Trump's America First Investment Policy: Promoting Allied Investment, Restricting Adversary Investment

February 24, 2025

On February 21, 2025, President Trump issued a policy memorandum, titled *America First Investment Policy*, which details measures intended to "make the United States the world's greatest destination for investment dollars" by facilitating investments by allies while countering "new and evolving threats" associated with foreign investment.

While addressing various areas related to both inbound and outbound foreign investment policy, the memorandum has an overarching theme that "[e]conomic security is national security" and cautions that "investment at all costs is not always in the national interest." It emphasizes national security threats from "foreign adversaries," principally the People's Republic of China ("PRC").[1] These threats include PRC efforts to "direct and facilitate" inbound U.S. investments to acquire critical technology, obtain intellectual property and gain leverage in strategic industries. The memorandum also highlights the PRC's exploitation of outbound U.S. investments in Chinese companies to strengthen its military and intelligence apparatuses.

THE MEMORANDUM'S NEW POLICY MEASURES

The memorandum announces several forthcoming policy changes designed to counter national security threats and "preserve an open investment environment" intended to catalyze U.S. development of artificial intelligence and other emerging technologies. The memorandum's nine significant policy measures are set out below.

- **Proportional Restrictions on Foreign Investment.** For investments in key areas, such as critical technologies, critical infrastructure, personal data and other sensitive areas, "restrictions on foreign investors' access to United States assets will ease in proportion to their verifiable distance and independence from the predatory

[1] "Foreign adversaries" under the memorandum are: "the PRC, including the Hong Kong Special Administrative Region and the Macau Special Administrative Region; the Republic of Cuba; the Islamic Republic of Iran; the Democratic People's Republic of Korea; the Russian Federation; and the regime of Venezuelan politician Nicolás Maduro."

investment and technology-acquisition practices" of foreign adversaries or other "threat actors."

- **"Fast-Track" Review**. Using "objective standards," the administration will create an expedited review process for investments from yet-to-be-specified allied and partner sources. This "fast-track" will apply to investments in advanced technology and "other important areas," and it will require investors to "avoid partnering" with foreign adversaries. In addition, the administration will expedite environmental reviews for any inbound investment over $1 billion.

- **New Inbound Investment Restrictions**. The administration will implement new rules that will prohibit PRC-affiliated persons from "buying up critical American businesses and assets" and permit only investments that, in the administration's view, "serve American interests." These rules may create a presumption of Committee on Foreign Investment in the United States ("CFIUS") prohibition of transactions in strategic sectors involving PRC-affiliated investors.

- **Potential Expansion of Outbound Investment Restrictions**. As part of its ongoing review of President Biden's Executive Order 14105, *Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern*, the administration is weighing new or expanded restrictions on outbound investment in the PRC. These restrictions would target areas of concern related to the PRC's military-industrial sector, including semiconductors, AI, quantum computing, biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy and other areas related to the PRC's Military-Civil Fusion strategy.

  The memorandum indicates that expansion of outbound investment restrictions could specifically target private equity, venture capital, greenfield investments, corporate expansions and investments in publicly traded securities. They may also target investments from sources including pension funds, university endowments and other limited partner investors.

  Notably, the memorandum reflects the administration's aggressive posture towards universities by stating, "[i]t is past time for American universities to stop supporting foreign adversaries with their investment decisions, much as they should stop granting university access to supporters of terrorism."

- **Potential Expansion of CFIUS Jurisdiction**. The memorandum states that "the United States will use all necessary legal instruments" to restrict PRC-connected investments in critical sectors, including U.S. "technology, critical infrastructure, healthcare, agriculture, energy, raw materials [and] other strategic sectors." The memorandum also states that the administration will (including in consultation with Congress) "protect" real estate and farmland near sensitive sites, "strengthen" CFIUS authority over greenfield investments, limit foreign adversary access to U.S. talent and operations in sensitive technologies (especially those related to AI) and expand the range of "emerging and foundational" technologies within CFIUS's jurisdiction.

- **Cessation of "Open-Ended" Mitigation Agreements**. The administration will cease entering what it considers "overly bureaucratic, complex, and open-ended" mitigation agreements with investors from foreign adversary countries. The memorandum suggests that, instead, the administration will prioritize agreements mandating "concrete actions that companies can complete within a specific time."

- **Encouragement of Passive Investments**. The administration will "continue to welcome and encourage passive investments from all foreign persons," including noncontrolling stakes and investments that confer no governance or decision-making rights, or access to nonpublic technologies or technical information products, or services.

- **Potential Suspension or Termination of U.S.–PRC Income Tax Convention**. The memorandum states that the 1984 United States-The People's Republic of China Income Tax Convention (along with China's admission to the World Trade Organization and its Most Favored Nation status) have contributed to the deindustrialization of the United States and facilitated the modernization of the PRC military. Because of this, the administration will consider whether to suspend or terminate the tax treaty to reduce Americans' incentives to invest in the PRC.

- **Protection of Investors' Savings**. The administration seeks to protect American investors' savings and "channel them into American growth and prosperity." To that end, it will review the application of auditing standards under the Holding Foreign Companies Accountable Act, "review the variable interest entity and subsidiary structures used by foreign-adversary companies to trade on United States exchanges," and ensure that foreign adversary companies are ineligible for pension plan contributions under the Employee Retirement Security Act of 1974.

IMPLICATIONS FOR INVESTORS AND U.S. BUSINESSES

By announcing the policy measures above, the memorandum signals that the Trump administration intends to take what it considers a business-friendly approach while bolstering national security safeguards. Investors and businesses should be aware of the following implications.

- **Difficult choices for investors seeking "fast-track" access**. Because eligibility for expedited investment reviews will be conditioned in part on investors' distance from the PRC, firms may have to pare back their PRC-related investments to gain "fast track" access.

- **A restrained approach to CFIUS mitigation agreements**. The administration may have heeded the concerns of investors from allied countries, many of whom have grown frustrated with lengthy CFIUS reviews and burdensome mitigation agreements. As a result, CFIUS may take a more targeted and less resource-intensive approach to mitigation. However, the impact of the memorandum's mitigation provision may be limited as it relates to investments from foreign adversary countries; CFIUS can perhaps be expected to prohibit these outright, rather than entering mitigation agreements.

- **A wider range of PRC-related companies targeted by the Outbound Investment Rule**. The Outbound Investment Rule ("OIR") currently targets China-related activities involving quantum information technologies, artificial intelligence and semiconductors and microelectronics. The memorandum indicates that the administration seeks to expand the OIR's scope to cover sectors that include biotechnology, hypersonics, aerospace, advanced manufacturing and directed energy. This would expand the range of PRC-related companies to which the OIR applies. By suggesting these additional sectors, the memorandum builds on the *America First Trade Policy* memorandum (January 20, 2025), which signaled that the administration may modify the OIR.

- **Potential expansion of CFIUS authority to include greenfield investments and further direction to review investments in agriculture**. The administration's stated intent to "strengthen CFIUS authority over 'greenfield' investments"—transactions over which CFIUS does not currently have jurisdiction—suggests that proposed amendments to the CFIUS regulations could be forthcoming. Similarly, the memorandum's focus on farmland and agriculture may mean that we will see proposed amendments aimed at expanding CFIUS jurisdiction over investments in these areas, and/or executive action directing CFIUS to more closely consider potential national security risks arising out of investments in the agricultural sector.

- **Increased scrutiny of PRC- and other foreign adversary-affiliated investments, including through private equity and complex acquisition structures**. As the administration seeks to further restrict PRC and other "foreign adversary" investment in the United States, we may see increased CFIUS attention to investments from these jurisdictions, with limited availability of ongoing mitigation to address any identified national security risks. This may include heightened scrutiny of minority investments from these jurisdictions to assess whether such investments in private equity funds and other complex acquisition structures are sufficiently “passive” to overcome concerns regarding “affiliation.”

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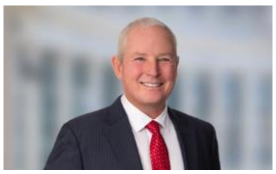
We are closely monitoring developments in this area. Please do not hesitate to contact us with any questions.



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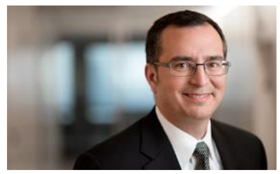

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