

118TH CONGRESS
1ST SESSION

S. 151

To amend the Securities Exchange Act of 1934 to address corrupt practices of the Government of the People’s Republic of China, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 30, 2023

Mr. RUBIO introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Securities Exchange Act of 1934 to address corrupt practices of the Government of the People’s Republic of China, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Countering Corporate
5 Corruption in China Act of 2023”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) In section 1 of the National Security Study
9 Memorandum issued on June 3, 2021 (relating to
10 establishing the fight against corruption as a core

1 United States national security interest), President
2 Joseph R. Biden, Jr., established countering corrup-
3 tion as a core United States national security inter-
4 est.

5 (2) The practices of the Chinese Communist
6 Party, the Government of the People’s Republic of
7 China, and instrumentalities of the Government of
8 the People’s Republic of China pose a unique chal-
9 lenge to the enforcement of section 30A of the Secu-
10 rities Exchange Act of 1934 (15 U.S.C. 78dd–1)
11 and sections 104 and 104A of the Foreign Corrupt
12 Practices Act of 1977 (15 U.S.C. 78dd–2, 78dd–3)
13 (referred to collectively in this section as the “cor-
14 porate anti-corruption laws”).

15 (3) The Chinese Communist Party, the Govern-
16 ment of the People’s Republic of China, and instru-
17 mentalities of the Government of the People’s Re-
18 public of China routinely frustrate the enforcement
19 of the corporate anti-corruption laws by leveraging
20 access to the markets of the People’s Republic of
21 China to cause companies that are subject to the
22 corporate anti-corruption laws to improperly provide
23 valuable benefits to those entities in the form of
24 principally nonmonetary actions (referred to collec-
25 tively in this section as “corporate actions currying

1 favor with the Chinese Communist Party’), which
2 include—

3 (A) the hiring, promotion, or retention of
4 Chinese Communist Party officials and children
5 of those officials, such as the unlawful practices
6 admitted to by certain entities subject to the
7 corporate anti-corruption laws in what are com-
8 monly known as the “princelings” settlements;

9 (B) political advocacy on behalf of the
10 goals and policies of the Chinese Communist
11 Party in the People’s Republic of China, the
12 United States, and the rest of the world, includ-
13 ing by—

14 (i) assisting in the denial, obfuscation,
15 or excusal of—

16 (I) genocide and other atrocities
17 committed by the Chinese Communist
18 Party, the Government of the People’s
19 Republic of China, and instrumental-
20 ities of the Government of the Peo-
21 ple’s Republic of China;

22 (II) the extrajudicial detainment,
23 subjection to forced labor, torture,
24 and political indoctrination of, and
25 other severe human rights abuses with

1 respect to, Uyghurs, Kazakhs,
2 Kyrgyz, and members of other pre-
3 dominantly Muslim ethnic groups by
4 the Government of the People's Re-
5 public of China in the Xinjiang
6 Uyghur Autonomous Region of China
7 (or comparable treatment of members
8 of other ethnic, religious, and political
9 groups who reside elsewhere in the
10 People's Republic of China);

11 (III) censorship or other activi-
12 ties with respect to Hong Kong
13 that—

14 (aa) prohibit, limit, or penal-
15 ize the exercise of freedom of ex-
16 pression or assembly by the citi-
17 zens of Hong Kong; or

18 (bb) limit access to free and
19 independent print, online, or
20 broadcast media; and

21 (IV) the extrajudicial rendition,
22 arbitrary detention, or torture of any
23 individual in Hong Kong or other
24 gross violations of internationally rec-

1 ognized human rights in Hong Kong;
2 and

3 (ii) supporting, legitimizing, or recog-
4 nizing the unlawful territorial claims of the
5 Government of the People's Republic of
6 China in Taiwan, Tibet, Korea, the South
7 China Sea, the East China Sea, and other
8 locations in which such claims are con-
9 tested; and

10 (C) investments without reasonable busi-
11 ness purposes in industries targeted for support
12 by the Chinese Communist Party, the Govern-
13 ment of the People's Republic of China, or in-
14 strumentalities of the Government of the Peo-
15 ple's Republic of China, including by entering
16 into a joint venture with such an instrumen-
17 tality or an entity affiliated with such an in-
18 strumentality.

19 (4) Corporate actions currying favor with the
20 Chinese Communist Party are valuable to officials of
21 the Chinese Communist Party, the Government of
22 the People's Republic of China, and instrumental-
23 ities of the Government of the People's Republic of
24 China, and constitute payments of value for the pur-

1 poses of subsection (a) of each of the corporate anti-
2 corruption laws, because those actions are—

3 (A) directly or indirectly financially valu-
4 able to those officials due to—

5 (i) the extent of corruption in the
6 People’s Republic of China;

7 (ii) the reliance of the economy of the
8 People’s Republic of China on state-owned
9 enterprises; and

10 (iii) the integration of the party-state
11 with business enterprises in the People’s
12 Republic of China; and

13 (B) valuable to the interests of the Chinese
14 Communist Party, and officials of that Party,
15 in a manner that is distinct from any inde-
16 pendent economic or public interest rationale
17 for those actions.

18 (5) Corporate actions currying favor with the
19 Chinese Communist Party are taken corruptly for
20 the purposes of each of the corporate anti-corruption
21 laws because those actions—

22 (A) have no reasonable business purpose
23 unrelated to obtaining or retaining business
24 within the People’s Republic of China and in-
25 stead relate to—

1 (i) accessing markets within the juris-
2 diction of the People’s Republic of China;

3 or

4 (ii) avoiding injury threatened by the
5 Chinese Communist Party, the Govern-
6 ment of the People’s Republic of China, or
7 instrumentalities of the Government of the
8 People’s Republic of China; and

9 (B) are morally wrongful to the extent that
10 those actions contribute to denying, obfus-
11 cating, or excusing—

12 (i) genocide and other atrocities; and

13 (ii) the extrajudicial detainment, sub-
14 jection to forced labor, torture, and polit-
15 ical indoctrination of, and other severe
16 human rights abuses with respect to, indi-
17 viduals by the Chinese Communist Party,
18 the Government of the People’s Republic of
19 China, or instrumentalities of the Govern-
20 ment of the People’s Republic of China.

21 (6) Despite the public and prominent under-
22 taking of corporate actions currying favor with the
23 Chinese Communist Party by individuals and enti-
24 ties that are subject to the corporate anti-corruption
25 laws, the Federal Government has undertaken little

1 enforcement with respect to those corporate actions
2 due to an apparent difficulty in demonstrating that
3 the actions are corrupt, or of value to a foreign offi-
4 cial, because of the principally nonmonetary nature
5 of those actions.

6 (7) In addition to undermining the public inter-
7 est in the enforcement of the corporate anti-corrup-
8 tion laws in the manner described in paragraphs (2)
9 through (6), corporate actions currying favor with
10 the Chinese Communist Party undermine the public
11 interest in the enforcement of the laws of the United
12 States, including—

13 (A) sections 4 and 5 of the Act entitled
14 “An Act to ensure that goods made with forced
15 labor in the Xinjiang Autonomous Region of the
16 People’s Republic of China do not enter the
17 United States market, and for other purposes”,
18 approved December 23, 2021 (Public Law 117–
19 78; 135 Stat. 1525) (referred to in this section
20 as the “Uyghur Forced Labor Prevention Act”)
21 (including the amendment made by section 5 of
22 that Act), by—

23 (i) reducing the awareness of entities
24 subject to, or potentially subject to, that
25 Act regarding the application of that Act

1 to activities in the Xinjiang Autonomous
2 Region of the People’s Republic of China
3 or elsewhere in the People’s Republic of
4 China;

5 (ii) aiding and abetting violations of
6 that Act; and

7 (iii) reducing the information available
8 to law enforcement officials in the United
9 States regarding the activities described in
10 clause (i); and

11 (B) United States sanctions laws with re-
12 spect to persons and entities in the People’s Re-
13 public of China (collectively referred to in this
14 section as the “sanctions laws of the United
15 States”)—

16 (i) including—

17 (I) section 1237 of the Strom
18 Thurmond National Defense Author-
19 ization Act for Fiscal Year 1999
20 (Public Law 105–261; 50 U.S.C.
21 1701 note);

22 (II) sections 4 and 5 of the
23 Uyghur Forced Labor Prevention Act
24 (including the amendment made by
25 section 5 of that Act);

1 (III) the Global Magnitsky
2 Human Rights Accountability Act
3 (subtitle F of title XII of Public Law
4 114–328; 22 U.S.C. 2656 note);

5 (IV) Executive Order 13818 (50
6 U.S.C. 1701 note; relating to blocking
7 the property of persons involved in se-
8 rious human rights abuse or corrup-
9 tion), as amended on or after the date
10 of enactment of this Act;

11 (V) Executive Order 13959 (50
12 U.S.C. 1701 note; relating to address-
13 ing the threat from securities invest-
14 ments that finance Communist Chi-
15 nese military companies), as amended
16 before, on, or after the date of enact-
17 ment of this Act and as superseded in
18 part before, on, or after the date of
19 enactment of this Act; and

20 (VI) Executive Order 14032 (50
21 U.S.C. 1701 note; relating to address-
22 ing the threat from securities invest-
23 ments that finance certain companies
24 of the People’s Republic of China), as

1 amended before, on, or after the date
2 of enactment of this Act; and

3 (ii) by facilitating investment in, or
4 transactions with, entities in which invest-
5 ment is, or with which transactions are,
6 prohibited under the sanctions laws of the
7 United States by—

8 (I) providing principally non-
9 monetary benefits of value to those
10 entities, which, in turn, become finan-
11 cially valuable to those entities in a
12 manner that is directly traceable to
13 those benefits, such as with respect to
14 raising capital from international cap-
15 ital markets;

16 (II) investing in, or transacting
17 with, entities not subject to the sanc-
18 tions laws of the United States under
19 circumstances that suggest that those
20 entities will, in turn, invest in or
21 transact with other entities that are
22 subject to the sanctions laws of the
23 United States; and

24 (III) reducing the information
25 available to law enforcement officials

1 in the United States for the purpose
2 of enforcing the sanctions laws of the
3 United States.

4 (8) The requirements of this Act, and the
5 amendments made by this Act, are justified by—

6 (A) the public interest in mitigating the
7 threats to the enforcement of the corporate
8 anti-corruption laws, and the sanctions laws of
9 the United States, that are posed by the Chi-
10 nese Communist Party, the Government of the
11 People’s Republic of China, and instrumental-
12 ities of the Government of the People’s Repub-
13 lic of China;

14 (B) the foreign policy interests achieved by
15 this Act and the amendments made by this Act;
16 and

17 (C) the fact that those requirements—

18 (i) are confined to the specific conduct
19 of entities and persons subject to the cor-
20 porate anti-corruption laws based on ob-
21 servable patterns of behavior demonstrated
22 by those entities and persons; and

23 (ii) do not subject any entity or per-
24 son described in clause (i) to any criminal
25 penalty.

1 **SEC. 3. AMENDMENTS REGARDING PROHIBITED FOREIGN**
 2 **TRADE PRACTICES.**

3 (a) ISSUERS.—

4 (1) IN GENERAL.—Section 30A of the Securi-
 5 ties Exchange Act of 1934 (15 U.S.C. 78dd–1) is
 6 amended—

7 (A) in subsection (f), by adding at the end
 8 the following:

9 “(4) The term ‘covered investment’—

10 “(A) means any direct or indirect contribu-
 11 tion or commitment of assets, including any—

12 “(i) acquisition of an equity interest
 13 or convertible equity interest; or

14 “(ii) loan or other debt interest; and

15 “(B) does not include a transaction in
 16 goods or services, or any related party trans-
 17 action, with a wholly owned subsidiary of an en-
 18 tity—

19 “(i) that is incorporated in a jurisdic-
 20 tion of the United States; or

21 “(ii) the principal place of business of
 22 which is in the United States.”; and

23 (B) by adding at the end the following:

24 “(h) APPLICATION.—For the purposes of this sec-
 25 tion—

1 “(1) an action that is taken corruptly includes
2 an action that serves to—

3 “(A) deny, obfuscate, or excuse that a
4 third party has committed, or assist a third
5 party in committing—

6 “(i) the extrajudicial detainment, sub-
7 jection to forced labor, torture, and polit-
8 ical indoctrination of, and other severe
9 human rights abuses with respect to,
10 Uyghurs, Kazakhs, Kyrgyz, and members
11 of other predominantly Muslim ethnic
12 groups by the Government of the People’s
13 Republic of China in the Xinjiang Uyghur
14 Autonomous Region of China (or com-
15 parable treatment of members of other eth-
16 nic, religious, and political groups who re-
17 side elsewhere in the People’s Republic of
18 China);

19 “(ii) censorship, or another activity,
20 by the Chinese Communist Party, the Gov-
21 ernment of the People’s Republic of China,
22 or instrumentalities of the Government of
23 the People’s Republic of China with re-
24 spect to Hong Kong that—

1 “(I) prohibits, limits, or penalizes
2 the exercise of freedom of expression
3 or assembly by citizens of Hong Kong;
4 or

5 “(II) limits access to free and
6 independent print, online, or broad-
7 cast media; or

8 “(iii) the extrajudicial rendition, arbi-
9 trary detention, or torture of any indi-
10 vidual in Hong Kong or other gross viola-
11 tions of internationally recognized human
12 rights in Hong Kong;

13 “(B) support, legitimize, or recognize the
14 territorial claims of the Government of the Peo-
15 ple’s Republic of China in Taiwan, Tibet,
16 Korea, the South China Sea, the East China
17 Sea, or another location in which such a claim
18 is contested;

19 “(C) express political advocacy in favor of
20 the Chinese Communist Party, the system of
21 governance of that Party, or any official of that
22 Party; or

23 “(D) make a covered investment—

1 “(i) in partnership with the Belt and
2 Road Initiative of the Government of the
3 People’s Republic of China; or

4 “(ii) in any entity (including a parent,
5 subsidiary, or affiliate of, or another entity
6 controlled by an entity) that is—

7 “(I)(aa) affiliated with the Chi-
8 nese Communist Party, the Govern-
9 ment of the People’s Republic of
10 China, or instrumentalities of the
11 Government of the People’s Republic
12 of China; and

13 “(bb) involved in the develop-
14 ment, production, or sale of emerging
15 or foundational technology identified
16 pursuant to section 1758 of the Ex-
17 port Controls Act of 2018 (50 U.S.C.
18 4817); or

19 “(II) on the Entity List main-
20 tained by the Bureau of Industry and
21 Security of the Department of Com-
22 merce and set forth in Supplement
23 No. 4 to part 744 of title 15, Code of
24 Federal Regulations; and

1 “(2) an action described in paragraph (1) is
2 made with respect to a foreign official, or any for-
3 eign political party or official thereof, if, among
4 other reasons, the action is taken in response to—

5 “(A) a request of any foreign official, or
6 any foreign political party or official thereof, as
7 applicable;

8 “(B) an injury or threat of injury, by
9 means of economic coercion, to the applicable
10 issuer, or to an officer, director, employee, or
11 agent of the applicable issuer, made by any for-
12 eign official or any foreign political party or of-
13 ficial thereof; or

14 “(C) a material action or announcement,
15 including with respect to policy, by the Chinese
16 Communist Party, the Government of the Peo-
17 ple’s Republic of China, or instrumentalities of
18 the Government of the People’s Republic of
19 China from which the action would rationally
20 follow.

21 “(i) SPECIAL RULES.—Notwithstanding any other
22 provision of this section, with respect to a violation of sub-
23 section (a) or (g) that is based on an action taken cor-
24 ruptly as described in any of subparagraphs (A) through
25 (D) of subsection (h)(1)—

1 “(1) the affirmative defenses under subsection
2 (c) shall not be available;

3 “(2) it shall be an affirmative defense to actions
4 under subsection (a) or (g) that the payment, gift,
5 offer, or promise of anything of value that was
6 made, as of the date on which it was made, had a
7 reasonable business purpose, which does not include
8 a purpose relating to—

9 “(A) advertising, marketing, or public rela-
10 tions; or

11 “(B) entering into or obtaining any agree-
12 ment, license, permit, or other arrangement
13 with respect to market access to a jurisdiction
14 of a government;

15 “(3) notwithstanding section 32—

16 “(A) only a penalty described in subsection
17 (c)(1)(B) or (c)(2)(B) of that section may apply
18 with respect to the violation; and

19 “(B) the minimum amount of the civil pen-
20 alty assessed for the violation shall be 3 times
21 the amount of the penalty described in sub-
22 section (c)(1)(B) or (c)(2)(B) of that section, as
23 applicable; and

24 “(4) in an action brought with respect to the
25 violation, evidence that the action taken by the ap-

1 plicable issuer (or the officer, director, employee, or
2 agent of the issuer, or stockholder acting on behalf
3 of such issuer) was directly or indirectly inconsistent
4 with the policies of the issuer, including any rep-
5 resentation to the Federal Government by the issuer,
6 shall be admissible to prove that the action taken by
7 the issuer (or officer, director, employee, agent, or
8 stockholder) was taken corruptly for the purposes of
9 subsection (a) or (g), as applicable.”.

10 (2) RULE OF CONSTRUCTION.—Nothing in sub-
11 section (h) of section 30A of the Securities Ex-
12 change Act of 1934 (15 U.S.C. 78dd–1), as added
13 by paragraph (1) of this subsection, may be con-
14 strued to expand the meaning of the term “cor-
15 ruptly”, “to any foreign official”, or “to any foreign
16 political party or official thereof” for the purposes of
17 such section 30A, except for the clarification that
18 the term includes an action that is taken as de-
19 scribed in paragraph (1) or (2) of such subsection
20 (h), as applicable.

21 (b) DOMESTIC CONCERNS.—

22 (1) IN GENERAL.—Section 104 of the Foreign
23 Corrupt Practices Act of 1977 (15 U.S.C. 78dd–2)
24 is amended—

1 (A) in subsection (h), by adding at the end
2 the following:

3 “(6) The term ‘covered investment’—

4 “(A) means any direct or indirect contribu-
5 tion or commitment of assets, including any—

6 “(i) acquisition of an equity interest
7 or convertible equity interest; or

8 “(ii) loan or other debt interest; and

9 “(B) does not include a transaction in
10 goods or services, or any related party trans-
11 action, with a wholly owned subsidiary of an en-
12 tity—

13 “(i) that is incorporated in a jurisdic-
14 tion of the United States; or

15 “(ii) the principal place of business of
16 which is in the United States.”; and

17 (B) by adding at the end the following:

18 “(j) APPLICATION.—For the purposes of this sec-
19 tion—

20 “(1) an action that is taken corruptly includes
21 an action that serves to—

22 “(A) deny, obfuscate, or excuse that a
23 third party has committed, or assist a third
24 party in committing—

1 “(i) the extrajudicial detainment, sub-
2 jection to forced labor, torture, and polit-
3 ical indoctrination of, and other severe
4 human rights abuses with respect to,
5 Uyghurs, Kazakhs, Kyrgyz, and members
6 of other predominantly Muslim ethnic
7 groups by the Government of the People’s
8 Republic of China in the Xinjiang Uyghur
9 Autonomous Region of China (or com-
10 parable treatment of members of other eth-
11 nic, religious, and political groups who re-
12 side elsewhere in the People’s Republic of
13 China);

14 “(ii) censorship, or another activity,
15 by the Chinese Communist Party, the Gov-
16 ernment of the People’s Republic of China,
17 or instrumentalities of the Government of
18 the People’s Republic of China with re-
19 spect to Hong Kong that—

20 “(I) prohibits, limits, or penalizes
21 the exercise of freedom of expression
22 or assembly by citizens of Hong Kong;
23 or

1 “(II) limits access to free and
2 independent print, online, or broad-
3 cast media; or

4 “(iii) the extrajudicial rendition, arbi-
5 trary detention, or torture of any indi-
6 vidual in Hong Kong or other gross viola-
7 tions of internationally recognized human
8 rights in Hong Kong;

9 “(B) support, legitimize, or recognize the
10 territorial claims of the Government of the Peo-
11 ple’s Republic of China in Taiwan, Tibet,
12 Korea, the South China Sea, the East China
13 Sea, or another location in which such a claim
14 is contested;

15 “(C) express political advocacy in favor of
16 the Chinese Communist Party, the system of
17 governance of that Party, or any official of that
18 Party; or

19 “(D) make a covered investment—

20 “(i) in partnership with the Belt and
21 Road Initiative of the Government of the
22 People’s Republic of China; or

23 “(ii) in any entity (including a parent,
24 subsidiary, or affiliate of, or another entity
25 controlled by an entity) that is—

1 “(I)(aa) affiliated with the Chi-
2 nese Communist Party, the Govern-
3 ment of the People’s Republic of
4 China, or instrumentalities of the
5 Government of the People’s Republic
6 of China; and

7 “(bb) involved in the develop-
8 ment, production, or sale of emerging
9 or foundational technology identified
10 pursuant to section 1758 of the Ex-
11 port Controls Act of 2018 (50 U.S.C.
12 4817); or

13 “(II) on the Entity List main-
14 tained by the Bureau of Industry and
15 Security of the Department of Com-
16 merce and set forth in Supplement
17 No. 4 to part 744 of title 15, Code of
18 Federal Regulations; and

19 “(2) an action described in paragraph (1) is
20 made with respect to a foreign official, or any for-
21 eign political party or official thereof, if, among
22 other reasons, the action is taken in response to—

23 “(A) a request of any foreign official, or
24 any foreign political party or official thereof, as
25 applicable;

1 “(B) an injury or threat of injury, by
2 means of economic coercion, to the applicable
3 domestic concern, or to an officer, director, em-
4 ployee, or agent of the applicable domestic con-
5 cern, made by any foreign official or any for-
6 eign political party or official thereof; or

7 “(C) a material action or announcement,
8 including with respect to policy, by the Chinese
9 Communist Party, the Government of the Peo-
10 ple’s Republic of China, or instrumentalities of
11 the Government of the People’s Republic of
12 China from which the action would rationally
13 follow.

14 “(k) SPECIAL RULES.—Notwithstanding any other
15 provision of this section, with respect to a violation of sub-
16 section (a) or (i) that is based on an action taken corruptly
17 as described in any of subparagraphs (A) through (D) of
18 subsection (j)(1)—

19 “(1) the affirmative defenses under subsection
20 (c) shall not be available;

21 “(2) it shall be an affirmative defense to actions
22 under subsection (a) or (i) that the payment, gift,
23 offer, or promise of anything of value that was
24 made, as of the date on which it was made, had a

1 reasonable business purpose, which does not include
2 a purpose relating to—

3 “(A) advertising, marketing, or public rela-
4 tions; or

5 “(B) entering into or obtaining any agree-
6 ment, license, permit, or other arrangement
7 with respect to market access to a jurisdiction
8 of a government;

9 “(3) notwithstanding any provision of sub-
10 section (g)—

11 “(A) only a penalty described in paragraph
12 (1)(B) or (2)(B) of that subsection may apply
13 with respect to the violation; and

14 “(B) the minimum amount of the civil pen-
15 alty assessed for the violation shall be 3 times
16 the amount of the penalty described in para-
17 graph (1)(B) or (2)(B) of that subsection, as
18 applicable; and

19 “(4) in an action brought with respect to the
20 violation, evidence that the action taken by the ap-
21 plicable domestic concern (or the officer, director,
22 employee, or agent of the domestic concern, or
23 stockholder acting on behalf of such domestic con-
24 cern) was directly or indirectly inconsistent with the
25 policies of the domestic concern, including any rep-

1 resentation to the Federal Government by the do-
2 mestic concern, shall be admissible to prove that the
3 action taken by the domestic concern (or officer, di-
4 rector, employee, agent, or stockholder) was taken
5 corruptly for the purposes of subsection (a) or (i),
6 as applicable.”.

7 (2) RULE OF CONSTRUCTION.—Nothing in sub-
8 section (j) of section 104 of the Foreign Corrupt
9 Practices Act of 1977 (15 U.S.C. 78dd–2), as added
10 by paragraph (1) of this subsection, may be con-
11 strued to expand the meaning of the term “cor-
12 ruptly”, “to any foreign official”, or “to any foreign
13 political party or official thereof” for the purposes of
14 such section 104, except for the clarification that the
15 term includes an action that is taken as described in
16 paragraph (1) or (2) of such subsection (j), as appli-
17 cable.

18 (c) PERSONS OTHER THAN ISSUERS OR DOMESTIC
19 CONCERNS.—

20 (1) IN GENERAL.—Section 104A of the Foreign
21 Corrupt Practices Act of 1977 (15 U.S.C. 78dd–3)
22 is amended—

23 (A) in subsection (f), by adding at the end
24 the following:

25 “(6) The term ‘covered investment’—

1 “(A) means any direct or indirect contribu-
2 tion or commitment of assets, including any—

3 “(i) acquisition of an equity interest
4 or convertible equity interest; or

5 “(ii) loan or other debt interest; and

6 “(B) does not include a transaction in
7 goods or services, or any related party trans-
8 action, with a wholly owned subsidiary of an en-
9 tity—

10 “(i) that is incorporated in a jurisdic-
11 tion of the United States; or

12 “(ii) the principal place of business of
13 which is in the United States.”; and

14 (B) by adding at the end the following:

15 “(g) APPLICATION.—For the purposes of this sec-
16 tion—

17 “(1) an action that is taken corruptly includes
18 an action that serves to—

19 “(A) deny, obfuscate, or excuse that a
20 third party has committed, or assist a third
21 party in committing—

22 “(i) the extrajudicial detainment, sub-
23 jection to forced labor, torture, and polit-
24 ical indoctrination of, and other severe
25 human rights abuses with respect to,

1 Uyghurs, Kazakhs, Kyrgyz, and members
2 of other predominantly Muslim ethnic
3 groups by the Government of the People’s
4 Republic of China in the Xinjiang Uyghur
5 Autonomous Region of China (or com-
6 parable treatment of members of other eth-
7 nic, religious, and political groups who re-
8 side elsewhere in the People’s Republic of
9 China);

10 “(ii) censorship, or another activity,
11 by the Chinese Communist Party, the Gov-
12 ernment of the People’s Republic of China,
13 or instrumentalities of the Government of
14 the People’s Republic of China with re-
15 spect to Hong Kong that—

16 “(I) prohibits, limits, or penalizes
17 the exercise of freedom of expression
18 or assembly by citizens of Hong Kong;
19 or

20 “(II) limits access to free and
21 independent print, online, or broad-
22 cast media; or

23 “(iii) the extrajudicial rendition, arbi-
24 trary detention, or torture of any indi-
25 vidual in Hong Kong or other gross viola-

1 tions of internationally recognized human
2 rights in Hong Kong;

3 “(B) support, legitimize, or recognize the
4 territorial claims of the Government of the Peo-
5 ple’s Republic of China in Taiwan, Tibet,
6 Korea, the South China Sea, the East China
7 Sea, or another location in which such a claim
8 is contested;

9 “(C) express political advocacy in favor of
10 the Chinese Communist Party, the system of
11 governance of that Party, or any official of that
12 Party; or

13 “(D) make a covered investment—

14 “(i) in partnership with the Belt and
15 Road Initiative of the Government of the
16 People’s Republic of China; or

17 “(ii) in any entity (including a parent,
18 subsidiary, or affiliate of, or another entity
19 controlled by an entity) that is—

20 “(I)(aa) affiliated with the Chi-
21 nese Communist Party, the Govern-
22 ment of the People’s Republic of
23 China, or instrumentalities of the
24 Government of the People’s Republic
25 of China; and

1 “(bb) involved in the develop-
2 ment, production, or sale of emerging
3 or foundational technology identified
4 pursuant to section 1758 of the Ex-
5 port Controls Act of 2018 (50 U.S.C.
6 4817); or

7 “(II) on the Entity List main-
8 tained by the Bureau of Industry and
9 Security of the Department of Com-
10 merce and set forth in Supplement
11 No. 4 to part 744 of title 15, Code of
12 Federal Regulations; and

13 “(2) an action described in paragraph (1) is
14 made with respect to a foreign official, or any for-
15 eign political party or official thereof, if, among
16 other reasons, the action is taken in response to—

17 “(A) a request of any foreign official, or
18 any foreign political party or official thereof, as
19 applicable;

20 “(B) an injury or threat of injury, by
21 means of economic coercion, to the applicable
22 person, or to an officer, director, employee, or
23 agent of the applicable person, made by any
24 foreign official or any foreign political party or
25 official thereof; or

1 “(C) a material action or announcement,
2 including with respect to policy, by the Chinese
3 Communist Party, the Government of the Peo-
4 ple’s Republic of China, or instrumentalities of
5 the Government of the People’s Republic of
6 China from which the action would rationally
7 follow.

8 “(h) SPECIAL RULES.—Notwithstanding any other
9 provision of this section, with respect to a violation of sub-
10 section (a) that is based on an action taken corruptly as
11 described in any of subparagraphs (A) through (D) of sub-
12 section (g)(1)—

13 “(1) the affirmative defenses under subsection
14 (c) shall not be available;

15 “(2) it shall be an affirmative defense to actions
16 under subsection (a) that the payment, gift, offer, or
17 promise of anything of value that was made, as of
18 the date on which it was made, had a reasonable
19 business purpose, which does not include a purpose
20 relating to—

21 “(A) advertising, marketing, or public rela-
22 tions; or

23 “(B) entering into or obtaining any agree-
24 ment, license, permit, or other arrangement

1 with respect to market access to a jurisdiction
2 of a government;

3 “(3) notwithstanding any provision of sub-
4 section (e)—

5 “(A) only a penalty described in paragraph
6 (1)(B) or (2)(B) of that subsection may apply
7 with respect to the violation; and

8 “(B) the minimum amount of the civil pen-
9 alty assessed for the violation shall be 3 times
10 the amount of the penalty described in para-
11 graph (1)(B) or (2)(B) of that subsection, as
12 applicable; and

13 “(4) in an action brought with respect to the
14 violation, evidence that the action taken by the ap-
15 plicable person was directly or indirectly inconsistent
16 with the policies of the person, including any rep-
17 resentation to the Federal Government by the per-
18 son, shall be admissible to prove that the action
19 taken by the person was taken corruptly for the pur-
20 poses of subsection (a).”.

21 (2) RULE OF CONSTRUCTION.—Nothing in sub-
22 section (g) of section 104A of the Foreign Corrupt
23 Practices Act of 1977 (15 U.S.C. 78dd–3), as added
24 by paragraph (1) of this subsection, may be con-
25 strued to expand the meaning of the term “cor-

1 ruptly”, “to any foreign official”, or “to any foreign
2 political party or official thereof” for the purposes of
3 such section 104A, except for the clarification that
4 the term includes an action that is taken as de-
5 scribed in paragraph (1) or (2) of such subsection
6 (g), as applicable.

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