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Political Law

Compliance and Investigations Update

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Alibaba Wins Injunction Against DOW's CMC Lobbying Ban, Which Otherwise Remains Enforceable Against Contractors for Now

As discussed in prior mailings, the Department of War (DOW)[1] is prohibited under 10 U.S.C. § 4663 from entering into a contract with a company, or with its parent or subsidiaries, if that company is party to a contract with a "covered lobbyist" for an entity that DOW has identified as a Chinese military company (CMC) on the Section 1260H list.

On October 26, 2026, the U.S. District Court for the Northern District of California preliminarily enjoined DOW from enforcing that prohibition against a company, or its parent or subsidiaries, if the company is party to a contract with a covered lobbyist representing Alibaba Group Holding Limited, which is listed as a CMC on the Section 1260H list, or its U.S. subsidiary, Alibaba Group Inc. The court had previously stayed enforcement of the prohibition in this manner while it considered Alibaba's motion for a preliminary injunction.

Alibaba challenged the statute on First Amendment grounds, both as applied to Alibaba and as facially overbroad. The court granted preliminary relief on Alibaba's as-applied challenge, holding that Alibaba is likely to succeed on its claim that, although the law does not directly violate its right to speak with and petition the government, it effectively does so. The court reasoned that the law has such effect because it impairs Alibaba's ability to retain outside lobbyists to advocate on its behalf, as those lobbyists would have to forgo DOW contractor clients if they represented Alibaba. The court, however, did not grant preliminary relief on the facial challenge, finding that there was insufficient evidence at this stage to show that the statute is unconstitutionally overbroad.

Importantly, the court's ruling does not prevent DOW from enforcing the prohibition against companies that contract with covered lobbyists for other CMCs, or against those companies' parents and subsidiaries. Accordingly, this injunction should not alter DOW contractors' approach to compliance with the prohibition, except that, during the pendency of the injunction, DOW contractors may contract with lobbyists representing Alibaba. Litigation remains ongoing, however, and we will continue to monitor developments, as it remains possible, in light of the facial challenge, that the statute could ultimately be struck down as unconstitutional.

Please contact us with any questions.

[1] Although President Donald Trump issued an executive order renaming the Department of Defense the Department of War, Congress has yet to pass legislation formalizing the change.

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