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Foley Hoag LLP has formed a firm-wide, multi-disciplinary task force dedicated to client matters related to the novel coronavirus (COVID-19). In the rapidly changing global health environment, Foley Hoag will provide clients with the resources required to develop and implement legal and operational policies and procedures, as well as business strategies during the outbreak and beyond. For more information, see our Task Force statement [here](#).

With an overwhelming majority of US companies feeling supply chain disruptions as a result of COVID-19, companies are facing shortages, longer lead time, and uncertainty around revenue targets. With a long history of working with clients from a broad range of industries, our [Trade Sanctions & Export Controls](#) team is equipped to guide and counsel clients as issues undoubtedly arise in the coming days, weeks and potentially months. For the latest updates, see our most recent [COVID-19 Supply Chain and Trade Update](#).

Proposed Rules on CFIUS Mandatory Declarations Released: No More NAICS Codes!

On May 21, 2020, the Department of the Treasury [released a proposed rule](#) that would modify the requirements for Committee on Foreign Investment in the United States (CFIUS) mandatory declarations. This proposed change includes removing the North American Industry Classification System (NAICS) codes criteria. These changes have been anticipated since new CFIUS regulations went into effect on February 13, 2020 and the Department of the Treasury announced that future changes regarding mandatory declarations for critical technology transactions were forthcoming. Written comments on the proposed rule must be submitted by June 22, 2020.

Currently, foreign investment transactions that require a mandatory CFIUS declaration include transactions where the U.S. business produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies in connection with any of the 27 specified industries referenced by their NAICS codes. These industries were formerly known as “Pilot Program industries” before the new CFIUS regulations went into effect and include biotechnology and nanotechnology. The proposed rule removes the NAICS code analysis from the determination of whether a mandatory declaration is required for certain foreign investment transactions. Instead, the proposed rule leverages existing U.S. export control requirements to mandate declarations where a technology or item couldn’t be transferred absent an export license.

Notably, the proposed rule does *not* modify the definition of “critical technologies.” Instead it applies to certain transactions involving critical technologies “for which a U.S. regulatory authorization would be required for the export, re-export, transfer (in-country), or retransfer of such critical technology to a foreign person that is a party to the covered transaction.” Regulatory authorization is defined as:

- (a) A license or other approval issued by the Department of State under the International Trade in Arms Regulations (ITAR);
- (b) A license from the Department of Commerce under the EAR (Export

Administration Regulations);

- (c) A specific or general authorization from the Department of Energy under the regulations governing assistance to foreign atomic energy activities at 10 CFR part 810 other than the general authorization described in 10 CFR 810.6(a); or
- (d) A specific license from the Nuclear Regulatory Commission under the regulations governing the export or import of nuclear equipment and material at 10 CFR part 110.

If one or more of the above regulatory authorizations is required for the export of the critical technology and the foreign investor meets certain control, voting interest, or rights thresholds related to the U.S. business, a mandatory declaration is required, regardless of whether the U.S. business operates within one of the 27 industries. The proposed rule also clarifies the definition of “substantial interest” to state that it applies only where the general partner, managing member, or equivalent primarily directs, controls, or coordinates the activities of the entity, and removes the word “voting” before the word “interest.”

New Prohibitions on Foreign-Produced Exports to Huawei

On May 15, 2020, the Bureau of Industry and Security (BIS) [released a long-awaited new rule](#) which directly targets Huawei Technologies Co., Ltd. (Huawei) and greatly restricts exports to Huawei by broadening existing restrictions to explicitly cover items manufactured outside of the U.S. The new rule imposes controls on certain foreign-produced items made with U.S.-origin technology or software, prohibiting the export, reexport, or transfer (in-country) of these items to Huawei and 114 of its non-U.S. affiliates.

The most significant impact of the new rule is the effect it will have on semiconductor-makers that use U.S. technology and software in chip design. The new rule would prevent them from selling chips to Huawei without a license from the BIS.

The Export Administration Regulations (EAR) already applies to certain foreign-produced items that are the product of U.S.-origin technology. This new rule broadens the existing scope by expanding EAR General Prohibition Three to prohibit certain transfers or sales of foreign-produced items that are the “foreign direct product” of U.S. technology to Huawei.

The new rule creates a new “footnote 1 designation” that

applies to Huawei. Under the new footnote, it is prohibited to reexport, export from abroad, or transfer (in-country) foreign-produced items to Huawei, if such items are:

1. The direct product of “technology” or “software” subject to the EAR, and specified in Export Control Classification Numbers (ECCN) 3E001, 3E002, 3E003, 4E001, 5E001, 3D001, 4D001, or 5D001;
2. “Technology” subject to the EAR and specified in ECCN 3E991, 4E992, 4E993, or 5E991; or
3. “Software” subject to the EAR and specified in ECCN 3D991, 4D993, 4D994, or 5D991 of the Commerce Control List (CCL) in Supplement No. 1 to part 774 of the EAR produced or developed by an entity with a Footnote 1 designation on the Entity List.

Exports, reexports, and transfers of these items are only allowed with a license or if an exception applies. The BIS has a policy of a presumption of denial for the granting any such license.

The rule is effective as of Friday, May 15, 2020, but there is a grace period for covered items in production prior to May 15, 2020 which are exported before midnight on September 14, 2020. More information is available at the [Department of Commerce Press Release](#).

New Executive Order Restricts Foreign Investment in Bulk-Power System

On May 1, 2020, President Trump released [Executive Order \(EO\) 13920](#), which restricts foreign investment transactions related the U.S. bulk power system. This is the system that provides the U.S. with electricity. The EO states that “the unrestricted foreign supply of bulk-power system electric equipment constitutes an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States” and declares national emergency with respect to the threat to the U.S. bulk-power system. There have been no foreign adversaries currently designated pursuant to the EO and the Department of Energy will issue regulations that will clarify the scope of the EO.

To respond to this threat, the EO prohibits the acquisition, importation, transfer, or installation of any bulk-power system electric equipment in the U.S. if transaction involves any property in which any foreign country or foreign national has any interest if certain criteria are met. The criteria are that:

1. The transaction involves bulk-power system equipment designed, developed, manufactured,

or supplied, by persons owned by, controlled by, or subject to the jurisdiction or direction of a foreign adversary; and

2. The transaction:
 - a. Poses an undue risk of sabotage to or subversion of the design, integrity, manufacturing, production, distribution, installation, operation, or maintenance of the bulk-power system in the U.S.;
 - b. Poses an undue risk of catastrophic effects on the security or resiliency of U.S. critical infrastructure or economy; or
 - c. Otherwise poses an unacceptable risk to national security or the security and safety of U.S. persons.

The EO also establishes a Task Force on Federal Energy Infrastructure Procurement Policies Related to National Security (the Taskforce) composed of the Secretary of Energy, the Secretary of Defense, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Homeland Security, the Director of National Intelligence, and the Director of the Office of Management and Budget. The Taskforce's mandate includes developing policy recommendations related to energy infrastructure procurement; evaluating the methods and criteria used to incorporate national security considerations into energy security and cybersecurity policymaking; and consulting with the Electricity Subsector Coordinating Council and the Oil and Natural Gas Subsector Coordinating Council in developing the criteria used to assess the security risks of foreign investment covered by the EO.

Human Rights Protections for Uighur and Minority Groups in China

Uyghur Human Rights Policy Act Passes Senate

On May 14, 2020, the [Uyghur Human Rights Policy Act of 2020](#) was passed by the U.S. Senate and is pending signature by the President. The Act targets human rights violations in the Xinjiang region committed against Uyghurs (also written as Uighur) and other ethnic minority groups in China. The Act requires that the State Department report to Congress on (1) human rights abuses in Xinjiang; (2) efforts to protect U.S. citizens and residents, including ethnic Uyghurs and Chinese nationals studying or working in the United States, from harassment and intimidation by the Chinese government; and (3) the Chinese government's

acquisition and development of technology to facilitate internment and mass surveillance in Xinjiang. In reporting on human rights violations, the Act requires the State Department to investigate the use of forced labor in Xinjiang "including a description of foreign companies and industries directly benefitting from such labor."

New Entity List Designations for Human Rights Abuses in the Xinjiang Uighur Autonomous Region

On May 22, 2020, the Department of Commerce's Bureau of Industry and Security (BIS) announced that China's Ministry of Public Security's Institute of Forensic Science and eight Chinese companies will be added to the Entity List. The Entity List restricts the export of U.S. items subject to the Export Administration Regulations (EAR) to persons or organizations reasonably believed to act in ways contrary to the national security or foreign policy interests of the U.S.

The nine entities are added to the Entity List for human rights violations and abuses committed in the Xinjiang Uighur Autonomous Region (XUAR), including the repression, mass arbitrary detention, forced labor and surveillance against Uighurs, ethnic Kazakhs, and other members of Muslim minority groups. For more information, see the Department of Commerce [press release](#).

North Korean and Chinese Bankers Indicted in \$2.5 Billion Money Laundering Scheme

In an indictment from February that was unsealed on May 28, 2020 in the U.S. District Court for the District of Columbia, the Department of Justice accused twenty-eight North Korean bankers and five Chinese bankers of helping launder more than \$2.5 billion from North Korea by setting up "covert branches" of the Foreign Trade Bank (FTB), North Korea's foreign exchange bank. The branches were located in Austria, Russia, Kuwait and China, and in violation of sanctions, carried out transactions in U.S. dollars. The money laundering allegedly began in 2013, after the FTB was designated by the State Department for funding North Korea's nuclear program. The defendants are charged with conspiracy, bank fraud, money laundering, continuing a financial crimes enterprise, and violations of the International Emergency Economic Powers Act, Weapons of Mass Destruction Proliferators Sanctions Regulations, and the North Korea Sanctions Regulations.

Michael Sherwin, the Acting U.S. Attorney for the District of Columbia, stated that "[t]hrough this indictment, the United States has signaled its commitment to hampering North

Korea's ability to illegally access the U.S. financial system and limit its ability to use proceeds from illicit actions to enhance its illegal W.M.D. and ballistic missile programs." The indictment is [available here](#).

Sanctions Advisory Issued for the Maritime Industry, Energy and Metals Sectors, and Related Communities

On May 14, 2020, the U.S. Department of State, the Office of Foreign Assets Control (OFAC), and the Coast Guard [issued a global advisory](#) regarding sanctions compliance and best practices for the maritime industry, energy and metals sectors, and similar industries. The main focus of the advisory is on the maritime and shipping industry, however, the guidance also includes best practices for compliance and due diligence that are relevant across all industries. While the advisory specifically addresses Iran, North Korea, and Syria, sanctions evasion is not limited to those three countries, and the guidance is intended to apply broadly. The advisory highlights common deceptive shipping practices, such as ship-to-ship transfers of cargo at sea, and offers ways to avoid them or options for how to mitigate their risk.

Sanctions Update

Iran: Sanctions on Chinese Company for Assisting Mahan Airline

On May 19, 2020, the State Department announced that Shanghai Saint Logistics Limited, a PRC-based company that provides general sales agent services to Iranian airline Mahan Air, was added to the Specially Designated Nationals and Blocked Persons (SDN) List. Mahan Air was designated in 2011 for providing material support to Iran's Islamic Revolutionary Guard Corps and in 2019 for shipping United Nations-restricted missile and nuclear items to Iran. According to the State Department, the airline is currently facilitating shipments between Venezuela and Iran to support the Maduro regime. The State Department [press release](#) states that "[t]his designation serves as another reminder that companies still providing services for Mahan Air – in the PRC or anywhere else – risk potential U.S. sanctions."

Iran: Twelve Iranian Officials and Entities Sanctioned

On May 20, 2020, the State Department added 12 Iranian entities and individuals to the SDN List for human rights violations. The sanctioned individuals include the current Minister of Interior for Iran, Abdolreza Rahmani Fazli, who

authorized the Iranian police forces to use lethal force on peaceful protestors and bystanders, seven senior officials of Iran's Law Enforcement Forces (LEF), and a provincial commander of Iran's Islamic Revolutionary Guard Corps (IRGC). In their [press release](#), the State Department also called on technology companies to "do their part to improve the free flow of information to the Iranian people" and highlighted the Department of the Treasury's General License D1, which facilitates the use by Iranians of certain personal communications services. More information on the sanctions is [available here](#).

Nicaragua: Sanctions on Senior Government Officials

On May 22, 2020, OFAC added two senior Nicaraguan government officials, Julio Cesar Aviles Castillo and Ivan Adolfo Acosta Montalvan to the Specially Designated Nationals (SDN) List. Julio Cesar Aviles Castillo is the Commander-in-Chief of the Nicaraguan Army, and was designated by OFAC for causing civilian deaths, significant acts of violence, and human rights abuses. Ivan Adolfo Acosta Montalvan is the Minister of Finance and Public Credit in Nicaragua, and was designated for continuing to arrange significant financial support to the Ortega regime, and for pressuring banks to not participate in a strike organized by opposition leaders in March 2019, the purpose of which was to push for the freeing of political prisoners.

Both Aviles and Acosta were designated pursuant to [EO 13851: Blocking Property of Certain Persons Contributing to the Situation in Nicaragua](#). Under this EO, non-US persons can face sanctions if they are found to have "materially assisted, sponsored, or provided financial, material, or technological support for, or goods or services in support of" sanctioned individuals, such as Aviles or Acosta, or any entities that are owned directly or indirectly, 50 percent or more, by them. For more information, see the [press release here](#).

State Department Designation of Former Official of Bosnia and Herzegovina for Corruption

On May 28, 2020, the State Department designated Amir Zukic, a former official of Bosnia and Herzegovina, for involvement in corruption while a Member of the House of Representatives in the Federation of Bosnia and Herzegovina (FBiH) and as the General Secretary of the Party of Democratic Action (SDA).

Zukic was designated under Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, which bars entry of

the designated individual and their immediate family members into the U.S. For more information, see the press release [here](#).

Zimbabwe: Removal of General License No. 1

On May 22, 2020, the Office of Foreign Assets Control (OFAC) [amended the Zimbabwe Sanctions Regulations](#) (31 CFR Part 541) to remove a general license that authorized transactions involving Agricultural Development Bank of Zimbabwe and Infrastructure Development Bank of Zimbabwe. These entities were removed from OFAC's SDN List in 2016. As OFAC authorization is no longer needed to engage with either bank, OFAC issued this rule to remove the general license from the regulations. In 2008, both banks were designated pursuant to [Executive Order 13469: Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe](#), for providing support for Robert Mugabe. In 2013, OFAC then issued a Zimbabwe General License No. 1, which authorized transactions with both banks, and was incorporated into the regulations in 2014.

CFIUS Releases Annual Report to Congress for 2018

The Committee on Foreign Investment in the United States (CFIUS) recently [publicly released](#) their annual report to Congress on covered foreign investment transaction for the 2018 calendar year. The report states that in 2018, CFIUS conducted a review of 229 filed notices of covered transactions. Of those 299 reviewed notices, CFIUS conducted a subsequent investigation of 158 notices and concluded action on 29 notices after mitigation measures were implemented. CFIUS referred one transaction to the President, who issued an order prohibiting the acquisition of Qualcomm Incorporated, a Delaware company, by Broadcom Limited, a Singapore corporation. Overall, the total number of notices reflects a slight decrease from 2017, which had 237 notices and 172 investigations. Another change between 2017 and 2018 is an increase in transactions related to the mining, utilities, and construction sector: from 12 percent (28) to 21 percent (47). Note that this report only captures the beginning of the "Pilot Program" for foreign investments in critical technology and does not capture any transactions

made under the new regulations which went into effect on February 13, 2020. For more information on the current CFIUS regulations, see the [CFIUS webpage](#).

CBP Issues Detention Order on Seafood Harvested with Forced Labor

On May 11, 2020, U.S. Customs and Border Protection (CBP) [announced](#) that they will detain all products made wholly or in part with tuna and other seafood products harvested by the Taiwanese fishing vessel Yu Long No. 2. CBP issued the order based on information obtained by the agency that indicates the use of forced labor. The detention order is part of the "withhold-release order" (WRO) process, in which CBP can block the import of products made with forced labor in the U.S., including convict labor, forced child labor, and indentured labor. For more on the WRO process, see the [CBP Forced Labor](#) webpage.

For more information about cross-border compliance, visit the [Foley Hoag Trade Sanctions & Export Controls Practice Group](#).



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