

# CLIENT ALERTS

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## Is US Satellite Technology at Risk?

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It started with two California-based entrepreneurs looking to develop a satellite to enhance internet web access in Africa. Estimating they would need over \$100M in equity to attract a qualified company to build the satellite, not to mention the additional hundreds of thousands of dollars to put the satellite into orbit, they founded a startup called Global IP. What follows is a summary of what happened next, largely as established or alleged in various interviews, reports, corporate records, and court filings.

### **An Offer from China**

In 2015, the Global IP founders received an email from a company called China Orbit, asking them to meet in Beijing. They attended the meeting, where they met with several China Orbit executives, including its president, who is a close friend of China's incumbent president, Xi Jinping. By meeting's end, China Orbit agreed to invest in Global IP.

The investment approach was convoluted. Bronzelink Holdings Ltd. is a company based in the British Virgin Islands. Bronzelink was set up by a Shanghai-born businessman named Charles Yiu Hoi Ying. Mr. Ying holds a Hong Kong passport. Global IP received the capital from Bronzelink, which received it from a China-based China Orbit subsidiary called Dong Yin Development (Holdings) Ltd., which worked through its office in the British Virgin Islands.

Mr. Ying's possession of a Hong Kong passport may be a key fact because the acquisition of a substantial amount of the ownership of a US satellite company may be subject to approval by the Committee on Foreign Investment in the US (CFIUS), and a major investor from Hong Kong may be considered as posing a lower risk to US national security than one from China. Yet while Mr. Ying's attorneys are de-emphasizing his connection to China, persons investigating the matter have uncovered loan

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documents that reference China Orbit's right through its subsidiary to name at least four board members of Global IP. They also have found corporate records identifying the same office address in the British Virgin Islands for both Bronzelink and Dong Yin.

### **Interest in the Boeing Contract**

With its funding secured, Global IP set out to find a manufacturer for its satellite. To that end, it entered discussions with Boeing in the summer of 2016. Global IP claims to have explained its funding arrangement with Boeing executives early on. Boeing ultimately agreed to take on the project. In the days before Global IP signed its manufacturing contract with Boeing, however, several new Global IP board members from China arrived in California unexpectedly. They were led by a lawyer representing a China-owned asset management company. The Global IP founders say they were surprised by the sudden arrival of these directors, as Global IP's board had already approved the Boeing contract.

During their unexpected visit, the Chinese directors demanded that the founders let them examine the proposed Boeing contract, which contained hundreds of pages detailing Boeing's satellite technology. Most of those pages were marked restricted; the satellite incorporates technology adopted by the US military. Accordingly, the technology was either on the US Munitions List (USML) and thus was subject to the International Traffic in Arms Regulations (ITAR), or was transferred to the Commerce Control List (CCL) under US export control reforms and thus was subject to the Export Administration Regulations (EAR). In any event, disclosure of the technology to non-US persons would have been a "deemed export" that would have required an export license under either the ITAR or the EAR. The founders maintain that they resisted the Chinese directors' requests to review the Boeing contract, while rejecting similar requests made by directors of Bronzelink, which by then had become Global IP's majority owner. For the founders, things unraveled quickly from there.

### **The Pending Litigation and Continuing Project**

The founders resigned from Global IP, as did its general counsel, claiming that Chinese directors were now controlling Global IP through intimidation. Litigation ensued and is now pending. Boeing, a non-party to the litigation, agreed to proceed with satellite development based on a compliance review performed by Bronzelink's US attorneys. Boeing claims to have obtained appropriate export licensing through the Commerce Department for the Global IP satellite, further adding that it "will continue to work closely with the Commerce Department to ensure appropriate protection of satellite technology."

The satellite may launch as soon as next spring, leaving some officials concerned about a later attempt by China to reprogram the satellite for state purposes. According to one person familiar with the project, "Once it's up there, whoever is the owner can choose whichever customers and whichever uses he wants." Incidentally, Elon Musk's Space Exploration Technologies Corp. is under contract to perform the launch, which also will require appropriate export licensing.

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### **What It Means**

How all of this, or any of it, may impact US-China efforts to assuage their trade tensions is anyone's guess. Also unknown is to what extent any company or individual involved in the Global IP satellite project will be liable for violation of the ITAR, the EAR, or the CFIUS rules. The pertinent facts and issues are still being sorted out in the pending litigation.

At the very least, the Global IP saga serves as a reminder to proceed with caution when doing business outside of the US, or with entities from foreign countries. Make sure you know exactly who you are dealing with, who will have access to your trade secrets and other IP, whether export/import laws and regulations apply to your project, and whether other laws and regulations such as CFIUS apply to the financing or other aspects of the underlying transactions.

With the relevant experience and expertise to guide you, Butzel Long stands ready to assist.

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