

China Issues Regulations on Its “Unreliable Entity List” Framework

September 21, 2020

International Trade Controls, China

On September 19, 2020, China’s Ministry of Commerce (“MOFCOM”) issued regulations that provide new details on the government’s plans for an “Unreliable Entity List” first proposed in May 2019.

The new *Regulations on the Unreliable Entity List* (“Regulations”; official English reference translation available [here](#)), effective immediately, set out a framework for imposing restrictions on foreign enterprises, organizations, and individuals (“foreign entities”) that are seen as (1) “endangering the national sovereignty, security, or development interests of China;” or (2) “suspending [or terminating] normal transactions with Chinese enterprises, organizations, or individuals, in violation of [commonly accepted] market-based principles, [thus] seriously harming the legitimate rights and interests of Chinese enterprises, organizations, or individuals.”¹

To date, China has not announced the placement of any companies on the Unreliable Entity List. The Regulations are the first document issued by the Chinese government to potentially implement the List.

Key details set out in the Regulations are summarized below:

1. New “Working Mechanism” Responsible for Unreliable Entity List

- According to the Regulations, a Working Mechanism of relevant government agencies will be established to implement the Unreliable Entity List framework.²
- Although the Regulations are silent as to which agencies will be involved, likely candidates include the National Development and Reform Commission, the State Administration of Market Regulation, MOFCOM, the Cybersecurity Administration of China, and the Ministry of Industry and Information Technology. The Regulations indicate that the Working Mechanism’s office will be hosted in MOFCOM, making MOFCOM the coordinator for the Working Mechanism.

¹ Article 2.

² Article 4.

2. Investigations and Decisions

- The Working Mechanism may launch an investigation based on its own initiative or on reports or complaints from other stakeholders. The Regulations do not specify whether these "stakeholders" may include other government agencies or companies. However, commentary by an expert published on MOFCOM's website suggests that companies or other entities impacted by the foreign entity's behavior may report it to protect their own interests. If the Working Mechanism decides to initiate an investigation, it will make a public announcement.³
- As part of the investigation, the Working Mechanism has the authority to interview "relevant individuals," access and copy relevant documents and materials, and take other investigative measures. Foreign entities subject to the investigation have the right to submit statements and arguments in their defense.⁴
- The Working Mechanism is to consider the following factors when determining whether a foreign entity should be placed on the Unreliable Entity List:⁵
 - "the degree of harm to China's national sovereignty, security, and development interests;"
 - "the degree of damage to the legitimate rights and interests of Chinese enterprises, organizations, or individuals;"
 - whether the foreign entity is "in compliance with internationally accepted economic and trade rules;" and
 - "other factors that should be considered."
- Following the conclusion of the investigation, the Working Mechanism will publicly announce the results. The announcement may highlight potential risks of transacting with the foreign entity in question and may provide a cure period for the entity to make rectifications.⁶

3. Restrictions and Penalties

- The Working Mechanism may announce one or more of the following restrictions or penalties on foreign entities included on the Unreliable Entity List:⁷
 - "restricting or prohibiting the foreign entity from engaging in import or export activities related to China;"
 - "restricting or prohibiting the foreign entity from investment in China;"
 - Entry bans or restrictions on personnel or transportation (e.g., flights, trains, or ships) related to the foreign entity;
 - "restricting or revoking...the work permit or qualifications for visiting or residency" of personnel related to the foreign entity;

³ Article 5.

⁴ Article 6.

⁵ Article 7.

⁶ Article 9.

⁷ Article 10.

- fines corresponding to the seriousness of the situation; and
- “other necessary measures.”
- If the Working Mechanism’s announcement includes a cure period, such measures would only go into effect following the expiration of that period of time.⁸
- Under special circumstances, a Chinese company, organization, or individual may apply to the Office of the Working Mechanism for approval to conduct transactions with a foreign entity subject to import or export-related restrictions.⁹

4. Removal from the List

- The Working Mechanism may decide to remove a foreign entity from the Unreliable Entity List on its own initiative and shall do so if the foreign entity rectifies and eliminates the consequences of its actions within the specified cure period. It may also remove a foreign entity following an application for removal by the listed foreign entity. Removal of a foreign entity must be publicly announced and any penalties terminated.¹⁰

Covington is continuing to monitor developments related to potential implementation of the Unreliable Entity List in the context of ongoing U.S.-China tensions. If you have any questions concerning the material discussed in this client alert, please contact the following members of our Public Policy and International Trade practices:

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⁸ Article 11.

⁹ Article 12.

¹⁰ Article 13.