



贸易咨询快讯

中国正式建立不可靠实体清单制度



因我不同
成就不凡
始于 1845

2020 年 9 月 19 日，中国商务部公布《不可靠实体清单规定》（商务部令 2020 年第 4 号，以下简称“《规定》”），并自公布之日起施行。《规定》为建立和推进不可靠实体清单管理制度奠定了基础，在中国对外贸易制度完善过程中具有里程碑式的意义。

背景

中国商务部新闻发言人在 2019 年 5 月表示，中国将建立“不可靠实体清单”制度，对不遵守市场规则，背离契约精神，出于非商业目的对中国企业实施封锁或断供、严重损害中国企业正当权益的外国企业组织或个人，将列入不可靠实体清单。在此背景下，经过了一年多的时间，《规定》终于正式公布施行。

《规定》概要

《规定》共计十四条，列明了“不可靠实体清单”制度规制的对象和行为，设置了跨部门的工作机制，界定了“不可靠实体”的确定标准和程序，并明确了对列入清单实体的处理措施。截至目前，“不可靠实体清单”尚未公布。

1. 建立“不可靠实体清单”的法律依据是什么？

根据《规定》第一条，其制定的法律依据是《对外贸易法》、《国家安全法》等有关法律。相比去年 6 月份商务部官员在答新华社记者问时表示《反垄断法》也是立法依据之一，此次正式出台的《规定》第一条并未明确列举《反垄断法》。我们理解，背后的原因可能是在利用《反垄

断法》规制外国实体拒绝交易、差别待遇等行为时，涉及相关市场界定、正当理由认定等具有高度技术性和复杂性的问题。尽管如此，若外国实体的行为同时违反《反垄断法》，依然可以由反垄断执法机构进行查处。

2. “不可靠实体清单”的规制对象包括哪些？

《规定》所规制的对象为外国实体，具体包括外国企业、其他组织或者个人。这一对外国实体的广泛定义，涵盖了所有法律形式的外国主体。

通常来说，外国实体是相对于本国实体而言的，因此原则上《规定》中所称的外国实体不应当包括其在中国设立的关联实体。但是，考虑到《规定》对外国实体可以采取的措施涉及对其在华投资、相关人员入境、相关人员在华工作和居留的限制，不排除《规定》的效果可能波及该外国实体在中国的关联实体。我们期待主管部门未来就《规定》适用的对象出台更详细的解释。

3. “不可靠实体清单”制度针对外国实体的哪些行为？

该制度将针对外国实体在国际经贸以及相关活动中的以下违法行为采取相应措施：

- 危害中国国家主权、安全、发展利益；
- 违反正常的市场交易原则，中断与中国企业、其他组织或者个人的正常交易，或者对中国企业、其他组织或者个人采取歧视性措施，严重损害中国企业、其他组织或者个人合法权益。

4. 哪个政府部门负责“不可靠实体清单”制度的组织实施？

中央国家机关有关部门参加的工作机制（以下简称“工作机制”）负责该项制度的组织实施。工作机制办公室设在国务院商务主管部门（即商务部）。可以合理推测，除商务部外，国家安全部、公安部、海关总署、国家市场监督管理总局、国家移民管理局等相关职能部门均可能会参与这一工作机制。

5. “不可靠实体”的判定流程如何？

工作机制在对外国实体实施调查程序之后，根据调查结果综合考虑决定是否将其列入清单；外国实体违法行为事实清楚的，也可以综合考虑相关因素，不经调查直接作出是否列入清单的决定。无论通过哪种形式决定列入的，均应当予以公告。

调查程序可由工作机制依职权或者根据有关方面的建议、举报启动；决定进行调查的，予以公告。调查方式包括询问有关当事人、查阅或者复制相关文件、资料，以及其他必要的方式。调查期间，有关外国实体可以进行陈述、申辩。

工作机制可以根据实际情况决定中止或者终止调查；中止调查决定所依据的事实发生重大变化的，可以恢复调查。

将有关外国实体列入不可靠实体清单的公告中可以提示与该外国实体进行交易的风险，并可以根据实际情况，明确该外国实体改正其行为的期限。

6. 判定是否将外国实体列入“不可靠实体清单”的主要因素是什么？

工作机制将综合考虑以下因素，作出是否将有关外国实体列入“不可靠实体清单”的决定：

- 对中国国家主权、安全、发展利益的危害程度；
- 对中国企业、其他组织或者个人合法权益的损害程度；
- 是否符合国际通行经贸规则；
- 其他应当考虑的因素。

7. 中国对列入清单的外国实体会采取哪些措施？

对列入“不可靠实体清单”的外国实体，工作机制根据实际情况，可以决定采取下列一项或者多项措施，并予以公告：

- 限制或者禁止其从事与中国有关的进出口活动；
- 限制或者禁止其在中国境内投资；
- 限制或者禁止其相关人员、交通运输工具等入境；
- 限制或者取消其相关人员在中国境内工作许可、停留或者居留资格；
- 根据情节轻重给予相应数额的罚款；
- 其他必要的措施。

值得注意的是，上述处理措施可能不会立即施加于被列入清单的外国实体。若有关外国实体列入“不可靠实体清单”的公告中明确该外国实体改正期限的，在期限内将不会对其采取上述处理措施；此时只有在该外国实体逾期不改正其行为的，才会依照规定对其采取上述处理措施。

《规定》还设置了个案处理机制：若有关外国实体因被列入清单而被限制或者禁止从事与中国有关的进出口活动，而中国企业、其他组织或者个人在特殊情况下确需与该外国实体进行交易的，在向工作机制办公室提出申请后，经同意可以与该外国实体进行相应的交易。

8. 若被列入“不可靠实体清单”，如何移出？

根据《规定》，在以下三种情形下，被列入清单的外国实体可以被移出清单：一是相关外国实体列入清单所基于的事实发生重大变化的，工作机制可以决定将其移出；二是有关外国实体在公告明确的改正期限内改正其行为并采取措施消除行为后果的，工作机制应当作出决定将其移出；三是有关外国实体自行申请将其移出清单的，由工作机制根据实际情况决定是否将其移出。

观察与评论

在当前的国际经贸形势下，包括关税及非关税（贸易管制与制裁）等贸易措施层出不穷。中国也在加强相关的制度完善，例如《中华人民共和国出口管制法》立法，近期对《中国禁止出口限制出口技术目录》的调整等（参见相关的[德勤贸易咨询快讯](#)）。

“不可靠实体清单”制度的建立，旨在欢迎和保护外资的同时，维护中国企业、其他组织和个人合法权益。该制度的实施将给从事涉华业务的外国实体带来新的合规要求。外国实体对其国际经贸及相关活动进行重大商业决策和执行决策时都需要更加审慎。

从《规定》来看，中国的“不可靠实体清单”制度较为注重程序保障和对外国实体合法权益的保护，具体体现为：任何调查决定均应公告；调查期间，有关外国实体可以进行陈述、申辩；在被列入清单公告中设置

的改正期限内，外国实体不会被立即采取处理措施；被列入清单的外国实体可以积极采取措施并消除行为后果，争取被移出清单。

虽然《规定》对外国实体在何种情形下会被列入清单有较为明确的综合判断因素，并规定了列入和移出清单的程序，但业界可能还期待在具体执行层面有更清晰的指引。例如，如何解读“违反正常的市场交易原则，中断与中国企业、其他组织或者个人的正常交易，或者对中国企业、其他组织或者个人采取歧视性措施”？对清单内外国实体在中国境内投资的限制或禁止措施对已经发生的投资活动是否会产生影响？对清单内外国实体相关人员在中国境内工作许可和居留资格的限制是否适用于该外国实体境内关联实体的人员？如果清单内外国实体被限制或禁止进出口活动，对已存放于海关特殊监管区域内的货物会有何影响？清单内外国实体的罚款金额区间为何？建议相关企业持续关注此类事项的政策进展。

基于德勤间接税、海关与全球贸易咨询团队在全球贸易合规领域的专业实践，及其与勤理律师事务所在该领域的密切协作，我们能够为希望了解该新制度对其潜在影响的企业提供以下专业协助，其中涉及法律服务部分由勤理律师事务所提供：

- 针对业务模式的制裁风险进行法律评估和检查，协助建立相关合规体系；
- 就潜在的政府调查协助制定并执行应对策略；
- 针对因为贸易合规原因终止在华业务的决策与执行提供法律意见和协助；
- 协助审视企业贸易合规管理策略，评估不同的业务场景，定制合规管理策略与控制点，完善贸易合规管理体系；
- 向管理层及员工提供贸易合规相关的培训或相关洞见；
- 协助根据监管动向对贸易流程以及自动化方案进行复核与更新。

我们将持续关注法规变化与实务进展，并向您提供相关资讯的更新与评述。

作者：

张晓洁

德勤 合伙人

+86 21 6141 1113

dozhang@deloitte.com.cn

贾维恒

勤理* 合伙人

+86 21 2316 6903

weihengjia@qinlilegal.com

赵哲

德勤 总监

+86 411 8371 2821

zhedlzhao@deloitte.com.cn

叶怀晴

勤理* 律师

+86 21 6141 1389

suye@qinlilegal.com

谢宜君

德勤 助理经理

+86 21 2316 6753

syxie@deloitte.com.cn

*Shanghai Qin Li Law Firm（上海勤理律师事务所）is a firm associated with Deloitte Legal.

如您有任何问题，请联系德勤团队：

间接税服务

全国领导人

上海

李晓晨

合伙人

+86 21 6141 1099

lilyxcli@deloitte.com.cn

海关与全球贸易服务

全国与华北区领导人

北京

周翊

合伙人

+86 10 8520 7512

jchow@deloitte.com.cn

华东区

上海

高立群

合伙人

+86 21 6141 1053

ligao@deloitte.com.cn

华南区

广州

张少玲

合伙人

+86 20 2831 1212

jazhang@deloitte.com.cn

华西区

重庆

汤卫东

合伙人

+86 23 8823 1208

ftang@deloitte.com.cn

上海勤理律师事务所

叶伟文

全国法律服务主管合伙人
资深全球顾问

patyipqinli@qinlilegal.com

葛向阳

全国法律服务协同主管合伙人

xyge@qinlilegal.com

陈朕

codychen@qinlilegal.com

费亚力

alexfischer@qinlilegal.com

贾维恒

weihengjia@qinlilegal.com

陆易

cllu@qinlilegal.com

马骋

roma@qinlilegal.com

宋姣琳

jolsong@qinlilegal.com

韩楨

zhenhan@qinlilegal.com

刘萍

liuping@qinlilegal.com

林泽军

jasonlinzi@qinlilegal.com

凌娜

alinaling@qinlilegal.com

联系我们



Deloitte (“德勤”)泛指一家或多家德勤有限公司, 及其全球成员所网络和它们的关联机构。德勤有限公司(又称“德勤全球”)及其每一家成员所和它们的关联机构均为具有独立法律地位的法律实体。德勤有限公司并不向客户提供服务。请参阅 www.deloitte.com/cn/about 了解更多信息。

德勤亚太有限公司(即一家担保有限公司)是德勤有限公司的成员所。德勤亚太有限公司的每一家成员及其关联机构均为具有独立法律地位的法律实体, 在亚太地区超过 100 座城市提供专业服务, 包括奥克兰、曼谷、北京、河内、香港、雅加达、吉隆坡、马尼拉、墨尔本、大阪、上海、新加坡、悉尼、台北和东京。

隐私

感谢您对德勤中国服务的关注。德勤中国希望可以继续使用您的个人资料(特别是姓名及联系信息), 以向您发送市场和政策最新动态, 以及由德勤中国举办、赞助或宣传之研讨会及其他活动的邀请函。如您日后不希望收到由德勤中国发出的信息, 请回复电邮并在邮件主题栏中填上“Unsubscribe”。

如欲更新您的个人资料, 请[点击](#)此处。

德勤于 1917 年在上海设立办事处, 德勤品牌由此进入中国。如今, 德勤中国为中国本地和在华的跨国及高增长企业客户提供全面的审计及鉴证、管理咨询、财务咨询、风险咨询和税务服务。德勤中国持续致力为中国会计准则、税务制度及专业人才培养作出重要贡献。德勤中国是一家中国本土成立的专业服务机构, 由德勤中国的合伙人所拥有。敬请访问 www2.deloitte.com/cn/zh/social-media, 通过我们的社交媒体平台, 了解德勤在中国市场成就不凡的更多信息。

本通信中所含内容乃一般性信息, 任何德勤有限公司、其成员所或它们的关联机构(统称为“德勤网络”)并不因此构成提供任何专业建议或服务。在作出任何可能影响您的财务或业务的决策或采取任何相关行动前, 您应咨询合资格的专业顾问。任何德勤网络内的机构均不对任何方面因使用本通信而导致的任何损失承担责任。

© 2020 德勤·关黄陈方会计师事务所(香港)、德勤·关黄陈方会计师事务所(澳门)、德勤华永会计师事务所(特殊普通合伙)(中国大陆)版权所有 保留一切权利。

如您日后不希望收到关于该话题的信息, 请回复电邮并在邮件主题栏中填上“取消订阅”。



Trade Advisory Newsflash

Ministry of Commerce announces "unreliable entity list"



On 19 September 2020, China's Ministry of Commerce (MOFCOM) announced the Provisions on the Unreliable Entity List (Provisions) (MOFCOM Order No. 4 of 2020), which came into effect on the same date of the announcement. The Provisions set forth a system to establish an "unreliable entity list" (UEL) of foreign entities that could be subject to various sanctions such as being restricted or banned from investing in China or trading with Chinese parties.

The Provisions cite the Foreign Trade Law, the National Security Law, and other relevant laws as the legal basis for the UEL system. Unlike the MOFCOM's press release in June 2019, the Anti-Monopoly Law is not expressly cited in the Provisions, which is possibly due to the technical complexity of, for example, relevant market definitions and other specifications under such law. Nevertheless, if a foreign entity violates the Anti-Monopoly Law, the government still has the right to take certain actions against the entity.

Target entities

The UEL system targets foreign entities that have taken the following actions in international economic, trade, and other relevant activities:

- Endangering the national sovereignty, security, or development interests of China; or

- Suspending normal business transactions with, or applying discriminatory measures against, Chinese enterprises, other organizations, or individuals, in violation of normal market transaction principles that causes serious damage to the legitimate rights and interests of the Chinese party.

The term "foreign entity" refers to an enterprise, other organization, or individual of a foreign country.

A foreign entity's Chinese affiliates do not appear to be covered by the UEL system. However, if a foreign entity is named on the UEL, certain sanctions (e.g., investment restrictions, travel bans for certain personnel) imposed on the foreign entity could possibly affect the operations of the foreign entity's Chinese affiliates.

Working procedure

The government will establish a cross-department working group to take charge of the UEL system implementation. The group's office will be located at the MOFCOM and is very likely to be comprised of officials from the MOFCOM as well as other departments such as the Ministry of State Security, Ministry of Public Security, General Administration of Customs, State Administration for Market Regulation, and National Immigration Administration.

The working group generally will take the following steps to name a foreign entity on the UEL:

- *Investigation:* The working group may initiate an investigation of a foreign entity before they decide to name the entity on the UEL, unless the group believes the facts are clear enough to proceed without an investigation. The working group must make an announcement if an investigation is initiated. During the investigation, the working group may meet with relevant parties, review or copy relevant materials, or take other necessary actions; the foreign entity at issue may state or defend its case. The working group may suspend or terminate the investigation depending on the circumstances. A suspended investigation may be resumed if the relevant facts have changed significantly.
- *Decision making:* After the investigation is concluded (or where an investigation is not necessary), the working group will decide whether to name the foreign entity on the UEL based on various considerations including:
 - The degree of danger to national sovereignty, security, or development interests of China;
 - The degree of damage to the legitimate rights and interests of Chinese enterprises, other organizations, or individuals;
 - Whether the foreign entity is in compliance with internationally accepted economic and trade rules; and
 - Other factors that shall be taken into consideration.

If the working group decides to include a foreign entity on the UEL, the group also must decide what sanctions should be taken against the entity, whether to grant a period of time for the

entity to make rectifications prior to the sanctions being imposed, and the length of such rectification period.

- *Announcement*: If a foreign entity is named on the UEL, the working group must make an announcement and provide the entity's information, what sanctions will be imposed, as well as the rectification period.

Sanction measures

One or more of the following measures may be taken against a foreign entity on the UEL:

- Restriction or prohibition from engaging in China-related import or export activities;
- Restriction or prohibition from investing in China;
- Restriction or prohibition on the foreign entity's relevant personnel or transport vehicles/vessels/aircraft from entering China;
- Restriction or revocation of the relevant personnel's work permit, stay, or residence qualification in China;
- Imposition of fines; and
- Other necessary measures.

Where a rectification period is granted, the sanction measures will not be implemented until the rectification period expires and the foreign entity has failed to remedy its actions during the period.

Where a foreign entity on the UEL is prohibited from engaging in import or export activities with Chinese parties, exceptional cases still may be granted depending on the circumstances, subject to a request by the relevant Chinese party and the working group's approval.

Removal from UEL

The working group may remove a foreign entity from the UEL if:

- The relevant facts have significantly changed;
- The entity has remedied its actions during the rectification period and took measures to eliminate the consequences thereof; or
- The entity has applied for removal and the working group approved of such removal.

Comments

China is enhancing its relevant legal and regulatory framework including the introduction of the UEL system, recent updates to the catalogue of technologies prohibited or restricted from being exported, and development of the draft Export Control Law. The UEL system will bring new compliance requirements to foreign entities engaged in China-related business. Foreign entities need to be more cautious when making major commercial decisions and implementing their business plans.

Certain issues are still not clear, and more guidance is expected on the following:

- Activities that are considered as "suspending normal business transactions with or applying discriminatory measures against" a Chinese party;
- The impact on a foreign entity's existing investments if such entity is put on the UEL;
- The effect of restrictions or revocations on work permit, stay, or residence qualifications in China with regard to the foreign entity's Chinese affiliates; and
- The impact on a foreign entity's goods that have already been imported into China and under customs' supervision if such foreign entity is restricted or prohibited from import and export activities with Chinese parties.

Affected businesses are advised to continuously monitor the regulatory and practice development in respect of the UEL system.

Authors:

Dolly Zhang

Partner
Deloitte China
+86 21 6141 1113
dozhang@deloitte.com.cn

Wei Heng Jia

Partner
Qin Li*
+86 21 2316 6903
weihengjia@qinlilegal.com

Raymond Zhao

Director
Deloitte China
+86 411 8371 2821
zhedlzhao@deloitte.com.cn

Sunny Ye

Senior Associate
Qin Li*
+86 21 6141 1389
suye@qinlilegal.com

Sylvia Xie

Assistant Manager
Deloitte China
+86 21 2316 6753
syxie@deloitte.com.cn

*Shanghai Qin Li Law Firm is a firm associated with Deloitte Legal.

If you have any questions, please contact the following professionals:

Indirect Tax

National Leader

Shanghai

Lily Li

Partner
+86 21 6141 1099
lilyxcli@deloitte.com.cn

Customs and Global Trade

National Leader / Northern China

Beijing

Yi Zhou

Partner
+86 10 8520 7512
jchow@deloitte.com.cn

Eastern China

Shanghai

Li Qun Gao

Partner
+86 21 6141 1053
ligao@deloitte.com.cn

Southern China

Guangzhou

Janet Zhang

Partner
+86 20 2831 1212
jazhang@deloitte.com.cn

Western China
Chongqing
Frank Tang
Partner
+86 23 8823 1208
ftang@deloitte.com.cn

Shanghai Qin Li Law Firm
National Leader
Senior International Advisor
Patrick Yip
patyipqinli@qinlilegal.com

Deputy National Leader
Xiangyang Ge
xyge@qinlilegal.com

Cody Chen
codychen@qinlilegal.com

Alexander Fischer
alexfischer@qinlilegal.com

Wei Heng Jia
weihengjia@qinlilegal.com

Clare Lu
cllu@qinlilegal.com

Ron Ma
roma@qinlilegal.com

Jolin Song
jolsong@qinlilegal.com

Zhen Han
zhenhan@qinlilegal.com

Ping Liu
liuping@qinlilegal.com

Jason Lin
jasonlinzj@qinlilegal.com

Alina Ling
alinaling@qinlilegal.com

Get in touch



Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities. DTTL (also referred to as “Deloitte Global”) and each of its member firms and their affiliated entities are legally separate and independent entities. DTTL does not provide services to clients. Please see www.deloitte.com/about to learn more.

Deloitte Asia Pacific Limited is a company limited by guarantee and a member firm of DTTL. Members of Deloitte Asia Pacific Limited and their related entities, each of which are separate and independent legal entities, provide services from more than 100 cities across the region, including Auckland, Bangkok, Beijing, Hanoi, Hong Kong, Jakarta, Kuala Lumpur, Manila, Melbourne, Osaka, Shanghai, Singapore, Sydney, Taipei and Tokyo.

Privacy

Thank you for your interest in Deloitte China services. Deloitte China would like to continue to use your personal information (in particular name and contact details) for the purpose of sending you marketing and regulatory updates, invitations to seminars and other events organized, sponsored or promoted by Deloitte China. If you do not wish to receive further communications from Deloitte China, please send a return email to the sender with the word “Unsubscribe” in the subject line.

If you would like to update your personal information, please click [here](#).

The Deloitte brand entered the China market in 1917 with the opening of an office in Shanghai. Today, Deloitte China delivers a comprehensive range of audit & assurance, consulting, financial advisory, risk advisory and tax services to local, multinational and growth enterprise clients in China. Deloitte China has also made—and continues to make—substantial contributions to the development of China’s accounting standards, taxation system and professional expertise. Deloitte China is a locally incorporated professional services organization, owned by its partners in China. To learn more about how Deloitte makes an Impact that Matters in China, please connect with our social media platforms at www2.deloitte.com/cn/en/social-media.

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited, its member firms, or their related entities (collectively the “Deloitte Network”) is by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser. No entity in the Deloitte Network shall be responsible for any loss whatsoever

sustained by any person who relies on this communication.

© 2020 Deloitte Touche Tohmatsu in Hong Kong, Deloitte Touche Tohmatsu in Macau, and Deloitte Touche Tohmatsu Certified Public Accountants LLP in the Chinese Mainland. All rights reserved.

To no longer receive emails about this topic please send a return email to the sender with the word “Unsubscribe” in the subject line.