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MOFCOM Order No. 4 of 2020 on Provisions on the Unreliable Entity List

Order of the Ministry of Commerce of the People's Republic of China

2020 No. 4

The Provisions on the Unreliable Entity List, approved by the State Council, are hereby promulgated and shall be effective as of the date of the promulgation.

Minister of Commerce

Zhong Shan

September 19, 2020

Provisions on the Unreliable Entity List

Article 1 These Provisions are formulated in accordance with the Foreign Trade Law of the People's Republic of China, the National Security Law of the People's Republic of China and other relevant laws, for the purpose of safeguarding national sovereignty, security and development interests, maintaining fair and free international economic and trade order, protecting the legitimate rights and interests of enterprises, other organizations, and individuals of China.

Article 2 The State shall establish the Unreliable Entity List System, and adopt measures in response to the following actions taken by a foreign entity in international economic, trade and other relevant activities:

(1) endangering national sovereignty, security or development interests of China;

(2) suspending normal transactions with an enterprise, other organization, or individual of China or applying discriminatory measures against an enterprise, other organization, or individual of China, which violates normal market transaction principles and causes serious damage to the legitimate rights and interests of the enterprise, other organization, or individual of China.

As used in these Provisions, the term "foreign entity" refers to an enterprise, other organization, or individual of a foreign country.

Article 3 The Chinese Government pursues an independent foreign policy, adheres to the basic principles of international relations, including mutual respect for sovereignty, non-interference in each other's internal affairs, and equality and mutual benefit, opposes unilateralism and protectionism, resolutely safeguards the core national interests, safeguards the multilateral trading system, and promotes an open world economy.

Article 4 The State shall establish a working mechanism composed of relevant central departments (hereinafter referred to as "the working mechanism") to take charge of organization and implementation of the Unreliable Entity List System. The Office of the working mechanism is located at the competent department of commerce of the State Council.

Article 5 The working mechanism shall, in accordance with its duties and functions or upon suggestions and reports from the relevant parties, decide whether to investigate the actions taken by the relevant foreign entity; if it decides to investigate, an announcement shall be made.

Article 6 When investigating the actions of a foreign entity, the working mechanism may inquire the relevant parties, consult or copy the relevant documents and materials, and take other necessary means. The foreign entity may state or defend its case during the investigation.

The working mechanism may, based on actual circumstances, decide to suspend or terminate the investigation. If the facts on which the decision to suspend the investigation is based have substantially changed, the investigation may be resumed.

Article 7 The working mechanism shall, according to the results of the investigation and by taking into overall consideration the following factors, make a decision on whether to include the relevant foreign entity in the Unreliable Entity List, and make an announcement of the decision:

(1) the degree of danger to national sovereignty, security or development interests of China;

(2) the degree of damage to the legitimate rights and interests of enterprises, other organizations, or individuals of China;

(3) whether being in compliance with internationally accepted economic and trade rules;

(4) other factors that shall be considered.

Article 8 Where the facts about the actions taken by the relevant foreign entity are clear, the working mechanism may, by taking into overall consideration the factors specified in Article 7 of these Provisions, directly make a decision on whether to include the relevant foreign entity in the Unreliable Entity List; if a decision is made to include in the Unreliable Entity List, an announcement shall be made.

Article 9 In the announcement in which the relevant foreign entity is included in the Unreliable Entity List, an alert about the risks of conducting transactions with the said foreign entity may be made. In addition, the time limit for the foreign entity to rectify its actions may also be specified based on actual circumstances.

Article 10 The working mechanism may, based on actual circumstances, decide to take one or several of the following measures (hereinafter referred to as “the measures”) with respect to the foreign entity which is included in the Unreliable Entity List, and make an announcement of the decision:

(1) restricting or prohibiting the foreign entity from engaging in China-related import or export activities;

(2) restricting or prohibiting the foreign entity from investing in China;

(3) restricting or prohibiting the foreign entity’s relevant personnel or means of transportation from entering into China;

(4) restricting or revoking the relevant personnel’s work permit, status of stay or residence in China;

(5) imposing a fine of the corresponding amount according to the severity of the circumstances;

(6) other necessary measures.

The measures provided for in the preceding paragraph shall be implemented according to law by the relevant departments in light of their respective duties and functions, and other units and individuals shall cooperate in the implementation.

Article 11 Where, the time limit for the relevant foreign entity to make rectifications is specified in the announcement of the inclusion of the said foreign entity in the Unreliable Entity List, the measures provided for in Article 10 of these Provisions shall not be implemented within

the time limit. Where the relevant foreign entity fails to make rectifications within the time limit, the measures shall be implemented according to Article 10 of these Provisions.

Article 12 Where, under special circumstances, it is necessary indeed for an enterprise, other organization, or individual of China to conduct transactions with the foreign entity that is restricted or prohibited from engaging in China-related import or export activities, an application shall be submitted to the Office of the working mechanism, then the transactions with the foreign entity in question may be conducted upon approval.

Article 13 The working mechanism may, based on actual circumstances, decide to remove the foreign entity from the Unreliable Entity List. Where the relevant foreign entity rectifies its actions within the time limit specified in the announcement and takes measures to eliminate the consequences of its actions, the working mechanism shall make a decision to remove it from the Unreliable Entity List.

A foreign entity may apply for its removal from the Unreliable Entity List, the working mechanism shall decide whether to remove it based on actual circumstances.

The decision to remove the foreign entity from the Unreliable Entity List shall be announced. Implementation of the measures taken according to Article 10 of these Provisions shall be ceased as of the date of the promulgation of the announcement.

Article 14 These Provisions shall be effective as of the date of the promulgation.

(All information published on this website is authentic in Chinese. English is provided for reference only.)

Approved by: MINISTRY OF COMMERCE, PRC

