

President Biden Issues Executive Order Restricting Investments in 59 Chinese Companies

June 4, 2021

On June 3, 2021, President Biden signed a new Executive Order (EO or Order) to address the national security threats posed by entities operating in the People's Republic of China (PRC). The Order – entitled Executive Order on Addressing the Threat from Securities Investments that Finance Certain Companies of the People's Republic of China – specifically prohibits the purchase or sale by a U.S. person of securities in any PRC entity determined by the Treasury Secretary:

- “to operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC;” or
- “to own or control, or to be owned or controlled by, directly or indirectly,” any such PRC company.

This Order “replace[s],” “supersede[s],” and “expand[s]” in scope the national emergency declared by former President Trump in EO 13959, as amended by EO 13974. Those original orders prohibited the purchase or sale of securities in companies identified by the Department of Defense as “Communist Chinese Military Companies” (CCMCs). President Biden’s rationale for expanding the scope of the prior orders is based on a finding that “additional steps are necessary to address . . . the threat posed by the military-industrial complex” of the PRC and “its involvement in military, intelligence, and security and research development programs, and weapons and related equipment production” under the Chinese Communist Party’s well-documented Military-Civil Fusion strategy. President Biden’s EO further finds that “the use of Chinese surveillance technology outside

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the PRC and the development or use of Chinese technology to facilitate repression or serious human rights abuse constitute unusual and extraordinary threats . . . to the national security, foreign policy and the economy of the United States.”

The new EO prohibits investments in 59 Chinese entities rather than the original 44 CCMCs identified by the Defense Department pursuant to Section 1237 of the 1999 National Defense Authorization Act (NDAA), as amended by Section 1260H of the 2021 NDAA. (As described in a prior alert, the Department of Defense has, to date, removed one company from the list of 44 CCMCs.) Here, the 59 Chinese entities subject to the new investment ban are identified in the Order’s accompanying Annex and include notable Chinese firms such as:

- Aviation Industry Corporation of China, Ltd.
- China Aerospace Science and Industry Corporation Limited
- China Communications Construction Company Limited
- China Electronics Technology Group Corporation
- China General Nuclear Power Corporation
- China Mobile Communications Group Co., Ltd.
- China Mobile Limited
- China National Nuclear Corporation
- China Railway Construction Corporation Limited
- China Satellite Communications Co., Ltd.
- China Shipbuilding Industry Company Limited
- China Spacesat Co., Ltd.
- China Telecom Corporation Limited
- China Telecommunications Corporation
- China Unicom (Hong Kong) Limited
- Hangzhou Hikvision Digital Technology Co., Ltd.
- Huawei Investment & Holding Co., Ltd.
- Huawei Technologies Co., Ltd.
- Semiconductor Manufacturing International Corporation, and
- Shaanxi Zhongtian Rocket Technology Company Limited

This prohibition list may grow, as the new EO gives authority to the Treasury Department, in consultation with the State Department and, as appropriate, the Defense Department, to identify additional PRC companies to which the Order’s investment restrictions could apply going forward.

For the purpose of the Order, a “publicly traded security” is any “security” defined by the Securities Exchange Act of 1934 that trades on an exchange or in over-the-counter markets. It applies broadly to any U.S. citizen, lawful permanent resident, any entity organized under U.S. law or other U.S. jurisdiction, or any person in the United States. This includes extraterritorial application to the foreign branches of multinational companies organized under U.S. law.

The Order provides a 60-day grace period, until August 2, 2021, before its prohibitions go into effect with respect to the 59 entities listed in the Annex. With respect to any additional entities identified by the Treasury Department going forward, prohibitions will be effective 60 days after the date of the relevant designation. Current shareholders, however, are given until June 3, 2022 to engage in transactions solely for the purpose of divesting currently held securities in the 59 entities listed in the Annex. A similar period of 365 days will apply for divestment of securities held in any entity subsequently identified by the Treasury Department.

The Order authorizes but does not require the Treasury Department to issue rules and regulations or to take other actions permitted under the International Emergency Economic Powers Act (IEEPA). It suggests that this discretion could include the authority to grant licenses permitting the purchase or sale of securities in the identified PRC companies, but it provides no guidance as to whether or when such procedures may go into effect.

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