



Biden Amends EO 13959, Removes Several Previously Designated Chinese Military Companies, and Designates 59 Chinese Companies as Chinese Military-Industrial Complex Companies

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On June 3, the President issued a new Executive Order eliminating the Communist Chinese Military Companies designation authority and replacing it with the Chinese Military Industrial Complex Companies authority. The new authority is more aggressive and provides greater clarity than the November 2020 Executive Order.

In November 2020, confusion and concern arose from industry and practitioners alike after Trump issued [Executive Order 13959](#) “Addressing the Threat from Securities Investments that Finance Communist Chinese Military Companies” (the E.O. or E.O. 13959) (later [amended](#) on January 19, 2021). The E.O. prohibited certain transactions related to certain companies designated as “Communist Chinese Military Companies” (CCMCs). Since the issuance of E.O. 13959, two listed entities have sued in the DC District Court challenging their designation and have been successful in obtaining preliminary injunctions against the U.S. government.

Industry groups, practitioners, financial institutions, and investors have waited eagerly to see how the Biden Administration would treat the E.O., and some had hopes that he would rescind it entirely. However, in a somewhat surprising turn of events, on June 3, President Biden signed an [Executive Order](#) “Addressing the Threat from Securities Investments that Finance Certain Companies of the People’s Republic of China” to further address the ongoing national emergency declared in E.O. 13959. According to the White House [Fact Sheet](#), Biden’s E.O. will “[s]olidify and strengthen [E.O. 13959] to prohibit U.S. investments in the military industrial complex of the People’s Republic of China” by “creating a sustainable and strengthened framework for imposing prohibitions on investments in Chinese defense and surveillance technology firms.”

In addition to strengthening the E.O., Biden simultaneously designated 59 companies with ties to China’s military or in the surveillance industry under the E.O. The U.S. Department of the Treasury’s Office of Foreign Assets Control (OFAC) will list these 59 entities on its new Non-SDN Chinese Military-Industrial Complex Companies List (CMIC) List, which has replaced the CCMC List entirely as of June 3. Included in the list are tech giants such as Huawei Technologies Co., and defense companies such as Aviation Industry Corp. A complete list of the added CMIC entities can be found in the Annex of the June 3rd E.O. Of particular note, a significant number of entities previously listed as CCMCs are not included on the new CMIC List.

Similar to E.O. 13959, Biden’s E.O. will prohibit U.S. Persons from engaging in the purchase or sale of any publicly traded securities of any person listed in the Annex to the E.O. (including the aforementioned entities) or those

determined by the Secretary of the Treasury, in consultation with the Secretary of State, and, as the Secretary of the Treasury deems appropriate, the Secretary of Defense:

- 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, a person who operates or has operated in any sector described above, or a person who is listed in the Annex to this E.O. or who has otherwise been determined to be subject to the prohibitions in this E.O.

U.S. Persons have one year to divest their holdings in the designated securities. Note that only entities whose names exactly match the names of the entities on the CMIC List are subject to the prohibitions in E.O. 13959. In addition, OFAC removed and replaced all previously issued Frequently Asked Questions (FAQs) related to E.O. 13959, as amended, and noted on its website that it will refer to E.O. 13959 as amended by E.O. of June 3, 2021 as “E.O. 13959, as amended.”

The White House noted in its Fact Sheet:

This E.O. prevents U.S. investment from supporting the Chinese defense sector, while also expanding the U.S. Government’s ability to address the threat of Chinese surveillance technology firms that contribute—both inside and outside China—to the surveillance of religious or ethnic minorities or otherwise facilitate repression and serious human rights abuses.

Key Takeaways:

- The CCMC List was replaced in its entirety with the CMIC List.
- While the United States’ stance on China has been a relatively bipartisan issue, Biden’s E.O. designating CMIC entities is a strong signal that the Biden Administration will take a tough stance on PRC’s defense sector, including preventing funds from flowing into companies that support the PRC’s military and intelligence sectors, or into companies that develop or use Chinese surveillance technology to facilitate serious human rights abuse.
- The Department of the Treasury, in consultation with State and Defense, will make additional designations.
- Although the controls are stronger, a significant number of entities previously listed as CCMCs are not included on the new CMIC List.

If you have additional questions or need further assistance, please reach out to [Cari Stinebower](#) (Chair, International Trade Practice), [Chris Monahan](#) (Of Counsel, International Trade Practice), [Dainia Jabaji](#) (Associate, International Trade Practice), [Mariana Pendás Fernández](#) (Associate, International Trade Practice), or your Winston relationship attorney.

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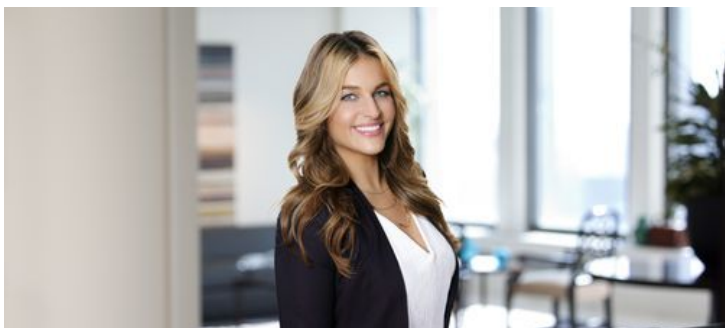
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