



# White House Issues Executive Order on Outbound Investment Screening

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On August 9, 2023, the White House issued [Executive Order 14105](#) (“EO”) to address the national security threat posed by outbound investment in certain countries of concern that seek to develop and exploit sensitive or advanced technologies and products critical for military, intelligence, surveillance, or cyber-enabled capabilities. For now, the EO is narrowly focused on China, Hong Kong, and Macau and covers products in the semiconductors and microelectronics, quantum information technologies, and artificial intelligence sectors. The EO does not immediately implement any new restrictions, and instead directs the Treasury Department (“Treasury”) to issue implementing regulations within the next year. As the regulations are developed, we will get a better sense of the scope and potential impact on outbound investment activity.

The EO uses a “small yard, high fence” approach to address national security threats posed by certain countries advancing the sensitive technologies listed above. Specifically, the EO requires development of regulations that would prohibit or otherwise impose notification requirements for U.S. persons regarding certain transactions involving countries of concern and the sub-sets of the three advanced technology areas. Of note, covered transactions would include not only traditional M&A, but also greenfield investments, joint ventures, and certain debt financing arrangements.

Importantly, the authorization granted to Treasury by this EO is far more narrow, both in covered countries and in product scope, than the current regulations for inbound U.S. investment (i.e., the Committee on Foreign Investment in the United States). Indeed, according to the [Proposed Rule](#), Treasury does not expect the new regulations to entail a case-by-case review of U.S. outbound investments. Rather, the expectation is that the transaction parties will have an obligation to determine whether a given transaction is prohibited, subject to notification, or permissible without notification. Treasury is also considering an exception for specific types of transactions, such as certain investments into publicly-traded securities or into exchange traded funds.

Treasury published an Advance Notice of Proposed Rulemaking (“ANPRM”) requesting public comment on various topics related to implementation of the EO’s mandate. Information regarding the submission of comments can be [found here](#) and comments are due by September 28, 2023. In the ANPRM, Treasury outlines the kind of information it is seeking from commenters, which includes:

- Requirements on U.S. persons;
- Specific categories of covered transactions;
- Transactions involving covered foreign persons;

- Treasury’s methodology for excepted transactions; and
- Details on sub-sets of technologies and products within the three identified categories.

An overview of the Outbound Investment Program as it stands can be [found here](#). If you are interested in submitting comments on the Proposed Rule, please contact our team.