Executive Order Prohibits U.S. Persons from Buying Securities of Chinese Military Companies

On November 12, 2020, President Trump issued an executive order prohibiting investments in publicly-traded Chinese companies that are connected to the Chinese military. The order designated 31 Chinese companies, that were determined by the U.S. Department of Defense to support the People’s Liberation Army, in two lists released in June and August of 2020. The investment restrictions take effect on January 11, 2021, although U.S. persons that currently hold any designated securities may divest them until November 11, 2021. This executive order aims to restrict the flow of U.S. capital to China’s military, intelligence, and security efforts.

The Executive Order prohibits U.S. persons from investing or otherwise transacting in publicly-traded securities of designated companies. It also prohibits transactions in “any securities that are derivative of, or are designed to provide investment exposure to such securities” of the designated Chinese companies. Accordingly, the restrictions appear to extend to derivatives contracts and indices or funds that provide any level of investment exposure to the designated securities. U.S. persons that hold securities in any of the 31 currently-designated Chinese companies may – but are not required to – divest those interests until November 11, 2021. Once a new Chinese military company is designated, the restrictions on investing in its publicly-traded securities will go into effect 60 days later and U.S. persons will have one year to divest any securities they held in that Chinese entity as of the date of designation.

In the Executive Order, President Trump states “the PRC…compel[s] civilian Chinese companies to support its military and intelligence activities and…exploits United States investors to finance the development and modernization of its military.” OFAC may promulgate regulations or issue guidance in the future to provide more clarity on these restrictions. Also, since these investment restrictions were implemented by Executive Order, they can always be removed or amended by President-elect Biden under the next administration.

U.S. persons should review their investments to see if they are affected, and take appropriate measures to divest in those securities as necessary. If you have any questions regarding this new executive order or how it may affect your business, please reach out to the contacts listed below.
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