

China Issues Provisions on Unreliable Entity List

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On September 9, 2020, the Ministry of Commerce (MOFCOM) of the People's Republic of China (PRC or China) released Order No. 4 of 2020, entitled Provisions on the Unreliable Entity List (Provisions). The Unreliable Entity List is a list-based countersanction that allows the Chinese government to impose punitive measures against foreign entities, including companies, organizations, or individuals.

Under article 2 of the Provisions, foreign entities may be added to the Unreliable Entity List and have measures levied against them for conduct in international economic and trade activities that:

- endanger China's sovereignty, national security, or development interests; or
- suspend normal transactions or apply discriminatory measures against Chinese enterprises, organizations, or individuals.

The prohibited conduct is broadly described, which provides the Chinese government with flexibility in the application of the Provisions.

LISTING PROCEDURE

Under the Provisions, the Chinese government will establish a "working mechanism" composed of various government agencies to implement the Provisions and administer the Unreliable Entity List, with an office in MOFCOM. The working mechanism will make decisions regarding whether to conduct investigations and place foreign entities on the Unreliable Entity List. The working mechanism may directly place a foreign entity on the Unreliable Entity List when the known facts regarding the entity's conduct are clear. In addition, the working mechanism may provide the foreign entity with an opportunity to present a defense.

The working mechanism shall consider the following factors when determining whether to list a foreign entity:

- the degree of danger to the national-sovereignty, security, or development interests of China;
- the degree of damage to the legitimate rights and interests of enterprises, other organizations, or individuals of China;
- whether the entity is in compliance with internationally accepted economic and trade rules; and

- other factors.

If the working mechanism decides to list a foreign entity, it shall make a public announcement that will also describe the risks of doing business with that foreign entity.

AUTHORIZED PUNITIVE MEASURES

The Provisions provide for various punitive measures to be levied against listed foreign entities, including:

- restricting or prohibiting the foreign entity from engaging in China-related import or export activities;
- restricting or prohibiting the foreign entity from investing in China;
- restricting or prohibiting the foreign entity's relevant personnel or means of transportation from entering China;
- restricting or revoking the relevant personnel's work permit, status of stay, or residence in China;
- imposing a fine in an amount corresponding to the severity of the circumstances; and
- other necessary measures.

REMOVAL FROM THE LIST

The Provisions provide for two methods for removal from the Unreliable Entities List. The first involves the working mechanism reviewing the "actual situation" surrounding the listed entity, including what corrective measures and other actions it has taken to address its listing, and determining whether to remove that entity from the Unreliable Entities List. The second is through an application process by the entity. Unfortunately, the Provisions do not specify the contents of the application or what criteria the working mechanism may consider as part of that application process.

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