

## President Trump Bans American Investment in Chinese Military Companies

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November 17, 2020

On November 12, 2020, President Trump issued an executive order (the "Order") prohibiting United States persons from investing in publicly traded securities of any person designated by the Secretary of Defense or the Secretary of the Treasury as a "Communist Chinese military company" pursuant to the National Defense Authorization Act for Fiscal Year 1999, as amended ("NDAA"). The Department of Defense released names of additional Communist Chinese military companies under the NDAA, and stated that the Department of Defense "is determined to highlight and counter [China's] Military-Civil Fusion development strategy, which supports the modernization goals of the People's Liberation Army (PLA)." The President declared a national emergency to facilitate the Order.

The Order prohibits the transactions described below:

- Effective 9:30 a.m. EST on January 11, 2021, any purchase for value by any *United States person* of any "publicly traded securities, or any securities that are derivative of, or designed to provide investment exposure to such securities" of any *Communist Chinese military company* (referred to in this alert as "prohibited securities" for convenience of reference only); and
- Effective 9:30 a.m. EST on the date that is 60 days after determination as a *Communist Chinese military company* pursuant to the Order, any purchase for value by any *United States person* of prohibited securities of that company.

The Order prohibits "transactions" in publicly traded securities and "securities that are derivative of, or designed to provide investment exposure to such securities." These may include investments in mutual funds, exchange traded funds and other investment vehicles which directly or indirectly are invested in the listed companies.

Violations of the Order include *any transaction by any United States person or within the United States to evade or avoid, having the purpose of evading or avoiding, or that violates or attempts to violate, and any conspiracy formed to violate, any of the prohibitions of the Order.*

United States persons will have until 11:59 p.m. EST on November 11, 2021 to divest prohibited securities that are held as of 9:30 a.m. EST on January 11, 2021. If additional persons are designated as Communist Chinese military companies, then divestiture must occur within 365 days of the date of designation.

Note that the permitted divestment windows follow the inauguration of the Biden administration in Washington on January 20, 2021. United States persons affected by the Order may be well advised to watch for possible actions and developments on these matters by the new administration as well as possible legal challenges.

The Secretary of the Treasury is broadly authorized under the Order to promulgate rules and regulations, and take other actions, and to exercise powers under the International Emergency Economic Powers Act ("IEEPA") to carry out the purposes of the Order. The Order contemplates that regulations, orders, directives and licenses may be issued pursuant to the Order to exempt otherwise prohibited transactions from the Order.

The Order defines a *Communist Chinese military company* as any individual or entity that (a) the Secretary of Defense lists as a Communist Chinese military company operating directly or indirectly in the United States pursuant to Section 1237 of the NDAA ("Section 1237") (see full list of the currently listed companies below in this alert), (b) the Secretary of

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Defense (in consultation with the Secretary of the Treasury) determines and lists as a Communist Chinese military company pursuant to Section 1237, or (c) that the Secretary of the Treasury publicly lists as meeting the criteria of Section 1237 for designation as a Communist Chinese military company (which may include subsidiaries of already designated Communist Chinese military companies). Once listed, a person continues to be a Communist Chinese military company for purposes of the Order until removed from the list by the Secretary of Defense or the Secretary of the Treasury.

*United States persons* covered by the Order include "any United States citizen, permanent resident alien, entity organized under the laws of the United States or any jurisdiction within the United States (including foreign branches), or any person in the United States." *Person* means an individual or entity in the Order. *Securities* for purposes of the Order are defined to include any "security" as defined in the Securities Exchange Act of 1934. Also included as "securities" are "currency, notes, bills of exchange and banker's acceptances with maturities not exceeding 9 months."

The Order currently applies to 31 Chinese companies previously listed by the Secretary of Defense in June and August 2020, and includes large Chinese technology, state-run aerospace, shipbuilding and construction companies such as China Mobile Communications Group, China Telecommunications Corp., Huawei, Hangzhou Hikvision Digital Technology, Aviation Industry Corporation of China, China Shipbuilding Industry Corporation, and China Railway Construction Corporation. The full list of the 31 companies is available [here](#).

Only two of those companies, China Mobile Communications Group and China Telecommunications Corp., currently trade on the New York Stock Exchange. Many, but not all, are publicly traded on mainland Chinese and Hong Kong stock exchanges.

If you have any questions about the Order, including its applicability to any of your investments, please contact the authors or your Miller Canfield attorney.