

S. 3598 No Chinese Communist SURPRISE Parties Act

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Background: As Xi Jinping tightens his grip over the Chinese economy, one of Beijing's most formidable tools to wield influence over companies in China – both state-owned and nominally private Chinese firms, as well as foreign ones present – is through the creation and presence of the Chinese Communist Party (CCP) organizations within company operations. According to CCP law, such organizations or committees are required to implement the Party's principles and policies within the company, with zero limiting factors.

In recent years, the CCP has made a serious push to expand these party organizations inside companies in China. So long as a firm reaches a certain number of CCP members among its staff, it is legally obligated to form one. These party organizations have no established limits on their influence and offer an alarming means by which the CCP can insert itself into corporate governance, personnel, business strategy, and other decisions.

The U.S. government has no way of identifying the scope of CCP organizations in companies, including ones listed on U.S. exchanges, or how they influence their China-based operations. In other words, American investors are left totally in the dark. Even more troublingly, some listed firms in the U.S. are reluctant to note the presence of party organizations out of a desire to maintain smooth relations with the CCP and continue kowtowing to Beijing's whims.

The Solution: To provide more transparency to Americans and ensure they are aware of the fiduciary duties they are owed as investors, the *No Chinese Communist Subterfuge via Unregistered Regime Presence Rendered Invisible to Shareholders and Equivalent Parties Act, or No Chinese Communist SURPRISE Parties Act*, creates three new disclosure requirements to the annual reports that firms listed on U.S. exchanges, including foreign private issuers, must submit:

1. Disclose whether the covered issuer has established or maintained a CCP organization during the period covered by the report;
2. If a party organization is present in a covered issuer's operations, summarize the nature of that participation; and
3. Disclose whether the board of the covered issuer owes a fiduciary duty to shareholders, including foreign ones, or is otherwise subject to heightened scrutiny with respect to conflicted controller transactions.

To ensure that any party organizational presence is made clear, the first two provisions of the *No Chinese Communist SURPRISE Parties Act* would apply not only to covered issuers, but also to any wholly- or partially-owned subsidiaries, as well as to joint venture partners of the covered issuer. It also requires the SEC to update its rules in accordance with the bill no later than one year after enactment. Furthermore, so no issuer is caught surprised by the new requirements should the bill be signed into law right near filing time, the new rules would go into effect starting with the second SEC annual report after enactment.