

The Commerce Department Announces Prohibitions on TikTok and WeChat

September 2020

Pursuant to Executive Orders 13942 and 13943, the US Department of Commerce (Commerce) published regulations identifying prohibited transactions related to TikTok and WeChat by any person, or with respect to any property, subject to the jurisdiction of the United States.

The final rules provided that as of midnight on Sunday, September 20, both apps will cease to be available for download in the US, and future patches and updates will not be available. The existing WeChat functionality in the US will start to degrade starting Monday, September 21. The TikTok application will begin to degrade on November 12 (unless a deal is reached with ByteDance to divest the US TikTok business before then).

Although WeChat Pay is not currently available in the US, the current Commerce rule signals that no payments may be initiated in the US over WeChat today or in the future.

The timeline for the implementation of the WeChat prohibitions is delayed because of a lawsuit filed by users in California. On September 19, 2020, the United States District Court in San Francisco issued an Order Granting Motion for Preliminary Injunction (the "Order") concerning the WeChat Executive Order 13943. Ultimately, the Order "grants the plaintiffs' motion for a nationwide injunction against the implementation of Executive Order 13943 (limited to the Secretary of Commerce's Identification of Prohibited Transactions 1 through 6)." This Order effectively puts the WeChat prohibitions on hold for the time being.

The timeline for implementation of the TikTok prohibitions also is delayed in part because of progress with Bytedance on the resolution of the Committee on Foreign Investment in the United States (CFIUS) case with Bytedance and the ultimate divestiture or other acceptable mitigation of the US TikTok business. Commerce announced that in light of recent positive developments, Commerce will delay the prohibition of identified transactions pursuant to Executive Order 13942, related to the TikTok mobile application that would have been effective on Sunday, September 20, 2020, until midnight on Sunday, September 27, 2020.

The exchange between or among TikTok and WeChat mobile application users of personal or business information using the TikTok or WeChat mobile applications, to include the transferring and receiving of funds over the WeChat application is not prohibited.

Specifically, Commerce announced the following:

As of September 20, 2020, for WeChat and September 27, 2020, for TikTok, the following transactions are prohibited:

1. Any provision of service to distribute or maintain the WeChat or TikTok mobile applications, constituent code, or application updates through an online mobile application store in the US;
2. Any provision of services through the WeChat mobile application for the purpose of transferring funds or processing payments within the US.

As of September 20, 2020, for WeChat and as of November 12, 2020, for TikTok, the following transactions are prohibited:

1. Any provision of internet hosting services enabling the functioning or optimization of the mobile application in the US;
2. Any provision of content delivery network services enabling the functioning or optimization of the mobile application in the US;
3. Any provision directly contracted or arranged internet transit or peering services enabling the function or optimization of the mobile application within the US;
4. Any utilization of the mobile application's constituent code, functions, or services in the functioning of software or services developed and/or accessible within the US.

Any other prohibitive transaction relating to WeChat or TikTok may be identified at a future date. Should the US government determine that WeChat's or TikTok's illicit behavior is being replicated by another app somehow outside the scope of these executive orders, the President has the authority to consider whether additional orders may be appropriate to address such activities. The President has provided until November 12 for the national security concerns posed by TikTok to be resolved. If they are, the prohibitions in this order may be lifted as to TikTok.

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