

CLIENT ALERT

The App Store Cold War Expands: New Executive Order Prohibits U.S. Transactions with the Owners and Developers of Chinese Connected Software Applications

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In the final weeks of the Trump administration, the president has again targeted Chinese platforms for sanctions by issuing an Executive Order on January 5, 2021, "[Addressing the Threat Posed by Applications and Other Software Developed or Controlled by Chinese Companies](#)" (the "EO"). The EO will prohibit certain transactions, beginning February 19, 2021, involving the following Chinese connected software applications: Alipay, CamScanner, QQ Wallet, SHAREit, Tencent QQ, VMate, WeChat Pay, and WPS Office (the "Eight Chinese Connected Applications"). The particular transactions that will be prohibited and the specific persons to which the restrictions shall apply, however, have yet to be announced.

The EO finds that "a number of Chinese connected software applications automatically capture vast swaths of information from millions of users in the United States, including sensitive personally identifiable information and private information," which can be used to advance China's economic and national security agendas. The EO declares that "aggressive action" must be taken to protect U.S. national security.

Specifically, the EO prohibits U.S. persons from engaging in any transaction with persons that develop or control the Eight Chinese Connected Applications, or with their subsidiaries, as and when those transactions and persons are identified by

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the Secretary of Commerce (the “Secretary”). Notably, the EO does not identify the persons that will be the subject of the prohibitions in connection with the named applications nor does it identify the type of transactions that will be prohibited. Instead, the Secretary has been provided a 45-day period to identify the relevant persons and transactions, after which the prohibitions of the EO will go into effect (*i.e.*, on February 19, 2021, as noted above). Complicating implementation further, the EO states that the Secretary shall identify the persons and transactions subject to the prohibitions *no earlier* than 45 days after its issuance, ostensibly on the same day the prohibitions go into effect, February 19. This means that implementation of the EO will be left to the incoming Biden administration, raising questions as to how the EO will ultimately be implemented. In a [press statement](#), U.S. Commerce Secretary Wilbur Ross advised that he has “directed [his] Department to begin implementing the EO’s directives, including identifying prohibited transactions related to certain Chinese connected software applications.”

The EO follows on the heels of the Trump administration’s issuance of two prior EOs related to Chinese-controlled apps, EOs [13942](#) and [13943](#) (August 6, 2020), which mandated a prohibition on certain transactions with Chinese social media platforms TikTok and WeChat, respectively, as described in our prior [client alert](#). To date, Commerce Department implementation of the TikTok- and WeChat-related EOs has been halted by federal courts that have issued injunctions preventing the prohibitions from going into effect. It is likely that the new EO also will be the subject of similar legal challenges, depending on the persons identified and the types of transactions prohibited, either by the Trump or Biden administrations. In the meantime, U.S. persons should plan for the EO prohibitions to go into effect on February 19, 2021 and prepare for compliance. We will continue to monitor implementation of these restrictions and provide further updates.

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