

# INTERNATIONAL BUSINESS ALERT

JULY 27, 2020

**YUANYOU (SUNNY) YANG**

412.235.1484

[yyang@porterwright.com](mailto:yyang@porterwright.com)

This law alert is intended to provide general information for clients or interested individuals and should not be relied upon as legal advice. It does not necessarily reflect the views of the firm as to any particular matter or those of its clients. Please consult an attorney for specific advice regarding your particular situation.

Please see our other publications at [www.porterwright.com/media](http://www.porterwright.com/media).

© 2020 Porter Wright Morris & Arthur LLP

## **BIS and OFAC add additional Chinese entities to the Entity List and SDN List**

On June 17, 2020, President Donald Trump signed the Uyghur Human Rights Policy Act of 2020. This act requires multiple U.S. government agencies to report on human rights abuses occurring in Xinjiang, and to both identify and designate Chinese officials and other individuals who are believed to be carrying out such abuses for future sanctions or designations by the U.S. government. On July 1, 2020, the U.S. Department of State (DOS), along with the U.S. Department of the Treasury, the U.S. Department of Commerce (Commerce) and the U.S. Department of Homeland Security issued the "Xinjiang Supply Chain Business Advisory," alerting businesses with potential supply chain exposure to Xinjiang to consider the reputational, economic and legal risks of involvement with entities that engage in alleged human rights abuses in that specific region of China. On July 9, 2020, the U.S. Treasury Department's Office of Foreign Assets Control (OFAC) [announced](#) in a press release its decision to add the Xinjiang Public Security Bureau (XPSB) and four Chinese government officials to the list of Specially Designated Nationals and Blocked Persons (SDN List). Additionally, on July 20, 2020, the Department of Commerce's Bureau of Industry and Security (BIS) published a [press release](#), adding 11 Chinese companies to the Department of Commerce's Entity List. These recent events suggest the U.S. government has increased its efforts to address perceived human rights abuses in Xinjiang, and may create significant legal compliance challenges for companies on the lists as well as companies with business dealings with those companies.

### **OFAC adds Chinese entities to SDN List**

On July 9, 2020, OFAC issued sanctions against the XPSB, together with four Chinese government officials pursuant to the 2016 Global Magnitsky Human Rights Accountability Act (GLOMAG) and Executive Order (EO)

13818 of December 20, 2017, entitled "Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption." Specifically, OFAC added both XPSB and four Chinese government officials to the SDN List for their alleged connection to human rights abuses in China's Xinjiang Uyghur Autonomous Region. The legal authorities for the underlying action are GLOMAG and EO 13818, under which the U.S. government is authorized to sanction foreign persons it believes to be involved in serious human rights abuse or corruption in a foreign country, as well as those who assist or provide material support, including goods and services, to the sanctioned persons or activities.

Such foreign persons are added to OFAC's SDN List, and all of their property interests located within the U.S., or in the possession or control of U.S. persons, are blocked and must be reported to OFAC. This blockage includes any entities that are owned, directly or indirectly, 50% or more by the above listed entities or individuals, individually, or with other blocked persons. Unless authorized by a general or specific license issued by OFAC or otherwise exempt, OFAC's regulations generally prohibit all transactions by U.S. persons or other individuals within (or transiting) the U.S. that involve any property of designated or otherwise blocked persons. The prohibitions include the making of any contribution or provision of funds, goods or services by, to, or for the benefit of any blocked person or the receipt of any contribution or provision of funds, goods or services from any such person. Individuals and entities found to be in violation of OFAC sanctions, whether U.S. or foreign, could be subject to significant civil and criminal penalties, and may themselves be added to OFAC's SDN List through the enforcement of secondary sanctions.

### **BIS adds Chinese entities to the Entity List**

On July 20, 2020, BIS added to the U.S. Department of Commerce's Entity List an additional 11 Chinese companies which it believed to be involved in human rights abuses in Xinjiang. This action supplements two Entity List designations on October 9, 2019, and May 22, 2020, that together added 37 Chinese parties to the Entity List.

The entities added to the Entity List under the July 20, 2020 press release include:

- Changji Esquel Textile Co. Ltd.
- Hefei Bitland Information Technology Co. Ltd.
- Hefei Meiling Co. Ltd.
- Hetian Haolin Hair Accessories Co. Ltd.
- Hetian Taida Apparel Co., Ltd.
- KTK Group
- Nanjing Synergy Textiles Co. Ltd.
- Nanchang O-Film Tech
- Tanyuan Technology Co. Ltd.

- Xinjiang Silk Road BGI
- Beijing Liuhe BGI

The Entity List is a tool utilized by the BIS to restrict the export, re-export, and transfer (in-country) of items subject to the Export Administration Regulations (EAR) to persons (individuals, organizations, companies) reasonably believed to be involved in, or to pose a significant risk of becoming involved in, activities contrary to the national security or foreign policy interests of the U.S. Companies placed on the Entity List are subject to strict restrictions on access to U.S.-origin items, including commodities and technology. Additional license requirements apply to exports, re-exports, and transfers (in-country) of items subject to the EAR to listed entities, and the availability of most license exceptions is limited. Furthermore, the DOS announced a visa restriction policy in October 2019, under the Immigration and Nationality Act for officials BIS believes responsible for, or complicit in, human rights abuses in Xinjiang, so owners and employees of those entities on the Entity List will likely not be permitted admission into the U.S.

#### List removal

Anyone placed on the SDN List by OFAC under GLOMAG has the right to seek removal from the list under an administrative process known as “De-Listing.” To be removed, listed individuals and entities must file a written request with OFAC showing that an insufficient basis exists for OFAC’s sanctions, or that the circumstances resulting in OFAC’s sanctions no longer exist.

After a De-Listing request is submitted, OFAC may request additional information before rendering a written decision. If the request for De-Listing is granted, the person’s name and related identifying information are removed from the SDN List. If OFAC denies the De-Listing request, administrative remedies are deemed exhausted, and listed individuals and entities can subsequently file a civil action with a U.S. District Court seeking judicial review of OFAC’s actions under the Administrative Procedure Act. In such a civil action, sanctioned individuals or entities may argue that OFAC’s action should be reversed on grounds that it was arbitrary, capricious, an abuse of may argue that OFAC’s action should be reversed on grounds that it was arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law. For more information on removal from the BIS’s Entity List, please see this Porter Wright [Law Alert](#).

#### Takeaway

The recent changes, along with the other developments in U.S. export control and sanction regulations, will have significant implications for U.S. and non-U.S. companies engaged in the business of importing, exporting, or transferring items with Chinese companies or individuals. Companies should be mindful of these changes and their implications; make reasonable inquiry of their contracting parties and supply chains; reexamine agreements for any representation and warranty provisions, as



## INTERNATIONAL BUSINESS ALERT

well as termination and indemnification provisions; and vigorously examine their export compliance programs to ensure compliance.

For more information please contact [Yuanyou Yang](#) or any member of Porter Wright's [International Business & Trade](#) practice group.