Companies

In addition, on November 12, 2020, President Trump issued Executive Order 13959, setting out restrictions on U.S. persons engaging in transactions in securities of Communist Chinese military companies. Specifically, the Executive Order prohibits U.S. persons from engaging in any transaction on or after 9:30 am EST on January 11, 2021, 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 identified on the Section 1237 List published by the U.S. Department of Defense as of November 11, 2020, and as listed in the Annex to Executive Order

13959. For entities added to the Section 1237 List after November 11, 2020, such transactions are prohibited beginning 60 days from when the entity was added to the Section 1237 List.

Organizations should take steps now to identify whether they hold any publicly traded securities or derivatives of such securities of any company listed on the Section 1237 list. Organizations should also ensure that they consider whether any funds in which they invest or which are offered as part of company benefit plans include such entities and that their compliance policies are updated to account for these new restrictions. Executive Order 13959 authorizes until November 11, 2021, divestment transactions from securities that were held as of January 11, 2021, in such companies.

Addition of Entities to Department of Defense List of Communist Chinese Military Companies

Further, on December 3, 2020, the U.S. Department of Defense published Tranche 4 of its Section 1237 List of Communist Chinese Military Companies operating in the United States, which added four entities to the list. Among the entities added is Semiconductor Manufacturing International Corp. (SMIC). The addition of these entities to the Section 1237 List means that, as of February 1, 2021, U.S. persons will be prohibited from engaging in the securities-related transactions described above with these companies. Under the terms of Executive Order 13959, organizations may engage in transactions to divest in securities held as of that date until December 3, 2021.

More immediately, the inclusion of these companies on the Section 1237 List raises considerations under the military end-use and military end-user restrictions in Section 744.21 of the EAR. Although the Section 1237 List does not have the force of law for purposes of the EAR's military end-use and military end-user restrictions, the presence of a company on this list is a red flag that the U.S. Government considers that company to be a military end-user. Organizations that supply items that are subject to the military end-use and military end-user rule should take steps to ensure that their compliance procedures take these additional entities into account.

RELATED PRACTICE AREAS

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MEET THE TEAM



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