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China Releases Provisions on the Unreliable Entity List

By [Liza L.S. Mark](#) and [Jasmine Yang](#)

On September 19, 2020, China's Ministry of Commerce ("MOFCOM") published the *Provisions on the Unreliable Entity List* (the "**Provisions**"), which took effect on the same day. MOFCOM had announced in May of 2019 that the Chinese government would introduce an "Unreliable Entity List" ("**UEL**") regime, under which foreign entities or individuals that boycott or cut off supplies to Chinese companies for non-commercial reasons, causing serious damages to Chinese companies, would be identified. These much-delayed Provisions provide the framework and mechanisms for the identification of foreign entities or individuals to be designated to the UEL. Entities designated to the UEL will be subject to restriction or prohibition from engaging in China-related import or export activities and investment in China, among other possible measures.

Details on how the UEL will work are still very scant, but a few key points on the Provisions are as follows:

Activities Triggering UEL Designation

According to the Provisions, the following actions taken by a "Foreign Entity" (an enterprise, other organization or individual of a foreign country) in international economic, trade and other relevant activities may trigger a UEL designation:

- (1) endangering the national sovereignty, security or development interests of China;
- (2) suspending normal transactions with an enterprise, other organization or individual of China or applying discriminatory measures against an enterprise, other organization or individual of China, which violates normal market transaction principles and causes serious damage to the legitimate rights and interests of the enterprise, other organization or individual of China.

Working Mechanism

Under the Provisions, a working mechanism composed of relevant central governmental authorities (the "**Working Mechanism Office**") is to be established to take charge of the organization and implementation of the UEL system. The Working Mechanism Office is authorized under the Provisions to announce investigations on the actions taken by the relevant Foreign Entity, based either on its own initiative or upon reports by relevant parties. The Working Mechanism Office will be subsumed under the Department of Commerce of the State Council.

Factors to be Considered for UEL Designation

The Working Mechanism Office will decide whether to designate the relevant Foreign Entity to the UEL on basis of the results of the investigation and by taking into overall consideration the following factors:

- (1) the degree of danger to the national sovereignty, security or development interests of China;
- (2) the degree of damage to the legitimate rights and interests of enterprises, other organizations or individuals of China;

- (3) whether the behavior of the Foreign Entity is in compliance with internationally accepted economic and trade rules; and
- (4) other factors that can be considered at its discretion.

Restrictions or Prohibitions on the Foreign Entities Designated in the UEL

If a Foreign Entity is designated to the UEL, the Working Mechanism Office can impose one or more of the following measures on the Foreign Entity:

- (1) restricting or prohibiting the Foreign Entity from engaging in China-related import or export activities;
- (2) restricting or prohibiting the Foreign Entity from investing in China;
- (3) restricting or prohibiting the Foreign Entity's relevant personnel or means of transportation from entering China;
- (4) restricting or revoking the Foreign Entity's personnel's work permits or status of stay or residence in China;
- (5) imposing a fine on the Foreign Entity, according to the severity of the circumstances; or
- (6) any other necessary measures.

Removal from UEL

A Foreign Entity may apply for its removal from the UEL to the Working Mechanism Office. Where the relevant Foreign Entity rectifies its actions within the curing period set forth in the designation announcement and takes measures to eliminate the consequences of its actions, the Working Mechanism Office will decide whether to remove it from the UEL.

At this point, the UEL Provisions do not specify any consequences for any Chinese parties that continue to undertake prohibited or restricted transactions with the designated Foreign Entity in the UEL.

Implications

Given that MOFCOM had indicated in a press conference that China would continue to welcome foreign investors and open its economy by deepening market reforms, and that it has no intention to target any particular countries or entities; and given the economic realities of the COVID-19 pandemic, we believe that the announcement of the Provisions at this juncture is politically motivated and comes in response to the U.S. Entities List regime. Foreign companies operating in China should watch this space carefully.

For more information, please see the following resources:

- [China Updates page](#)
- [China Releases Revised Measures on Handling Complaints of Foreign-Invested Enterprises](#), September 23, 2020
- [China Releases Administrative Measures for Strategic Investment by Foreign Investors in Listed Companies](#), September 10, 2020
- [China Releases Draft Data Security Law](#), September 8, 2020
- [China Releases Circular on Further Stabilizing Foreign Trade and Foreign Investment](#), August 24, 2020
- [China Releases Draft Measures for the Administration of Imported and Exported Food Safety](#), August 18, 2020
- [U.S. Listed Chinese Companies: Regulatory Scrutiny and Strategic Options](#), July 30, 2020
- [China Passes Controversial Hong Kong National Security Law](#), July 9, 2020
- [China's Relaxed Financial Sector May Aid Foreign Investors](#), June 18, 2020
- [Is There a Law in China Similar to the US Defense Production Act?](#), May 8, 2020
- [Coronavirus Brings Force Majeure Claims to LNG Contracts](#), March 4, 2020
- [The Rise of China](#), March 4, 2020
- [Coronavirus Fears Cast Cloud Over Dealmaking](#), February 27, 2020
- [Is Your China Chemical Plant in Danger of Being Shut Down](#), December 2019

Additional Questions? Please contact Haynes and Boone lawyers [Liza L.S. Mark](#) and [Jasmine Yang](#).