

Horizon scanner Financial Crime – US



RISK RATING

Potential impact



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| <p>President Biden amends the executive order on Communist Chinese military companies</p> <p>On 3 June 2021, President Biden issued Executive Order (EO) 14032, which restricts US investment in and transactions related to securities of certain Chinese entities and others that have connections with certain Chinese entities or sectors. EO 14032 (sometimes referred to as the amended EO 13959) supersedes and amends EO 13959, which was issued on 12 November 2020 by former President Trump.</p> <p>EO 13959 prohibited US persons from engaging in transactions in “publicly traded securities, or any securities that are derivative of, or are designed to provide investment exposure to such securities, of” companies that meet the definition of “Communist Chinese military company.” Companies met the definition if the Secretary of Treasury or Defense determined that they were owned or controlled by the Chinese military, or if they were placed on the US Department of Defense’s Communist Chinese military company (CCMC) list. The Department of Defense published its first list of Communist Chinese military companies in June 2020, and OFAC had previously maintained a list of entities subject to the prohibitions of EO 13959 on its website.</p> <p>Instead of prohibiting transactions in securities of Communist Chinese military companies, EO 14032 applies to the defense and surveillance sector of China. Specifically, EO 14032 prohibits US persons from dealing in publicly traded securities of (1) any person determined by the Secretary of the Treasury (in consultation with the Secretary of State, and the Secretary of Defense as appropriate) “to operate or have operated in the defense and related material sector or the surveillance technology sector of” China; (2) any person listed in the Annex to EO 14032; or (3) any person determined to “own or control,</p> | Current | Financial institutions and businesses that engage in securities transactions should consider the potential impact of EO 14032. | <p>EO 14032</p> <p>Press Release and FAQs on EO 14032</p> <p>Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List)</p> <p>EO 13959</p> <p>DoD CCMC Lists</p> <p>DC District Court Preliminary Injunction</p> |



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| <p>or to be owned or controlled by, directly or indirectly" a person described in (1) or (2).</p> <p>Additionally, the Annex to EO 14032 supersedes the Annex to EO 13959. Although many of the Communist Chinese military companies listed on the Annex to EO 13959 were included on the Annex to EO 14032, the latter Annex expands the former and does not include several CCMC list or DoD list entities. In particular, the Annex to EO 14032 does not include Xiaomi Corporation, a major producer of smartphones and electronics. Xiaomi previously obtained a preliminary injunction preventing the US government from enforcing the prohibitions set forth in EO 13959 against Xiaomi by the US District Court for the District of Columbia on 12 March 2021.</p> <p>The names of entities identified in or pursuant to EO 14032 are compiled on a list titled the Non-SDN Chinese Military-Industrial Complex Companies List (NS-CMIC List). The prohibitions in EO 14032 only apply to a subsidiary of a listed Chinese Military-Industrial Complex Company (CMIC) if the subsidiary is publicly listed on the NS-CMIC List by Treasury. In other words, OFAC's 50 percent rule does not apply to entities listed solely pursuant to EO 14032.</p> <p>The prohibitions of EO 14032 as applied to the persons listed in the Annex take effect on 2 August 2021. For persons later determined to be subject to EO 14032, the prohibitions take effect 60 days after the date the determination is made by the Department of Treasury (Treasury). US persons may divest securities of persons listed in the Annex before 3 June 2022, and within 365 days after the date of determination for persons later found to be subject to EO 14032.</p> | | | |



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| <p>OFAC issues general licenses authorizing some activity under the recent sanctions on Burma</p> <p>On 25 March 2021, OFAC issued four (4) general licenses authorizing the following activities that would otherwise be prohibited by Executive Order (EO) 14014 "Blocking Property With Respect to the Situation in Burma":</p> <ul style="list-style-type: none"> • General License No. 1: Official business of the US government. • General License No. 2: Official activities of certain international organizations (including the United Nations). • General License No. 3: Certain NGO and humanitarian transactions and activities. • General License No. 4: Transactions that are "ordinarily incident and necessary to" the wind down or tying up of transactions involving Myanmar Economic Corporation Limited (MEC) or Myanmar Economic Holdings Public Company Limited (MEHL), and their 50 percent or more owned entities through 21 June 2021. <p>OFAC added MEHL and MEC to the Specially Designated Nationals and Blocked Persons List (SDN List) on 25 March 2021, pursuant to EO 14014. As a result, all property and interests in property of MEHL and MEC (and their 50 percent or more, directly or indirectly, owned entities) that are in the US or in the possession or control of US persons are blocked. However, General License No. 4 temporarily authorizes wind down transactions with MEHL and MEC (through 21 June 2021) that would otherwise be prohibited because of their SDN List designation under EO 14014.</p> <p>For more details regarding US sanctions on Burma, please see our previous Horizon Scanner from March 2021.</p> | Current | Financial institutions and businesses should confirm that any transaction involving MEC, MEHL, or any entity 50 percent or more owned by MEC or MEHL (individually or in the aggregate) is authorized under General License No. 4 and is completed before 12:01 a.m. eastern daylight time on 22 June 2021. | <p>Blocking Property With Respect to the Situation in Burma</p> <p>OFAC's Press Release on the Executive Order</p> <p>General License No. 4</p> <p>OFAC's Press Release on the MEC and MEHL designations</p> |



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| <p>Tax Authorities Target FinTech and Crypto</p> <p>In late March 2021, the Joint Chiefs of Tax Enforcement (or J5)—taxing authorities from Australia, Canada, the Netherlands, the United Kingdom, and the United States—held a coordinated virtual event, known as a “Challenge,” focused on FinTech companies. The event included experts from each country with the mission of optimizing data from a variety of open and investigative sources available to each country, including offshore account information. Using various analytical tools, members of each country were put into teams and tasked with generating leads and finding tax offenders using cryptocurrency based on the new data available to them through The Challenge. The Challenge’s focus on FinTech companies is reflective of the fact that due to the online nature of the products, the novelty and the lack of regulation and compliance in some areas, the FinTech industry can be used by tax avoiders and money launderers to commit crimes.</p> <p>The Challenge was followed by a set of John Doe summonses issued by the IRS in April and May 2021 to two cryptocurrency exchanges for detailed information regarding the companies’ users, as well as public reporting in May 2021 indicating that a third cryptocurrency exchange is under investigation by the IRS and the DOJ.</p> | Current | <p>While the concern of the J5 appears to be with the FinTech users rather than the companies themselves, businesses and financial institutions that operate in this space should expect increased IRS and DOJ investigative activity through both administrative and judicial processes.</p> <p>The information gleaned through these investigations is expected to be given to IRS agents who specialize in tax and money-laundering investigations.</p> | <p>J5 countries host “Challenge” aimed at FINtech companies</p> <p>Court Authorizes Service of John Doe Summons Seeking the Identities of U.S. Taxpayers Who Have Used Virtual Currency</p> <p>Binance Faces Probe by U.S. Money Laundering and Tax Sleuths</p> |
| <p>IRS Guidance Addresses Hard Forks and Virtual Accessions to Wealth</p> <p>On 9 April 2021, the Internal Revenue Service (IRS) issued Chief Counsel Advice 202114020, which addresses the tax consequences for individuals who have received Bitcoin Cash (BCH) following the August 2017 hard fork of Bitcoin (BTC). A hard fork occurs when changes are made to the protocols of a blockchain that results in a split</p> | Current | <p>Businesses or financial institutions that deal in cryptocurrency or that hold positions in cryptocurrency should consider the taxable income impact of a hard fork given this recent guidance.</p> | <p>IRS Memorandum No. 202114020: Bitcoin (BTC)/Bitcoin Cash (BCH) Hard Fork</p> <p>Fork it over: IRS guidance reaffirms crypto position</p> |



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| <p>wherein a new version of the blockchain exists and continues to develop alongside the old version. This guidance addresses the application of the IRS's position expressed in Revenue Ruling 2019-24.</p> <p>The guidance finds that a taxpayer may only have gross income in connection with the receipt of a new cryptocurrency following a hard fork that created the new currency if and when the taxpayer actually has dominion and control over the new cryptocurrency. Stated differently, the Chief Counsel Advice is primarily about <i>whether</i> the taxpayer has income, with the timing of <i>when</i> the income is recognized being a collateral consequence of the timing of the <i>whether</i> decision.</p> |  | | |
| <p>The US government imposes new sanctions on Russia</p> <p>On 15 April 2021, President Biden signed Executive Order (EO) 14024 "Blocking Property with Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation." The EO addresses US government concerns that Russia has been engaging in a series of "harmful foreign activities," including interference in US elections and malicious cyber activities against the US and its allies.</p> <p>EO 14024 authorizes blocking sanctions against persons who are found to have (1) operated in the technology or defense sectors of the Russian economy (with the potential for additional sectors), or (2) participated in election interference, malicious cyber-enabled activities, and a range of other activities. The EO additionally identifies various persons who are subject to sanctions for being affiliated with the Russian government or entities designated for engaging in the activities described above.</p> <p>All property and interests in property of persons designated under EO 14024 (and their 50 percent or</p> | | <p>Current</p> | <p>Financial institutions and businesses should continue to monitor US sanctions on Russia and confirm that any transaction involving bonds issued after 14 June 2021 to, or funds lent to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation, are consistent with Directive 1.</p> |



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| <p>more, directly or indirectly, owned entities) that are in the US or in the possession or control of US persons are blocked. As a result, US persons generally are prohibited from engaging in transactions with designated persons.</p> <p>Additionally, EO 14024 imposes secondary sanctions. Persons who have provided "material assistance" or otherwise supported the sanctioned conduct or persons described in the EO, including by providing financial or technical support, or supplying goods and services to designated persons, may themselves be sanctioned.</p> <p>In connection with EO 14024, the Department of the Treasury (Treasury) issued Directive 1, which prohibits US financial institutions from (i) participating in the primary market for ruble or non-ruble denominated bonds issued after 14 June 2021, and (ii) lending ruble or non-ruble denominated funds. The prohibitions only apply if the bonds are issued by or the funds are lent to the Central Bank of the Russian Federation, the National Wealth Fund of the Russian Federation, or the Ministry of Finance of the Russian Federation.</p> | | | |
| <p>Treasury submits a report to Congress identifying <u>no</u> Foreign Financial Institution for potential sanctions under the Hong Kong Autonomy Act</p> <p>The Department of the Treasury (Treasury) submitted its second Section 5(b) Report to Congress indicating that as of 1 May 2021, Treasury has not identified any Foreign Financial Institution (FFI) that has "knowingly conducted a significant transaction" with certain foreign persons that would expose a FFI to sanctions under the Hong Kong Autonomy Act (HKAA).</p> <p>Section 5(a) of the HKAA requires the Secretary of State (in consultation with the Secretary of Treasury) to determine whether any foreign person has "materially" contributed to the failure of the Government of China to</p> | Current | Financial institutions and businesses should continue monitoring the US government's sanctions on Hong Kong and stay apprised of the different types of sanctions that apply to designated persons. | <p>Hong Kong Autonomy Act</p> <p>May 2021, HKAA Section 5(b) Report</p> |



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| <p>meet its obligations under the Sino-British Joint Declaration or Hong Kong's Basic Law. If any foreign person is found to have engaged in this activity, the Secretary of State must submit a report to Congress identifying the foreign person(s). Subsequently, the Secretary of Treasury (in consultation with the Secretary of State) is required under Section 5(b) of the HKAA to submit a report to Congress identifying any FFI that has "knowingly conducted a significant transaction" with a foreign person that has been identified in a Section 5(a) Report. The US President is then required to impose sanctions on the identified FFI(s) within one year, unless the President excludes the FFI(s) from the Section 5(a) Report.</p> <p>While the Secretary of State identified foreign persons (Chinese and Hong Kong government officials) in its October 2020 and March 2021 Section 5(a) Reports, the Secretary of Treasury did not identify any FFIs in either its December 2020 or current May 2021 Section 5(b) Reports.</p> <p>For more details regarding US sanctions on Hong Kong, please see our previous Horizon Scanner from March 2021.</p> | | | |
| <p>Treasury Releases Report on its Tax Compliance Agenda</p> <p>On 20 May 2021, the US Department of the Treasury (Treasury) released a report on a set of tax compliance measures aimed at closing the "tax gap" between taxes owed and taxes paid. President Biden's compliance agenda includes:</p> <ul style="list-style-type: none"> • providing additional resources to the IRS to address sophisticated tax evasion; | Current | While these administrative agenda items require additional spending authorization from Congress, the fact that they have been published demonstrates the Biden administration's commitment towards the stated goals. Businesses and financial institutions should continue to monitor IRS | The American Families Plan Tax Compliance Agenda |



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| <ul style="list-style-type: none"> allowing the IRS to utilize information that financial institutions already know about the accounts they house; overhauling outdated IRS technology; and increasing penalties for tax crimes. <p>Treasury expects these measures to bring in an additional \$700 billion in tax revenue over the next decade.</p> <p>In addition, Treasury noted that President Biden is expected to propose a reporting requirement for all virtual currency transactions exceeding \$10,000. This proposal will apply to businesses receiving virtual currency, payment processing services, and cryptoasset exchange accounts.</p> | | announcements and pending legislation. | |



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| <p>The US House of Representatives passes legislation providing statutory authority for insider trading violations</p> <p>On 18 March 2021, the US House of Representatives passed the Insider Trading Prohibition Act (ITPA). Currently, there is no law that specifically prohibits insider trading. Instead, US prosecutors and regulators rely on fraud statutes to pursue insider trading violations. The ITPA is intended to provide statutory authority for and codify existing insider trading law that has been developed by courts.</p> <p>The ITPA would prohibit individuals from trading a security while "aware of material, nonpublic information related to such security" if the individual "knows, or recklessly disregards that such information has been obtained wrongfully, or that such purchase or sale would constitute a wrongful use of such information." It also would prohibit transmitting material, nonpublic information to others who then trade on the information or further share that information. The ITPA contains a provision that protects employers from incurring derivative liability for their employees' wrongdoing.</p> | TBD | The US Senate will vote on the bill; however, a date for the vote has not yet been set. The Senate is expected to pass the bill, at which time it will become law. | Insider Trading Prohibition Act Congress.gov H.R. 2655 - Insider Trading Prohibition Act |



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| <p>President Biden launches new initiative to address cybersecurity risks to the US electric grid and infrastructure</p> <p>On 1 May 2021, Executive Order (EO) 13920 on securing the US bulk-power system, issued on 1 May 2020 under the Trump Administration, expired. Additionally, on 20 April 2021, the Department of Energy (DOE) revoked the January 2021 Prohibition Order on critical defense facilities. (See our previous Horizon Scanner from March 2021 for more details on the EO and Prohibition Order.)</p> <p>However, the Biden Administration has initiated its own electric grid cyber-security program. First, President Biden signed Executive Order 14017 "American's Supply Chains" on 24 February 2021, which initiated the process for US government to assess and strengthen supply chain vulnerabilities. Second, on 20 April 2021, the Administration announced a 100-day plan to address cybersecurity risks to the US electric system. Third, the DOE announced a Request for Information (RFI) on 20 April 2021, which asks stakeholders to submit comments on cybersecurity threats to the US supply chain connected to electric infrastructure, by 7 June 2021.</p> | Ongoing | The Biden Administration is currently evaluating cybersecurity risks to US electric infrastructure and the power grid. It is unclear when regulations, rules, or policies will be developed and implemented. However, interested parties can submit comments responding to DOE's RFI by 7 June 2021. | DOE announcement of 100-Day Plan DOE RFI and FAQs DOE Bulk-Power System EO webpage |
| <p>FinCEN solicited public comment on the implementation of the ultimate beneficial ownership register pursuant to the Corporate Transparency Act</p> <p>The Corporate Transparency Act (which is part of the National Defense Authorization Act for Fiscal Year 2021) requires corporations, limited liability companies, and similar entities to file reports with and keep current information about their beneficial ownership with the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN). These reports must include the full name, date of birth, residential or business address, and information from an identification document or FinCEN identifier number for the beneficial owner(s). FinCEN will maintain this information in a non-public beneficial ownership</p> | 1 January 2022 | The time to provide comments ended on 5 May 2021. The CTA requires FinCEN to promulgate rules related to the beneficial ownership register no later than 1 January 2022. | Beneficial Ownership Reporting Requirements, Advance notice of proposed rulemaking FinCEN proposes and seeks public comment on new AML Corporate |



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| <p>database and can disclose information to financial institutions with the reporting company's consent.</p> <p>On 5 April 2021, FinCEN issued an Advance Notice of Proposed Rulemaking seeking input from the public on implementing the CTA's reporting requirements. Specifically, FinCEN requested comment on, among other issues, how to ensure that the reported information is accurate, how to define key terms and concepts, what security and privacy measures should be implemented to protect reported information and limit its use to authorized purposes, and how the reporting requirement may burden small businesses.</p> <p>For more details regarding the Corporate Transparency Act, as well as the Anti-Money Laundering Act of 2020, please see our Q1 Horizon Scanner issued in March 2021.</p> | | | Transparency Act Rulemaking |



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