

OFAC Publishes Regulations Implementing the Chinese Military-Industrial Complex Sanctions Program

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On February 15, 2022, the Office of Foreign Assets Control (“OFAC”) of the U.S. Department of the Treasury published regulations to implement the Chinese military-industrial complex sanctions program established pursuant to Executive Order 13959, as amended by Executive Order 14032 (the “CMIC Sanctions Program”). With the aim of restricting access of certain Chinese companies, including those with an ostensibly civil character, to U.S. sources of capital, the CMIC Sanctions Program targets transactions in publicly traded securities that may be used to provide, directly or indirectly, financial support for modernization or operations of the military, intelligence or security apparatuses of People’s Republic of China’s (“PRC”).

Under the CMIC Sanctions Program, the U.S. Secretary of the Treasury (the “Treasury Secretary”), in consultation with the U.S. Secretary of State and the U.S. Secretary of Defense, may designate any entity that is determined by the Treasury Secretary: (i) to operate or have operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC; or (ii) to own or control, or to be owned or controlled by, any entity that is operating or has operated in such economic sectors (any such designated entity, a “CMIC Company”).

U.S. persons (*i.e.*, individual citizens or permanent residents of the United States, individuals located within the United States and entities incorporated under the laws of the United States) are generally prohibited from engaging in transactions involving the publicly traded securities, or any publicly traded securities that are derivative of, or designed to provide investment exposure to, such securities, of any entity that is designated by the Treasury Secretary as a CMIC Company, with effect sixty (60) days following such designation. The CMIC Sanctions Program includes an exception for the purchase or sale of the publicly traded securities of an entity designated as a CMIC Company where such purchase or sale is made solely to effect the divestment, in whole or in part, of such securities by a U.S. person prior to the date that is three hundred sixty-five (365) days after the designation of such entity as a CMIC Company.

Unlike in the context of certain other sanctions programs administered by OFAC, the property and interest in property of a CMIC Company are not blocked as a result of its designation as such under the CMIC Sanctions Program. As a result, any entity that is 50% or more owned by a CMIC Company is not itself, by virtue of such ownership, considered a CMIC Company, or otherwise the target of U.S. sanctions, by operation of law but must instead be specifically designated as a CMIC Company by the Treasury Secretary in order for the prohibitions under the CMIC Sanctions Program to apply to it.

This Client Alert is not comprehensive, and provides only a high-level overview, as to the regulations promulgated by OFAC for the CMIC Sanctions Program.

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