

Recent Developments in the CCMC Designations of Xiaomi Corporation and Luokung Technology Corporation

March 15, 2021

In this Debevoise Debrief, we summarize recent developments related to the designations of two Communist Chinese military companies (“CCMCs”): Xiaomi Corporation (“Xiaomi”) and Luokung Technology Corp. (LKCO) (“Luokung”). On Friday, March 12, 2021, a U.S. federal district court [granted](#) Xiaomi’s motion for preliminary injunction, blocking Executive Order 13959’s restrictions on Xiaomi from going into effect. On Sunday, March 14, 2021, the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”) issued guidance clarifying the status of Luokung as a CCMC. Under E.O. 13959, issued by the Trump Administration, U.S. persons generally are restricted from engaging in securities transactions involving publicly traded securities of CCMCs and certain derivative securities.

Xiaomi Corporation. Xiaomi had filed a motion for preliminary injunction on February 17, 2021, which the U.S. District Court for the District of Columbia [granted](#) on Friday, thereby blocking the Executive Order’s restrictions on Xiaomi from going into effect as previously scheduled on March 15, 2021. In granting the injunction, the court determined Xiaomi has a high likelihood of success on its Administrative Procedure Act claim that its designation as a CCMC by the Department of Defense (“the DOD”) was “arbitrary and capricious.”

The court found that (i) the DOD had not adequately explained the basis for Xiaomi’s designation, (ii) Xiaomi’s designation exceeded the DOD’s statutory authority under Section 1237 of the National Defense Authorization Act for Fiscal Year 1999 and (iii) the DOD’s determination was not supported by “substantial evidence.” Further, the court found Xiaomi would, without injunctive relief, suffer irreparable harm, based on Xiaomi’s showing of its severe and irreparable reputational harm and significant and unrecoverable economic losses resulting from its CCMC designation. Finally, the court was skeptical of the government’s invocation of national security interests to argue against the preliminary injunction, noting both the lack of any transfers of technology from Xiaomi to China and the DOD’s lack of use of its CCMC designation authority for nearly 20 years before the last days of the Trump Administration.

Following the court's granting of the preliminary injunction, on March 14, 2021, OFAC issued a new FAQ [880](#), stating that E.O. 13959's prohibitions do not apply to Xiaomi pending further order of the court.

Luokung Technology Corp. On Sunday, OFAC also issued a new FAQ [881](#) regarding Luokung (LKCO). On January 14, 2021, the DOD had designated "Luokong Technology Corp. (LKCO)" as a CCMC, which, given the misspelling of Luokung's company name, generated some uncertainty as to the applicability of E.O. 13959's restrictions.

On March 4, 2021, Luokung filed a complaint in the U.S. District Court for the District of Columbia contesting its designation as a CCMC and the resulting application of restrictions to it under E.O. 13959, followed by a further motion for temporary emergency relief seeking to enjoin the application of E.O. 13959's restrictions to it. Notably, the same federal judge presides over the Luokung case as granted the preliminary injunction to Xiaomi.

On March 9, 2021, the DOD delisted Luokung's mis-spelled name from its list of CCMCs and re-listed Luokung as a CCMC with the correct spelling of the company's name. OFAC's FAQ 881 describes the DOD's action, making clear that, as a result of the de-listing and re-listing of Luokung on March 9, 2021, the effective date of restrictions and divestment date under E.O. 13959 for Luokung are determined using March 9, 2021 as the date of Luokung's designation (not January 14, 2021). Accordingly, the effective date of restrictions under E.O. 13959 for Luokung is May 8, 2021, and the divestment date is March 9, 2022.

* * *

We will continue monitoring the ongoing developments with respect to E.O. 13959. Please do not hesitate to contact us with any questions.



Satish M. Kini
Partner, Washington, D.C.
+1 202 383 8190
smkini@debevoise.com



Carl Micarelli
Counsel, New York
+1 212 909 6813
cmicarelli@debevoise.com



David G. Sewell
Counsel, New York
+1 212 909 6755
dsewell@debevoise.com



Robert T. Dura
Associate, Washington, D.C.
+1 202 383 8247
rdura@debevoise.com



Zila Reyes Acosta-Grimes
Associate, New York
+1 212 909 6513
zracosta@debevoise.com



Jonathan R. Wong
Associate, London
+44 20 7786 9193
jrwong@debevoise.com