

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 response to 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:

**Joseph HE**

Head – China Practice

d: +65 6416 8218**e:** joseph.he[@wongpartnership.com](mailto:joseph.he@wongpartnership.com)Click [here](#) to view Joseph's CV.**Gerry GAN**

Partner – China Practice

d: +65 6416 8006**e:** gerry.gan[@wongpartnership.com](mailto:gerry.gan@wongpartnership.com)Click [here](#) to view Gerry's CV.**MIAO Miao**

Partner – China Practice

d: +86 21 3306 4990**e:** miao.miao[@wongpartnership.com](mailto:miao.miao@wongpartnership.com)Click [here](#) to view Miao's CV.**Weitan LIANG**

Partner – China Practice

d: +65 6416 2556**e:** weitan.liang[@wongpartnership.com](mailto:weitan.liang@wongpartnership.com)Click [here](#) to view Weitan's CV.

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Beijing Representative Office
Unit 3111 China World Office 2
1 Jianguomenwai Avenue, Chaoyang District
Beijing 100004, PRC
t +86 10 6505 6900
f +86 10 6505 2562

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Corporate Avenue 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

wongpartnership.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

-

Al Aidarous International Legal Practice
Abdullah Al Mulla Building, Mezzanine Suite
02
39 Hameem Street (side street of Al Murroor
Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous International Legal Practice
Zalfa Building, Suite 101 - 102
Sh. Rashid Road
Garhoud
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

-

ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw