

## China To Adopt PRC Version of “Entity List”

On 31 May 2019, the Ministry of Commerce (“MofCom”) of the People’s Republic of China (“PRC”) announced that it will adopt a new system which includes the creation of an “Unreliable Entity List” (“UEL”), which is a fresh new system widely understood to be the PRC’s version of the “entity list” maintained by the Department of Commerce, United States of America (“USA”).

This update sets out a short summary of the salient terms of the UEL system.

### Who will be on the UEL?

According to the announcement from MofCom, the “entity” includes a foreign company, organisation and/or individual who damages the legitimate interest of PRC enterprise(s), endangers PRC national security and interest and/or threatens the security of relevant supply chain or industrial chain. In determining whether a foreign entity will be placed on the UEL, MofCom will consider the following factors:

- whether the foreign entity has taken action(s) such as suspending or stopping a supply chain, or has imposed any discriminatory measure against PRC enterprise(s);
- whether the action(s) of the foreign entity are acting against market rules and breaching relevant contract(s) on non-commercial grounds;
- whether the action(s) of the foreign entity has caused substantial or material damage to PRC entities or relevant industries; and
- whether the actions of the foreign entity pose a threat or potential threat to the national security of PRC.

The interpretation and application of the four above factors are subject to further and detailed regulations to be promulgated by MofCom. It is widely expected that MofCom will soon promulgate detailed regulations spelling out the

procedure, standards and/or timeline(s) in relation to the enforcement of the UEL.

### What is the consequence of being placed on the UEL?

It is not clear thus far on what the consequence(s) will be if a foreign entity is placed on the UEL. However, it is generally understood that the possible consequence(s) will include:

- Suspension or stoppage of supply of goods and/or services to the foreign entities on the UEL;
- Imposition of stricter scrutiny on potential investment by such foreign entity into the PRC or existing investment of such foreign entity in the PRC;
- Restricting the import of products of the foreign entities into the PRC; and/or
- Restricting the technical cooperation between the foreign entities and PRC entities.

In practice, being placed on the UEL is widely expected to be the end of doing business in the PRC or with PRC entities, a similar effect of being on the “entity list” maintained by the Department of Commerce, USA.

### Will foreign - invested enterprises be included or affected?

Although no specific foreign country is suggested, the looming UEL regulatory regime appears to be a legal tactic aimed at USA’s sanctions against a series of PRC companies, entities and individuals who/which are on the USA’s export control “entity list” issued by the Bureau of Industry and Security under the Department of Commerce, USA. The May 2019 strike against Huawei, the giant Chinese telecommunication technology company escalated the tension of the trade war after US announced that it had placed Huawei and its 76 affiliates all over the world on the entity list, essentially preventing it from buying USA

components and parts, including the vital chips, software and technologies in the absence of special licence(s) from the USA government.

Although the UEL technically refers to “foreign” entities only, it is widely expected that the UEL, as a retaliation against USA’s sanctions, will cover affiliates of the foreign entities on the list, effectively capturing foreign - invested enterprises invested by the foreign entities concerned in the PRC.

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the partner at WongPartnership that you normally work with or any of the following partners:

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