88R10369 RDS-D

By:  Creighton S.B. No. 2405

A BILL TO BE ENTITLED

AN ACT

relating to state contracts with Chinese companies and investments in Chinese companies and certain companies doing business with China; authorizing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 2270.0001, Government Code, is amended by adding Subdivision (1-a) and amending Subdivision (9) to read as follows:

(1-a)  "Chinese company" means a company that is headquartered in China, regardless of whether:

(A)  the company's or its parent company's securities are publicly traded; or

(B)  the company or its parent company is listed as a Chinese company on a public stock exchange.

(9)  "Scrutinized company" means:

(A)  a company that:

(i)  engages in scrutinized business operations described by Section 2270.0052; or

(ii)  has been complicit in the Darfur genocide during any preceding 20-month period;

(B)  a company that engages in scrutinized business operations described by Section 2270.0102; [~~and~~]

(C)  a company that engages in scrutinized business operations described by Section 2270.0152; and

(D)  a company that engages in scrutinized business operations described by Section 2270.0162 or that is a Chinese company.

SECTION 2.  Subchapter A, Chapter 2270, Government Code, is amended by adding Section 2270.00015 to read as follows:

Sec. 2270.00015.  APPLICABILITY. (a) In this section:

(1)  "Institution of higher education" has the meaning assigned by Section 61.003, Education Code.

(2)  "Trust company" means the Texas Treasury Safekeeping Trust Company.

(b)  This subchapter applies to an institution of higher education and the trust company in the same manner as this subchapter applies to an investing entity.

(c)  Subchapter E, except Section 2270.0205, applies to an institution of higher education and the trust company in the same manner that the subchapter applies to an investing entity, but only to the extent the institution of higher education or trust company owns direct or indirect holdings of a company described by Section 2270.0001(9)(D).

SECTION 3.  Section 2270.0002, Government Code, is amended to read as follows:

Sec. 2270.0002.  EXCEPTION. Notwithstanding any other law, a company that the United States government affirmatively declares to be excluded from its federal sanctions regime relating to Sudan, its federal sanctions regime relating to Iran, [~~or~~] any federal sanctions regime relating to a designated foreign terrorist organization, or its federal sanctions regime relating to China is not subject to divestment or investment prohibition under this chapter.

SECTION 4.  Chapter 2270, Government Code, is amended by adding Subchapter D-1 to read as follows:

SUBCHAPTER D-1. GENERAL PROVISIONS RELATING TO INVESTMENTS IN CHINA

Sec. 2270.0161.  DEFINITIONS. In this subchapter:

(1)  "Business operations" means engaging in commerce in any form in China, including by acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2)  "Military equipment" means weapons, arms, military supplies, and equipment that readily may be used for military purposes, including radar systems and military-grade transport vehicles.

Sec. 2270.0162.  SCRUTINIZED BUSINESS OPERATIONS IN CHINA. A company engages in scrutinized business operations in China if:

(1)  the company has business operations that involve contracts with or providing supplies or services to the government of China, a company in which the government of China has any direct or indirect equity share, a consortium or project commissioned by the government of China, or a company involved in a consortium or project commissioned by the government of China; or

(2)  the company supplies military equipment to China.

SECTION 5.  Sections 2270.0201(a) and (b), Government Code, are amended to read as follows:

(a)  The comptroller shall prepare and maintain a list of all scrutinized companies. The list must be categorized according to:

(1)  companies that are scrutinized companies under Section 2270.0001(9)(A);

(2)  companies that are scrutinized companies under Section 2270.0001(9)(B); [~~and~~]

(3)  companies that are scrutinized companies under Section 2270.0001(9)(C); and

(4)  companies that are scrutinized companies under Section 2270.0001(9)(D).

(b)  In maintaining the list of scrutinized companies under Subsection (a), the comptroller may review and rely, as appropriate in the comptroller's judgment, on publicly available information regarding companies with business operations in Sudan, in Iran, [~~or~~] with designated foreign terrorist organizations, or in China, as applicable, including information provided by the state, nonprofit organizations, research firms, international organizations, and governmental entities.

SECTION 6.  Section 2270.0203, Government Code, is amended to read as follows:

Sec. 2270.0203.  NOTICE TO LISTED COMPANY ENGAGED IN INACTIVE BUSINESS OPERATIONS. For each listed company identified under Section 2270.0202 that is engaged in only inactive scrutinized business operations, the investing entity shall send a written notice informing the company of this chapter and encouraging the company to continue to refrain from initiating active business operations in Sudan, in Iran, [~~and~~] with designated foreign terrorist organizations, and in China until it is able to avoid being considered a listed company. The investing entity shall continue the correspondence as the entity considers necessary, but is not required to initiate correspondence more often than semiannually.

SECTION 7.  Section 2270.0204(b), Government Code, is amended to read as follows:

(b)  The notice shall offer the company the opportunity to clarify its Sudan-related, Iran-related, [~~or~~] designated foreign terrorist organization-related, or China-related activities, as applicable, and shall encourage the company, not later than the 90th day after the date the company receives notice under this section, to either cease all scrutinized business operations as described by Sections 2270.0052, 2270.0102, [~~and~~] 2270.0152, and 2270.0162, or convert such operations to inactive business operations in order to avoid qualifying for divestment by investing entities.

SECTION 8.  Subtitle F, Title 10, Government Code, is amended by adding Chapter 2279 to read as follows:

CHAPTER 2279. PROHIBITION ON CONTRACTS WITH CHINESE COMPANIES

Sec. 2279.001.  DEFINITIONS. In this chapter:

(1)  "Chinese company" means a company that is headquartered in China, regardless of whether:

(A)  the company's or its parent company's securities are publicly traded; or

(B)  the company or its parent company is listed as a Chinese company on a public stock exchange.

(2)  "Company" means a sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company, including a wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of those entities or business associations, that exists to make a profit.

(3)  "State agency" has the meaning assigned by Section 2151.002.

Sec. 2279.002.  PROVISION REQUIRED IN CERTAIN CONTRACTS. A state agency may not enter into a contract with a vendor for goods or services unless the contract contains a written verification from the vendor that it is not a Chinese company.

Sec. 2279.003.  FALSE VERIFICATION; PENALTIES. (a) If a state agency determines that a vendor holding a contract with the agency was ineligible to have the contract awarded under Section 2279.002 because the vendor's written verification was false, the state agency shall immediately terminate the contract without further obligation to the vendor.

(b)  A vendor described by Subsection (a):

(1)  is barred from responding to a solicitation for or being awarded a contract for goods or services by any state agency; and

(2)  is liable to this state for a civil penalty of $10,000.

(c)  The attorney general may bring an action to recover a civil penalty imposed under Subsection (b)(2). The attorney general may recover reasonable attorney's fees and court costs in bringing an action under this subsection.

SECTION 9. (a) As soon as practicable after the effective date of this Act, the comptroller of public accounts shall review all contracts entered into under the comptroller's purchasing authority and identify any contracts entered into between this state and a Chinese company, as defined by Section 2270.0001, Government Code, as amended by this Act. The comptroller of public accounts shall prepare a list of all Chinese companies that are a party to a contract identified under this section.

(b)  Not later than September 1, 2024, the comptroller of public accounts shall provide the list prepared under Subsection (a) of this section to the governor, the lieutenant governor, the speaker of the house of representatives, and each member of the legislature.

SECTION 10.  Not later than the 180th day after the effective date of this Act, the comptroller of public accounts shall include the companies described by Section 2270.0201(a)(4), Government Code, as added by this Act, on the list under Section 2270.0201(a), Government Code.

SECTION 11.  Section 2279.002, Government Code, as added by this Act, applies only to a contract entered into on or after the effective date of this Act. A contract entered into before that date is governed by the law in effect on the date the contract was entered into, and the former law is continued in effect for that purpose.

SECTION 12.  This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2023.