

New Treasury List Supersedes DOD Communist Chinese Military Companies List for Purposes of Securities Trading Ban 禁止证券交易 — 财政部新名单取代国防部“军事企业名单”

June 8, 2021
2021年6月8日

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),¹ substantially amending the prohibitions originally contained in Executive Order 13959 (EO 13959), issued by President Trump on November 12, 2020.² Original EO 13959 prohibited US persons from trading in the securities of any entity 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).

2021年6月3日，美国总统拜登发布了有关限制对某些中国企业进行证券投资的第14032号行政令（下称“**EO 14032**”），¹对特朗普总统于2020年11月12日发布的第13959号行政令（下称“**EO 13959**”）中所含的禁止内容进行了大幅修改²。原EO 13959，基于《1999财年国防授权法》（下称“**1999 NDAA**”）第1237节，禁止美国人交易被国防部（DOD）指定为所谓的“中国共产党军事企业”（下称“**CCMC**”）的证券。

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 for challenging a designation on the NS-CMIC List.

EO 14032仍然禁止美国人交易被列实体的证券，但用财政部管理的“NS-CMIC”的新实体名单取代了CCMC名单；创设了列入名单企业的实质性标准，包括为禁令提供了更多理由；且明确了禁令的域外适用性，具体见下文所述。其中，列入名单的实质性标准尤其重要，被列入NS-CMIC名单的企业可以此为事实依据提出异议。

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.

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

财政部的NS-CMIC名单取代国防部的CMCC名单

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 (NS-CMIC List), is administered by the Department of the Treasury’s Office of Foreign Assets Control (OFAC).

旧的EO 13959禁止任何美国人购买或出售相关实体的公开交易证券，包括作为此类证券衍生品或旨在提供此类证券投资机会的证券，该禁令经新的EO 14032修订后继续施行；但是，受禁令约束的实体清单被替换。EO 14032用其附件中新的实体名单取代了国防部管理的CCMC名单，并授权财政部添加列入该名单的实体。这份新的名单，即“非特别指定中国军工复合体公司名单”（下称“**NS-CMIC**名单”），由财政部外国资产控制办公室（下称“**OFAC**”）负责管理。

¹ 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>.

EO 14032，于2021年6月3日签署，公布于86 FR 30145（2021年6月7日），见<https://www.govinfo.gov/content/pkg/FR-2021-06-07/pdf/X21-10607.pdf>。

² 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.

EO 14032表面上被称为EO 13959的修正案。事实上，新的行政令撤销并取代了EO 13959中对美国人施加禁令的所有实质性条款，结果是实质上取代了旧的行政令。

33 New Entities Added to Treasury List, 18 CCMC Designated Entities Not Included

33家新实体列入财政部名单，18家CCMC实体未纳入

A summary chart has been included as an appendix to this publication showing the entities that have been designated on the CCMC list by the DOD and those included in Treasury's new NS-CMIC List.

本文附件中的图表对比了国防部CCMC名单和财政部NS-CMIC名单上的实体。

Interestingly, 18 entities designated as CCMCs by the DOD are not included in the new Treasury list. Those entities include businesses in various industries, such as semiconductors, chemicals, aviation and consumer electronics. On the other hand, 33 entities that have not previously been designated on the DOD's CCMC list are now included in the new NS-CMIC List.

值得注意的是，有18家被国防部指定为CCMC的实体未列入财政部新名单。这些实体包括不同行业的企业，如半导体、化学品、航空和消费电子产品。而另一方面，有33家原先不在国防部CCMC名单上的实体却被添加到新的NS-CMIC名单中。

Substantive Test for Designation by Treasury

财政部指定的实质性标准

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 should determine one of the following:

EO 14032为列入NS-CMIC名单规定了实质性标准，这是在原有的EO 13959中所没有的。财政部要将某中国实体列入NS-CMIC名单，必须确定存在以下情况之一：

- The company operates or has operated in the “defense and related materiel sector or the surveillance technology sector of the economy of the PRC”

该公司的经营领域属于“中华人民共和国经济中的国防和相关物资领域或监控技术领域”

- 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

该公司直接或间接地拥有或控制，NS-CMIC名单上的公司或在中华人民共和国经济中的国防及相关物资领域或监控技术领域经营或曾经经营的公司，或是被此等公司直接或间接地拥有或控制。

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.

如下文所述，财政部就NS-CMIC名单指定作出行政决定时，应当允许公司有机会质疑或反驳该决定。

The NS-CMIC List does not impose restrictions on 50% or more-owned subsidiaries of the listed entities, unless the subsidiary entity is itself listed (i.e., the OFAC 50% rule does not apply to this list).³

NS-CMIC名单对所列实体拥有50%或以上所有权的子公司未加以限制，除非该子公司本身被列入名单中（即OFAC的50%规则不适用于该名单）³。

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

相关组织可依行政令对NS-CMIC名单指定提出异议

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.

EO14032将行政令的施行理由扩展至中国军工综合体带来的威胁之外，纳入了与开发中国监控技术“以促进镇压或严重侵犯人权”有关联的公司。值得注意的是，由于美国对中国军民融合所持的普遍看法，非国有企业也可能被认定存在上述关联。

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.

目前尚不清楚名单上的所有公司是否实际上满足被列入NS-CMIC名单的实质性新标准。EO 14032授权财政部不仅可以指定NS-CMIC名单上的公司，还可以确定对名单上的任何公司“不再需要适用该禁令”，并将该公司从NS-CMIC名单上移除。NS-CMIC名单上的企业可以遵循相应的程序申请除名。

³ 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.

OFAC的50%规则规定，任何实体若合计50%或以上被一个或多个主体直接或间接拥有，而后的财产和财产权益根据行政令或OFAC执行的法规被封锁（被封锁者），则前者也视为被封锁者。

Prohibition on Trading in Subject Securities, Anywhere

禁止在任何地方进行标的证券的交易

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, the new language instituted in EO 14032 applies the US person⁴ trading prohibition even if the trading conduct occurs entirely outside the US.

EO 14032明确禁止美国人在世界任何地方的任何交易所买卖名单所列实体的证券。EO 14032将受制于美国人交易禁令的“公开交易证券”定义为包括以下任何情形的证券（证券本身的定义见1934年《证券交易法》第3(a)(10)节）：“以任何币种计价，在任何法域的证券交易所或通过一般称作‘场外交易’的交易方式进行交易”。原EO 13959并未明确这一点。因此，EO 14032中的交易禁令适用美国人⁴，即使交易行为完全发生在美国境外。

The DoD Lists Continue to Have Impact

国防部名单的影响仍会持续

Notably, concurrently with EO 14032, DOD promulgated another list that designates Chinese Military Companies pursuant to the Fiscal Year 2021 National Defense Authorization Act, Section 1260H). The appended chart compares the new DOD list, the CCMC List (i.e., the old DOD list) and the NS-CMIC List.

值得注意的是，与EO 14032同时颁布了另一份国防部“中国军事企业”名单（基于《2021财年国防授权法》第1260H节）。本文所附图表对该新的国防部名单、CCMC名单（即旧的国防部名单）以及NS-CMIC名单进行了对比。

As described above, only entities named on the NS-CMIC List are subject to the securities trading prohibitions imposed on US persons. The 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.

如上文所述，只有NS-CMIC名单上的实体才受制于对美国人实施的证券交易禁令，而两份国防部名单与行政令或证券交易限制并无联系。尽管如此，被列入国防部名单对所涉企业的影响可能是严重的，特别是上榜企业很可能被美国的《出口管制条例》视为军事最终用户，从而限制对其的出口或再出口。

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.

国防部名单上的企业可能还将遭遇其他后果，因为美国国会正密切审视这些公司及其在美国的活动，一些立法者提议限制其与联邦政府的交易，如此种种均可能成为未来针对这些公司的限制性举措。

Effective Dates

生效日期

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.

对于EO 14032附件中所列的公司（即NS-CMIC名单上的第一批实体），交易禁令于2021年8月2日美国东部时间凌晨12:01生效。但是，纯粹为实现剥离而进行的交易允许在2022年6月3日（EO14032发布之日起一年）美国东部时间凌晨12:01之前发生。

For companies later designated by Treasury, the trading prohibition will enter 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.

对于财政部日后指定的公司，交易禁令将于确定日期后60天的美国东部时间凌晨12:01开始生效，美国人可以在指定日期后365天的美国东部时间凌晨12:01之前进行纯粹为了剥离的交易。

⁴ 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.

OFAC的50%规则规定，任何实体若合计50%或以上被一个或多个主体直接或间接拥有，而后的财产和财产权益根据行政令或OFAC执行的法规被封锁（被封锁者），则前者也视为被封锁者。

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Our export controls and sanctions lawyers have the ability to provide advice on the shifting regulatory framework on both sides of the Atlantic. We have extensive experience in advising and representing a wide range of companies and financial institutions in Europe, the US and other jurisdictions on export control and sanctions from a multijurisdictional perspective.

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我们出口管制和制裁团队的律师有能力就欧美不断变化的监管框架提供建议。我们从跨辖区和多领域的角度为欧美和其他各国的众多企业和金融机构提供法律意见，并代表他们处理出口管制和制裁问题。

Appendix

附件

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

受限制中国企业名单比较概览（截至2021年6月7日）

Designated Chinese Company* (highlighted entities are on all three lists) 被指定的中国公司* (突出显示的实体包含于三个名单中) * Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	CCMC List by DOD used as list for prohibitions in original EO 13959 国防部的CCMC名单 原EO 13959的禁令名单	NS-CMIC List by OFAC subject to trading prohibition under EO 14032 财政部 (OFAC) 的NS-CMIC 名单 受制于EO 14032项下的交易禁令	2021 List of Chinese Military Companies by DOD 2021年新的国防部“中国军事企业”名单
Advanced Micro-Fabrication Equipment Inc. 中微半导体设备（上海）股份有限公司	Tranche 5 第5批		
Aero Engine Corporation of China 中国航空发动机集团有限公司	Tranche 1 第1批		
Aerospace CH UAV Co., Ltd 航天彩虹无人机股份有限公司			
Aerospace Communications Holdings Group Company Limited 航天通信控股集团股份有限公司			
Aerosun Corporation 航天晨光股份有限公司			
Anhui Greatwall Military Industry Company Limited 安徽长城军工股份有限公司			
Aviation Industry Corporation of China, Ltd. (AVIC) 中国航空工业集团有限公司	Tranche 1 第1批		
AVIC Aviation High-Technology Company Limited 中航航空高科技股份有限公司			
AVIC Heavy Machinery Company Limited 中航重机股份有限公司			
AVIC Jonhon Optronics Technology Co., Ltd. 中航光电科技股份有限公司			
AVIC Shenyang Aircraft Company Limited 中航沈飞股份有限公司			
AVIC Xi'an Aircraft Industry Group Company Ltd. 中航工业西安飞机工业集团股份有限公司			
Beijing Zhongguancun Development Investment Center 北京中关村发展投资中心	Tranche 5 第5批		
Changsha Jingjia Microelectronics Company Limited 长沙景嘉微电子股份有限公司			

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China Academy of Launch Vehicle Technology (CALT) 中国运载火箭技术研究院	Tranche 2-3 第2-3批		
China Aerospace Science and Industry Corporation Limited (CASIC) 中国航天科工集团有限公司	Tranche 1 第1批		
China Aerospace Science and Technology Corporation (CETC) 中国航天科技集团有限公司	Tranche 1 第1批		
China Aerospace Times Electronics Co., Ltd 航天时代电子有限公司			
China Avionics Systems Company Limited 中航航空电子系统股份有限公司			
China Communications Construction Company Limited (CCCC) 中国交通建设股份有限公司	Tranche 2-3 第2-3批		
China Communications Construction Group (Limited) (CCCCG) 中国交通建设集团有限公司			
China Construction Technology Co. Ltd. (CCTC) 中国建设科技有限公司	Tranche 4 第4批		
China Electronics Corporation (CEC) 中国电子信息产业集团有限公司	Tranche 2-3 第2-3批		
China Electronics Technology Group Corporation (CETC) 中国电子科技集团有限公司	Tranche 1 第1批		
China General Nuclear Power Corporation (CGN) 中国广核集团有限公司	Tranche 1 第1批		
China International Engineering Consulting Corp. (CIECC) 中国国际工程咨询有限公司	Tranche 4 第4批		
China Marine Information Electronics Company Limited 中国船舶重工集团海洋防务与信息对抗股份有限公司			
China Mobile Communications Group Co., Ltd. 中国移动通信集团有限公司	Tranche 1 第1批		
China Mobile Limited 中国移动有限公司			

Designated Chinese Company* (highlighted entities are on all three lists) 被指定的中国公司* (突出显示的实体包含于三个名单中) * Note, legal entity abbreviations (e.g., "Co., Ltd.") are not consistent among the lists	CCMC List by DOD used as list for prohibitions in original EO 13959 国防部的CCMC名单 原EO 13959的禁令名单	NS-CMIC List by OFAC subject to trading prohibition under EO 14032 财政部 (OFAC) 的NS- CMIC 名单 受制于EO 14032项下的交 易禁令	2021 List of Chinese Military Companies by DOD 2021年新的国防部“中国 军事企业”名单
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China National Chemical Corporation (ChemChina) 中国化工集团有限公司	Tranche 2-3 第2-3批		
China National Chemical Engineering Group Co., Ltd. (CNCEC) 中国化学工程集团有限公司	Tranche 2-3 第2-3批		
China National Nuclear Corporation (CNNC) 中国核工业集团有限公司	Tranche 1 第1批		
China National Offshore Oil Corporation (CNOOC) 中国海洋石油集团有限公司	Tranche 4 第4批		
China North Industries Group Corporation Limited (Norinco Group) 中国北方工业有限公司	Tranche 1 第1批		
China Nuclear Engineering & Construction Corporation (CNECC) 中国核工业建设集团有限公司	Tranche 2-3 第2-3批	Listed as "China Nuclear Engineering Corporation Limited" 列单名称为"China Nuclear Engineering Corporation Limited"	
China Railway Construction Corporation Limited (CRCC) 中国铁道建筑集团有限公司 (CRCC)	Tranche 1 第1批		
China Satellite Communications Co. Ltd. 中国卫通集团股份有限公司			
China Shipbuilding Industry Corporation (CSIC) 中国船舶重工集团有限公司 (CSIC)	Tranche 1 第1批	Listed as "China Shipbuilding Industry Company Limited" 列单名称为"China Shipbuilding Industry Company Limited"	
China Shipbuilding Industry Group Power Company Limited 中国船舶重工集团动力股份有限公司			
China South Industries Group Corporation (CSGC) 中国南方工业集团公司	Tranche 1 第1批		
China SpaceSat Co., Ltd. 中国东方红卫星股份有限公司	Tranche 2-3 第2-3批		
China State Construction Group Co., Ltd. 中国建筑集团有限公司	Tranche 2-3 第2-3批		

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China State Shipbuilding Corporation Limited (CSSC) 中国船舶集团有限公司	Tranche 1 第1批		
China Telecom Corporation Limited 中国电信股份有限公司			
China Telecommunications Corporation 中国电信集团有限公司	Tranche 1 第1批		
China Three Gorges Corporation Limited 中国三峡集团有限公司	Tranche 2-3 第2-3批		
China Unicorn (Hong Kong) Limited 中国联合网络通信（香港）股份有限公司			
China United Network Communications Group Co., Ltd. (China Unicom) 中国联合网络通信集团有限公司	Tranche 2-3 第2-3批		
CNOOC Limited 中国海洋石油有限公司			
Commercial Aircraft Corporation of China, Ltd. (COMAC) 中国商用飞机有限责任公司	Tranche 5 第5批		
Costar Group Co., Ltd. 中光学集团股份有限公司			
CRRC Corporation 中国中车股份有限公司	Tranche 1 第1批		
CSSC Offshore & Marine Engineering (Group) Company 中船海洋与防务装备股份有限公司			
Dawning Information Industry Co (Sugon) 曙光信息产业股份有限公司	Tranche 1 第1批		
Fujian Torch Electron Technology Co. Ltd. 福建火炬电子科技股份有限公司			
Global Tone Communication Technology Co. Ltd. (GTCOM) 中译语通科技股份有限公司	Tranche 5 第5批		
GOWIN Semiconductor Corp. 广东高云半导体科技股份有限公司	Tranche 5 第5批		
Grand China Air Co. Ltd. (GCAC) 大新华航空有限公司	Tranche 5 第5批		
Guizhou Space Appliance Co., Ltd. 贵州航天电器股份有限公司			
Hangzhou Hikvision Digital Technology Co., Ltd. (Hikvision) 杭州海康威视数字技术股份有限公司	Tranche 1 第1批		
Huawei Investment & Holding Co., Ltd. 华为投资控股有限公司			

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Huawei Technologies Co., Ltd. 华为技术有限公司	Tranche 1 (listed only as "Huawei") 第1批 (列单名称仅显示 为"Huawei")		
Inner Mongolia First Machinery Group Co., Ltd. 内蒙古第一机械集团有限公司			
Inspur Group Co., Ltd. 浪潮集团有限公司	Tranche 1 第1批		
Jiangxi Hongdu Aviation Industry Co., Ltd. 江西洪都航空工业股份有限公司			
LuoKung Technology Corporation 箩筐技术公司	Tranche 5 第5批		
Nanjing Panda Electronics Company Limited 南京熊猫电子股份有限公司			
North Navigation Control Technology Co., Ltd. 北方导航控制技术有限公司			
Panda Electronics Group Co., Ltd. 熊猫电子集团有限公司	Tranche 1 第1批		
Proven Glory Capital Limited			
Proven Honor Capital Limited			
Semiconductor Manufacturing International (Beijing) Corporation 中芯国际集成电路制造（北京）有限公司			
Semiconductor Manufacturing International (Shenzhen) Corporation 中芯国际集成电路制造（深圳）有限公司			
Semiconductor Manufacturing International (Tianjin) Corporation 中芯国际集成电路制造（天津）有限公司			
Semiconductor Manufacturing International Corporation (SMIC) 中芯国际集成电路制造有限公司	Tranche 4 第4批		

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Semiconductor Manufacturing South China Corporation 中芯国际集成电路制造华南公司			
Shaanxi Zhongtian Rocket Technology Company Limited 陕西中天火箭技术股份有限公司			
Sinochem Group Group Co Ltd 中国中化集团有限公司	Tranche 2-3 第2-3批		
SMIC Holdings Limited 中芯国际控股有限公司			
SMIC Hong Kong International Company Limited 中芯香港国际有限公司			
SMIC Northern Integrated Circuit Manufacturing (Beijing) Co., Ltd 中芯北方集成电路制造（北京）有限公司			
SMIC Semiconductor Manufacturing (Shanghai) Co., Ltd 中芯国际集成电路制造（上海）有限公司			
Xiaomi Corporation 小米集团	Tranche 5 第5批		
Zhonghang Electronic Measuring Instruments Company Limited 中航电测仪器股份有限公司			