

CLIENT ALERT

Executive Order Prohibits U.S. Investments in Communist Chinese Military Companies

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On November 12, 2020, President Trump issued an [Executive Order](#) (“E.O.”) prohibiting U.S. persons from investing in Chinese companies designated as Communist Chinese military companies operating directly or indirectly in the United States. The E.O. prohibits U.S. persons from engaging in any transaction directly or indirectly involving the purchase or sale of publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities,¹ of any Communist Chinese military companies.

“Communist Chinese military companies” will be identified by the Department of Defense pursuant to section 1237 of Public Law 105-261, as amended by section 1233 of Public Law 106-398 and section 1222 of Public Law 108-375, which defines the term as companies that are owned, controlled by, or affiliated with the People’s Liberation Army, a ministry of the government of the People’s Republic of China, or an entity affiliated with the defense industrial base of the People’s

¹ For the purposes of this E.O., a “security” means any note, stock, treasury stock, security future, security-based swap, 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; including any 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.

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Republic of China, and engaged in providing commercial services, manufacturing, producing, or exporting. The definition includes any person the Secretary of the Treasury publicly lists as a subsidiary of a person already determined to be a Communist Chinese military company. The Department of Defense has published and maintains a [list of Communist Chinese military companies](#), which currently designates 31 Chinese companies as such, including Sinochem Group Co Ltd and China National Chemical Corporation (ChemChina). The E.O. does not state explicitly whether the restrictions apply to the subsidiaries of listed companies like the Office of Foreign Assets Control's ("OFAC") blocking restrictions, but the absence of such a specific statement in addition to Treasury's authority to separately list subsidiaries suggest the restrictions do not automatically extend down the corporate chain.

These prohibitions will take effect at 9:30 a.m. Eastern Standard Time on January 11, 2021 for any Communist Chinese military companies currently designated as such by the DOD or 60 days after an entity is determined to be a Communist Chinese military company in the future.

The E.O. includes two wind-down periods allowing U.S. persons to divest, or facilitate a divestment, from designated Communist Chinese military companies. U.S. persons who hold investments in currently designated Communist Chinese military companies as of January 11, 2021 will be permitted to make purchases for value or sales through November 11, 2021 so long as those transactions are for the sole purpose of divesting from any Communist Chinese military companies. Additionally, U.S. persons will be permitted to make purchases for value or sales of investments in any Communist Chinese military companies designated by the Secretaries of Defense or Treasury at a future date for up to 365 days from the date the company is designated so long as those transactions are for the sole purpose of divesting from the newly designated Communist Chinese military companies.

In addition to the prohibitions above, U.S. persons should also be aware of the OFAC prohibitions on facilitation. Generally, U.S. persons are prohibited from facilitating an act by a foreign person that would be considered a violation of U.S. sanctions laws if committed by a U.S. person. Facilitation is oftentimes a fact-specific analysis but can cover a broad range of activities, such as providing instructions or approvals, or moving funds related to the investment. While the E.O. does not specify what penalties will be enforced upon parties found to have violated the prohibitions, the E.O. was published pursuant to the International Emergency Economic Powers Act ("IEEPA") and those who directly violate the prohibitions, or are found to have facilitated an act by a foreign person that would be considered a violation of the provisions, will potentially face significant civil penalties. Under current regulations, a civil penalty for a violation of sanctions imposed pursuant to IEEPA is the greater of \$307,922 or twice the amount of the transaction that is the basis of the violation. Additionally, OFAC may impose sanctions on U.S. persons found to have violated the prohibitions in the E.O.

It is important for U.S. financial institutions and other U.S. companies to ensure that they maintain effective sanctions compliance policies and procedures in line with [OFAC's Framework for Compliance Commitments](#). Robust sanctions

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policies and procedures can help financial institutions and companies identify when a proposed transaction would be a violation of U.S. sanctions laws and mitigate the risks associated with this E.O.

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