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OFAC Issues Chinese Military-Industrial Complex Sanctions Regulations

February 23, 2022

On February 16, 2022, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) issued "abbreviated" regulations to implement President Biden's 2021 Executive Order (EO) barring certain investments in Chinese Military Industrial-Complex Companies (CMICs). OFAC announced that it intends to "supplement" these regulations at a later time to include interpretative guidance and definitions, general licenses, and other regulatory provisions. The narrow regulations, 31 C.F.R. part 586, went into effect on February 16, 2022.

OFAC's regulations implement President Biden's June 2021 EO 14032, which restricts certain types of investments in CMICs that "operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the [People's Republic of China (PRC)]" or own/control such a company. This EO expands the scope of prior investment restrictions issued by then-President Trump (EO 13959 as amended by EO 13974) to better target the PRC's "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.

Under EO 14032, OFAC has the authority to designate CMICs for investment restrictions. OFAC designated 59 Chinese companies as CMICs in June 2021 and an additional eight companies in December 2021.

As justification for the investment prohibitions, President Biden's EO specifically refers to the military-industrial complex of the PRC and its involvement in military, intelligence, and security research and

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development programs, and weapons and related equipment production under the PRC's Military-Civil Fusion strategy. In addition, EO 14032 states that the use of Chinese surveillance technology outside the PRC and the development or use of Chinese surveillance technology to facilitate repression or serious human rights abuses constitute unusual and extraordinary threats, which have their source in whole or substantial part outside the United States, to the national security, foreign policy, and economy of the United States.

Investment restrictions extend to publicly traded securities (or any securities that are derivatives thereof). The regulations define "publicly traded security" as any "security" as defined by the Securities Exchange Act of 1934 that trades on an exchange or in over-the-counter markets. The prohibitions apply 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. Penalties for non-compliance with the investment ban will be levied pursuant to section 206 of the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706) (IEEPA).

The February 16 regulations are largely limited to the prohibitions already described in the EO 14032. While OFAC did not issue FAQs with the regulations, it did caution that those would be forthcoming as would additional guidelines issued through updated regulations.

Wiley continues to monitor these developments and will issue updates as soon as they develop.

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