

## OFAC Issues Amended General License, FAQs Clarifying Scope of Chinese Military Companies Sanctions

January 28, 2021

In its first public action with respect to the sanctions under the new Biden administration, the Office of Foreign Assets Control (OFAC) issued an amended general license and two new responses to Frequently Asked Questions (FAQs) addressing the applicability of sanctions under Executive Order (E.O.) 13959, as amended by E.O. 13974, to subsidiaries of Communist Chinese Military Companies (CCMCs) listed in the Annex to or designated under E.O. 13959.<sup>1</sup>

Specifically, amended General License 1A authorizes, until 9:30 a.m. eastern daylight time on May 27, 2021, all transactions prohibited by E.O. 13959 involving publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities, of an entity whose name closely matches, but does not exactly match, the name of a CCMC included on OFAC's Non-SDN Communist Chinese Military Companies List (NS-CCMC List). The license does not authorize any transactions involving securities of or linked to entities named on the NS-CCMC List, including certain subsidiary entities that were added to the list on by OFAC on January 8, 2021. OFAC clarifies in a note in the general license, as well as in new FAQ 879, that these entities are considered to have been added to the NS-CCMC List on January 8, 2021 pursuant to section 4(a)(iii) of E.O. 13959, meaning that prohibitions on transactions involving securities of or linked to those entities take effect on **March 9, 2021**.<sup>2</sup>

These actions by OFAC represent at least a partial reversal of the position the agency took earlier this month that sanctions under E.O. 13959 would apply automatically to any subsidiary of an entity named on the Annex to E.O. 13959 or designated pursuant to that order if the subsidiary's name is a "close match" to the name of its parent entity.<sup>3</sup> This prior guidance suggested that the subsidiary entities added to the NS-CCMC List on January 8, 2021 were subject to the same sanctions as their parent entities, with those sanctions becoming effective on either January 11 or February 1, depending on the specific subsidiary. OFAC has now clarified that this is not the case.

OFAC's clarification in this regard is a welcome step in the direction of rationalizing its administration of E.O. 13959, and in particular seems likely to preview a broader walk-back of the "close match" standard articulated in FAQ 864, which has raised substantial implementation challenges and is arguably inconsistent with the text and structure of E.O. 13959. General License 1A, however, merely delays and does not entirely eliminate the purported requirement to apply sanctions to entities whose names "closely match" but are not exact matches to entities included on the NS-CCMC List. Further action by OFAC will be needed prior to May 27 to fully address this issue.

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<sup>1</sup> For further details and analysis of the CCMC sanctions, please see our prior [client memorandum](#).

<sup>2</sup> The other FAQ issued by OFAC in connection with this action, [FAQ 878](#), restates the scope of the authorization in General License 1A without material additional analysis.

<sup>3</sup> See [FAQ 864](#).

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If you have any questions regarding the matters covered in this publication, please contact any of the lawyers listed below or your usual Davis Polk contact.

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