

By: Creighton

S.B. No. 2405

A BILL TO BE ENTITLED

1 AN ACT
2 relating to state contracts with Chinese companies and investments
3 in Chinese companies and certain companies doing business with
4 China; authorizing a civil penalty.

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

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

9 (1-a) "Chinese company" means a company that is
10 headquartered in China, regardless of whether:

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

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

15 (9) "Scrutinized company" means:

16 (A) a company that:

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

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

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

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

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

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

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

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

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

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

14 (c) Subchapter E, except Section 2270.0205, applies to an
15 institution of higher education and the trust company in the same
16 manner that the subchapter applies to an investing entity, but only
17 to the extent the institution of higher education or trust company
18 owns direct or indirect holdings of a company described by Section
19 2270.0001(9)(D).

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

22 Sec. 2270.0002. EXCEPTION. Notwithstanding any other law,
23 a company that the United States government affirmatively declares
24 to be excluded from its federal sanctions regime relating to Sudan,
25 its federal sanctions regime relating to Iran, [~~or~~] any federal
26 sanctions regime relating to a designated foreign terrorist
27 organization, or its federal sanctions regime relating to China is

1 not subject to divestment or investment prohibition under this
2 chapter.

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

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

6 Sec. 2270.0161. DEFINITIONS. In this subchapter:

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

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

17 Sec. 2270.0162. SCRUTINIZED BUSINESS OPERATIONS IN CHINA.

18 A company engages in scrutinized business operations in China if:

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

25 (2) the company supplies military equipment to China.

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

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

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

5 (2) companies that are scrutinized companies under
6 Section 2270.0001(9)(B); ~~and~~

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

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

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

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

21 Sec. 2270.0203. NOTICE TO LISTED COMPANY ENGAGED IN
22 INACTIVE BUSINESS OPERATIONS. For each listed company identified
23 under Section 2270.0202 that is engaged in only inactive
24 scrutinized business operations, the investing entity shall send a
25 written notice informing the company of this chapter and
26 encouraging the company to continue to refrain from initiating
27 active business operations in Sudan, in Iran, ~~and~~ with designated

1 foreign terrorist organizations, and in China until it is able to
2 avoid being considered a listed company. The investing entity
3 shall continue the correspondence as the entity considers
4 necessary, but is not required to initiate correspondence more
5 often than semiannually.

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

8 (b) The notice shall offer the company the opportunity to
9 clarify its Sudan-related, Iran-related, [~~or~~] designated foreign
10 terrorist organization-related, or China-related activities, as
11 applicable, and shall encourage the company, not later than the
12 90th day after the date the company receives notice under this
13 section, to either cease all scrutinized business operations as
14 described by Sections [2270.0052](#), [2270.0102](#), [~~and~~] [2270.0152](#), and
15 [2270.0162](#), or convert such operations to inactive business
16 operations in order to avoid qualifying for divestment by investing
17 entities.

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

20 CHAPTER 2279. PROHIBITION ON CONTRACTS WITH CHINESE COMPANIES

21 Sec. 2279.001. DEFINITIONS. In this chapter:

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

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

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

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

7 (3) "State agency" has the meaning assigned by Section
8 [2151.002](#).

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

13 Sec. 2279.003. FALSE VERIFICATION; PENALTIES. (a) If a
14 state agency determines that a vendor holding a contract with the
15 agency was ineligible to have the contract awarded under Section
16 2279.002 because the vendor's written verification was false, the
17 state agency shall immediately terminate the contract without
18 further obligation to the vendor.

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

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

23 (2) is liable to this state for a civil penalty of
24 \$10,000.

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

1 bringing an action under this subsection.

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

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

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

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

26 SECTION 12. This Act takes effect immediately if it
27 receives a vote of two-thirds of all the members elected to each

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1 house, as provided by Section 39, Article III, Texas Constitution.
2 If this Act does not receive the vote necessary for immediate
3 effect, this Act takes effect September 1, 2023.