

On June 3, 2021, US President Joseph Biden issued Executive Order 14032, “Addressing the Threat From Securities Investments that Finance Certain Companies of the People’s Republic of China” (EO 14032),<sup>1</sup> substantially amending the prohibitions originally contained in Executive Order 13959 (EO 13959), issued by President Trump on November 12, 2020 (amended January 13, 2021).<sup>2</sup>

Original EO 13959 prohibited US persons from trading in securities of entities designated by the Department of Defense (DOD) as a Communist Chinese Military Company (CCMC), pursuant to Section 1237 of the Fiscal Year 1999 National Defense Authorization Act (1999 NDAA).

EO 14032 continues to prohibit US persons from trading in securities of listed entities, but replaces the CCMC list with a new “NS-CMIC” list of entities to be administered by the Department of the Treasury; creates a new substantive test for inclusion in the list, including additional rationale for the prohibition; and clarifies the extraterritorial application of the prohibition, as discussed below. The new substantive test for inclusion on the Treasury NS-CMIC List is of particular importance because it may provide a factual basis to challenge a designation on the NS-CMIC List.

Leveraging a combination of legal acumen and policy expertise to navigate this complex area of law, our multidisciplinary lawyers are experienced in preparing comprehensive and compelling delisting petitions.

## Replacing DOD’s CCMC List With Treasury’s NS-CMIC List

The EO 13959 prohibition against any US person from purchasing or selling publicly traded securities, including securities that are derivative of or designed to provide investment exposure to such securities, continues after the amendments instituted under the new EO 14032; however, the list of entities subject to the prohibition is replaced. EO 14032 replaces the CCMC list administered by the DOD under Section 1237 of the 1999 NDAA with a new list of entities included in the annex to EO 14032 and gives the Treasury Department the authority to designate additional entities upon an administrative determination that certain criteria are met. This new list, the Non-SDN Chinese Military-Industrial Complex Companies List (the NS-CMIC List), is administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC).

## New Entities Added to Treasury List, Certain CCMC Designated Entities Not Included

A summary chart included as an appendix to this publication shows the entities designated on the CCMC list by the DOD and those included in Treasury’s new NS-CMIC List.

Interestingly, 18 entities designated as CCMCs by the DOD (thereby subject to the trading prohibitions in the original EO 13959) are not included in the new Treasury list subject to the trading prohibitions of EO 14032. These entities include businesses in various industries, such as semiconductors, chemicals, aviation and consumer electronics. On the other hand, 33 entities that have not been designated on the DOD’s CCMC list are now included in the new NS-CMIC List.

Understanding why new entities have been added to the new NS-CMIC List, while some CCMC designated companies previously subject to the trading prohibitions of EO 13959 were not included the new list, can provide insights into the designations by Treasury; the risks of future designations to other Chinese companies; and the opportunities to contest existing designations that are inconsistent with other Treasury designations.

## Impact of Designation on a List

The promulgation of various lists may create uncertainties for the listed organizations and for the organizations with whom they do business. Only entities named on the NS-CMIC List are subject to the securities trading prohibitions imposed on US persons, as described below. US persons are not prohibited from trading in the securities of entities on the CCMC list (as established by Section 1237 of the 1999 NDAA) or another DOD list promulgated concurrently with EO 14032 (pursuant to the Fiscal Year 2021 National Defense Authorization Act, Section 1260H) that designates “Chinese Military Companies.”

<sup>1</sup> EO 14032, “Addressing the Threat From Securities Investments That Finance Certain Companies of the People’s Republic of China”, signed June 3, 2021, published at 86 FR 30145 (Jun. 7, 2021), available at <https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/X21-10607.pdf>.

<sup>2</sup> EO 14032 is styled as an amendment to EO 13959. However, the new EO revokes and replaces all of the substantive provisions of EO 13959 that imposed prohibitions on US persons, effectively superseding the older EO in substance.

These two DOD lists are not linked to the EO or the restrictions on trading in securities. Nonetheless, designation on these lists may be consequential for the listed organizations, perhaps most importantly as any such organization would likely be viewed by exporters and re-exporters of items subject to the Export Administration Regulations as military end-users. The appended chart compares all three lists.

We may see other consequences for entities designated on the list, as the US Congress is closely scrutinizing the listed companies and their activities in the US, with some lawmakers proposing restrictions on their ability to do business with the federal government, among other possible restrictions.

## Substantive Test for Designation by Treasury

EO 14032 creates a substantive test for inclusion in the NS-CMIC List, which was not provided in the original EO 13959. For Treasury to add a Chinese entity to the NS-CMIC List, it must determine one of the following:

1. The company operates or has operated in the “defense and related materiel sector or the surveillance technology sector of the economy of the PRC”
2. The company owns or controls, or is owned or controlled by, directly or indirectly, a company that is on the NS-CMIC List or otherwise operates or operated in the defense and related materiel sector or the surveillance technology sector of the economy of the PRC

As discussed below, the requirement that Treasury make an administrative determination for designation on the NS-CMIC List should allow companies with opportunities to contest or refute the determination.

The NS-CMIC List does not impose restrictions on 50% or more-owned subsidiaries of listed entities, unless the subsidiary entity is itself listed (i.e., the OFAC 50% rule does not apply to this list).<sup>3</sup> While the prohibition may not apply to subsidiaries through the 50% rule, in many cases, subsidiaries of listed companies were also included (see Appendix to this publication).

## Prohibition on Trading in Subject Securities, Anywhere

EO 14032 clearly prohibits US persons from trading in the securities of listed entities on any exchange anywhere in the world. EO 14032 defines the “publicly traded securities” subject to the US person trading ban to include any security, as defined in section 3(a)(10) of the Securities Exchange Act of 1934, “denominated in any currency that trades on a securities exchange or through the method of trading that is commonly referred to as ‘over-the-counter,’ in any jurisdiction” (emphasis added). The original EO 13959 did not clarify this point. Thus, amendments instituted in EO 14032 apply the US person<sup>4</sup> trading prohibition even if the trading conduct occurs entirely outside the US.

## Organizations May Challenge Designations on the NS-CMIC List Under the Executive Order

EO 14032 extends the rationale for the EO beyond threats arising from China’s military-industrial complex to include companies connected to the development of Chinese surveillance technology “to facilitate repression or serious human rights abuse.” Notably, the needed connection may be found even if the company is not a government-owned entity because of the prevailing US view of military-civil fusion in China.

It is not clear that all of the companies on the list actually satisfy the new substantive test for inclusion on the NS-CMIC List. EO 14032 gave Treasury authority to designate companies on the NS-CMIC List, but also to determine when “circumstances no longer warrant the application of these prohibitions” against any company listed and to remove that company from the NS-CMIC List. There is a process for blocked persons on the NS-CMIC List to petition OFAC to seek removal from that list.

## Effective Dates

For companies listed in the Annex to EO 14032 (i.e., the first entities on the NS-CMIC List), the trading prohibition enters into effect at 12:01 a.m. EST on August 2, 2021. However, transactions made solely to effect divestment prior to 12:01 a.m. EST on June 3, 2022 (one year from the date of EO 14032) are permitted.

For companies later designated by Treasury, the trading prohibition enters into effect at 12:01 a.m. EST on the date that is 60 days after the date of that determination, but US persons may engage in transactions made solely to effect divestment prior to 12:01 a.m. EST on the date that is 365 days after the date of that designation.

<sup>3</sup> OFAC’s 50% rule provides that any entity owned in the aggregate, directly or indirectly, 50% or more by one or more persons whose property and interests in property are blocked pursuant to an EO or regulations administered by OFAC (blocked persons) are also considered to be a blocked person.

<sup>4</sup> EO 14032 defines US persons as “any United States citizen, lawful permanent resident, 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.”

## Contacts

### Public Policy

**Edward Newberry**

Global Managing Partner – Public Policy, Investigatory and Regulatory Solutions, Washington DC  
T +1 202 457 5285  
E [edward.newberry@squirepb.com](mailto:edward.newberry@squirepb.com)

**Pablo Carrillo**

Of Counsel, Washington DC  
T +1 202 457 6415  
E [pablo.carrillo@squirepb.com](mailto:pablo.carrillo@squirepb.com)

**Ludmilla Kasulke**

Senior Associate, Washington DC  
T +1 202 457 5125  
E [ludmilla.kasulke@squirepb.com](mailto:ludmilla.kasulke@squirepb.com)

### International Trade

**George Grammas**

Partner and Practice Group Leader – Trade Compliance and National Security, Washington DC/London  
T +1 202 626 6234/+44 20 7655 1301  
E [george.grammas@squirepb.com](mailto:george.grammas@squirepb.com)

**Daniel Waltz**

Partner, Washington DC  
T +1 202 457 5651  
E [daniel.waltz@squirepb.com](mailto:daniel.waltz@squirepb.com)

**Peter Alfano**

Senior Associate, Washington DC  
T +1 202 626 6263  
E [peter.alfano@squirepb.com](mailto:peter.alfano@squirepb.com)

### People's Republic of China

**Daniel Roules**

Office Managing Partner, Shanghai  
T +86 21 6103 6309  
E [daniel.roules@squirepb.com](mailto:daniel.roules@squirepb.com)

**Ju (Lindsay) Zhu**

Partner, Shanghai  
T +86 21 6103 6303  
E [lindsay.zhu@squirepb.com](mailto:lindsay.zhu@squirepb.com)

**Laura Wang**

Partner, Beijing  
T +86 10 6589 3721  
E [laura.wang@squirepb.com](mailto:laura.wang@squirepb.com)

## Appendix

### Summary Chart Comparing Chinese Entity Lists as of June 7, 2021

<b>Designated Chinese Company*</b> (highlighted entities are on all three lists) *Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	<b>1999 NDAA § 1237</b> List of entities designated as Communist Chinese Military Companies (CCMC) by DOD, used as list for prohibitions in original EO 13959	<b>EO 13595, as Amended</b> Treasury (OFAC) List of Chinese Military-Industrial Complex companies subject to trading prohibition in EO 13595 as amended by EO 14032	<b>2021 NDAA § 1260H</b> List of Chinese Military Companies designated by DOD as operating in the US, including military-civil fusion contributors
Advanced Micro-Fabrication Equipment Inc.	Tranche 5		
Aero Engine Corporation of China	Tranche 1		
Aerospace CH UAV Co., Ltd			
Aerospace Communications Holdings Group Company Limited			
Aerosun Corporation			
Anhui Greatwall Military Industry Company Limited			
Aviation Industry Corporation of China, Ltd. (AVIC)	Tranche 1		
AVIC Aviation High-Technology Company Limited			
AVIC Heavy Machinery Company Limited			
AVIC Jonhon Optronics Technology Co., Ltd.			
AVIC Shenyang Aircraft Company Limited			
AVIC Xi'an Aircraft Industry Group Company Ltd.			
Beijing Zhongguancun Development Investment Center	Tranche 5		
Changsha Jingjia Microelectronics Company Limited			
China Academy of Launch Vehicle Technology (CALT)	Tranche 2-3		
China Aerospace Science and Industry Corporation Limited (CASIC)	Tranche 1		
China Aerospace Science and Technology Corporation (CETC)	Tranche 1		
China Aerospace Times Electronics Co., Ltd			
China Avionics Systems Company Limited			
China Communications Construction Company Limited (CCCC)	Tranche 2-3		
China Communications Construction Group (Limited) (CCCG)			
China Construction Technology Co. Ltd. (CCTC)	Tranche 4		
China Electronics Corporation (CEC)	Tranche 2-3		
China Electronics Technology Group Corporation (CETC)	Tranche 1		
China General Nuclear Power Corporation (CGN)	Tranche 1		

<b>Designated Chinese Company*</b> (highlighted entities are on all three lists) *Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	<b>1999 NDAA § 1237</b> List of entities designated as Communist Chinese Military Companies (CCMC) by DOD, used as list for prohibitions in original EO 13959	<b>EO 13595, as Amended</b> Treasury (OFAC) List of Chinese Military-Industrial Complex companies subject to trading prohibition in EO 13595 as amended by EO 14032	<b>2021 NDAA § 1260H</b> List of Chinese Military Companies designated by DOD as operating in the US, including military-civil fusion contributors
China International Engineering Consulting Corp. (CIECC)	Tranche 4		
China Marine Information Electronics Company Limited			
China Mobile Communications Group Co., Ltd.	Tranche 1		
China Mobile Limited			
China National Aviation Holding Co. Ltd. (CNAH)	Tranche 5		
China National Chemical Corporation (ChemChina)	Tranche 2-3		
China National Chemical Engineering Group Co., Ltd. (CNCEC)	Tranche 2-3		
China National Nuclear Corporation (CNNC)	Tranche 1		
China National Offshore Oil Corporation (CNOOC)	Tranche 4		
China North Industries Group Corporation Limited (Norinco Group)	Tranche 1		
China Nuclear Engineering & Construction Corporation (CNECC)	Tranche 2-3	Listed as "China Nuclear Engineering Corporation Limited"	
China Railway Construction Corporation Limited (CRCC)	Tranche 1		
China Satellite Communications Co. Ltd.			
China Shipbuilding Industry Corporation (CSIC)	Tranche 1	Listed as "China Shipbuilding Industry Company Limited"	
China Shipbuilding Industry Group Power Company Limited			
China South Industries Group Corporation (CSGC)	Tranche 1		
China SpaceSat Co., Ltd.	Tranche 2-3		
China State Construction Group Co., Ltd.	Tranche 2-3		
China State Shipbuilding Corporation Limited(CSSC)	Tranche 1		
China Telecom Corporation Limited			
China Telecommunications Corporation	Tranche 1		
China Three Gorges Corporation Limited	Tranche 2-3		
China Unicorn (Hong Kong) Limited			
China United Network Communications Group Co., Ltd. (China Unicom)	Tranche 2-3		
CNOOC Limited			
Commercial Aircraft Corporation of China, Ltd. (COMAC)	Tranche 5		

<b>Designated Chinese Company*</b> (highlighted entities are on all three lists) *Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	<b>1999 NDAA § 1237</b> List of entities designated as Communist Chinese Military Companies (CCMC) by DOD, used as list for prohibitions in original EO 13959	<b>EO 13595, as Amended</b> Treasury (OFAC) List of Chinese Military-Industrial Complex companies subject to trading prohibition in EO 13595 as amended by EO 14032	<b>2021 NDAA § 1260H</b> List of Chinese Military Companies designated by DOD as operating in the US, including military-civil fusion contributors
Costar Group Co., Ltd.			
CRRC Corporation	Tranche 1		
CSSC Offshore & Marine Engineering (Group) Company			
Dawning Information Industry Co (Sugon)	Tranche 1		
Fujian Torch Electron Technology Co. Ltd.			
Global Tone Communication Technology Co. Ltd. (GTCOM)	Tranche 5		
GOWIN Semiconductor Corp.	Tranche 5		
Grand China Air Co. Ltd. (GCAC)	Tranche 5		
Guizhou Space Appliance Co., Ltd.			
Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision)	Tranche 1		
Huawei Investment & Holding Co., Ltd.			
Huawei Technologies Co., Ltd.	Tranche 1 (listed only as "Huawei")		
Inner Mongolia First Machinery Group Co., Ltd.			
Inspur Group Co., Ltd.	Tranche 1		
Jiangxi Hongdu Aviation Industry Co., Ltd.			
LuoKung Technology Corporation	Tranche 5		
Nanjing Panda Electronics Company Limited			
North Navigation Control Technology Co., Ltd.			
Panda Electronics Group Co., Ltd.	Tranche 1		
Proven Glory Capital Limited			
Proven Honor Capital Limited			
Semiconductor Manufacturing International (Beijing) Corporation			
Semiconductor Manufacturing International (Shenzhen) Corporation			
Semiconductor Manufacturing International (Tianjin) Corporation			
Semiconductor Manufacturing International Corporation (SMIC)	Tranche 4		
Semiconductor Manufacturing South China Corporation			
Shaanxi Zhongtian Rocket Technology Company Limited			

<b>Designated Chinese Company*</b> (highlighted entities are on all three lists) *Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	<b>1999 NDAA § 1237</b> List of entities designated as Communist Chinese Military Companies (CCMC) by DOD, used as list for prohibitions in original EO 13959	<b>EO 13595, as Amended</b> Treasury (OFAC) List of Chinese Military-Industrial Complex companies subject to trading prohibition in EO 13595 as amended by EO 14032	<b>2021 NDAA § 1260H</b> List of Chinese Military Companies designated by DOD as operating in the US, including military-civil fusion contributors
Sinochem Group Group Co Ltd	Tranche 2-3		
SMIC Holdings Limited			
SMIC Hong Kong International Company Limited			
SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd			
SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd			
Xiaomi Corporation	Tranche 5		
Zhonghang Electronic Measuring Instruments Company Limited			