

117TH CONGRESS  
2D SESSION

# S. 3584

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.

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IN THE SENATE OF THE UNITED STATES

FEBRUARY 3, 2022

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

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## 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 2022”.

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  
21 Act”), by—

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



1           Region of the People’s Republic of China  
2           or elsewhere in the People’s Republic of  
3           China;

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

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

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

15               (i) including—

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

21                   (II) sections 4 and 5 of the  
22                   Uyghur Forced Labor Prevention Act;

23                   (III) the Global Magnitsky  
24                   Human Rights Accountability Act

1 (subtitle F of title XII of Public Law  
2 114–328; 22 U.S.C. 2656 note);

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

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15 ment of this Act and as superseded in  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

18 (VI) Executive Order 14032 (50  
19 U.S.C. 1701 note; relating to address-  
20 ing the threat from securities invest-  
21 ments that finance certain companies  
22 of the People’s Republic of China), as  
23 amended before, on, or after the date  
24 of enactment of this Act; and

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

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

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

22 (III) reducing the information  
23 available to law enforcement officials  
24 in the United States for the purpose

1 of enforcing the sanctions laws of the  
2 United States.

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

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

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

16 (C) the fact that those requirements—

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

22 (ii) do not subject any entity or per-  
23 son described in clause (i) to any criminal  
24 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 Control Reform Act of 2018 (50  
18 U.S.C. 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 Control Reform Act of 2018 (50  
12          U.S.C. 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 Control Reform Act of 2018 (50  
6           U.S.C. 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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