

President Trump Announces “America First Investment Policy” to Promote Investments from Allies and Enhance Restrictions on China

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On February 21, 2025, President Trump signed a National Security Presidential Memorandum (NSPM) announcing an “America First Investment Policy” focused on promoting foreign investment in the United States from allies and partners and addressing threats to U.S. national security interests posed by foreign adversaries – including by strengthening the Committee on Foreign Investment in the United States (CFIUS).

The NSPM recognizes the Trump Administration’s interest in maintaining the United States’ long-standing open investment policy (and welcoming passive investments from all foreign persons) while limiting inbound and outbound investment involving foreign adversaries. The NSPM focuses primarily on threats posed by the People’s Republic of China (PRC), including Hong Kong and Macau, though the NSPM defines the term “foreign adversaries” to also include Cuba, Iran, North Korea, Russia, and Venezuela’s Maduro regime.

The NSPM does not impose any immediate new restrictions on foreign investment in the United States or U.S. outbound investment, nor does it provide a timeline for implementation of the various policy initiatives. It instead instructs the U.S. Department of the Treasury (Treasury), in consultation with other agencies, to take the lead in promulgating rules and regulations to implement most of the initiatives laid out in the NSPM.

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The policy objectives in the NSPM (and accompanying fact sheet) include the following:

Facilitate foreign investment from U.S. allies and partners. The NSPM pledges that for investment in U.S. businesses involved in critical technology, 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 investment and technology-acquisition practices of the PRC and other foreign adversaries or threat actors.” The NSPM also seeks to “create an expedited ‘fast-track’ process, based on objective standards, to facilitate greater investment from specified allied and partner sources in United States businesses involved with United States advanced technology and other important areas.” This process would be subject to certain restrictions, including requirements that the specified foreign investors avoid partnering with U.S. foreign adversaries.

It's unclear from the language of the NSPM how these proposals will ultimately be implemented. CFIUS has jurisdiction to review controlling and certain non-controlling, non-passive foreign investments in U.S. businesses as well as certain real estate transactions. It does not regulate “access” to U.S. assets *per se* (though foreign access to aspects of a U.S. company’s business may subject a transaction to CFIUS review in some cases). CFIUS also does not impose blanket “restrictions” on certain types of transactions, so it’s unclear what restrictions would be “eased” for U.S. allies and partners. Additionally, the CFIUS regulations already provide for relatively expedient review (*i.e.*, 30 days for a declaration and typically 45-90 days for a notice). Creating a “fast-track” process to further truncate these timelines would be challenging absent a pre-clearance mechanism or jurisdictional carve-out for transactions involving certain investors, classes of investors, and/or industry sectors.

Regardless, the language included in each of these proposals suggests that they’re primarily intended to afford favorable regulatory treatment to foreign investors who distance themselves from China and other foreign adversaries. Implementation could therefore result in a lower degree of scrutiny of transactions involving qualifying foreign investors and, conversely, increased scrutiny of foreign investors with ties to China or other foreign adversaries. It could also include changes to CFIUS’s existing “excepted investor” framework, which provides an exclusion from CFIUS jurisdiction for certain non-controlling, non-passive transactions involving investors with close ties to U.S.-allied countries. The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) directed CFIUS to limit the scope of its expanded jurisdiction under FIRRMA with respect to investments involving certain categories of foreign persons (referred to as “excepted investors” under the CFIUS regulations). In practice, however, CFIUS has implemented this directive narrowly. Only investors from a limited number of “excepted foreign states” (currently Australia, Canada, New Zealand, and the United Kingdom) may qualify, and only if they meet a stringent set of criteria pertaining to the entity’s corporate organization, management, and ownership that are difficult for most multinational companies to satisfy. The NSPM could potentially result in the expansion of this program by including more countries in CFIUS’s list of excepted foreign states and/or by easing the qualifying criteria.

Further restrict Chinese foreign investment. The NSPM pledges to “stop PRC-affiliated persons from buying up critical American businesses and assets, allowing only those investments that serve American interests.” To that end, the United States “will use all necessary legal instruments, including [CFIUS], to restrict PRC-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors.”

While CFIUS has long taken a hard look at investments by PRC-affiliated persons in industry sectors viewed as critical to U.S. national security, the NSPM contemplates expanding the range of “emerging and foundational” technologies within CFIUS’s jurisdiction. An additional means of implementing this policy objective could include broadly restricting PRC investments in certain kinds of U.S. businesses. While Section 721 of the Defense Production Act of 1950 (Section 721), the CFIUS-authorizing statute, and the CFIUS regulations do not currently prohibit investments from specific countries, the NSPM could set the stage for prohibitions on investments by PRC-affiliated persons in certain U.S. industry sectors. CFIUS would likely not have the legal authority to impose such restrictions absent statutory amendments to Section 721. However, the President could potentially utilize his authority under the International Emergency Economic Powers Act (IEEPA) to prohibit inbound foreign investments by PRC-affiliated persons in strategic U.S. industry sectors, similar to how President Biden invoked IEEPA to prohibit certain outbound investments by U.S. persons in China.

Enhance restrictions on real estate transactions. The NSPM pledges to “protect United States farmland and real estate near sensitive facilities.”

Existing regulations already allow CFIUS to review real estate transactions involving land located near sensitive military installations. However, the statutory language in FIRRMA is broader in that it also authorizes CFIUS to review real estate transactions involving any “facility or property of the United States Government that is sensitive for reasons relating to national security.” The Administration could potentially rely on this authority to broaden the scope of CFIUS’s jurisdiction over real estate transactions to include non-military installations and/or add more military installations to Appendix A to Part 802. Providing CFIUS with jurisdiction to review farmland transactions would likely require statutory amendments to Section 721, though legislative efforts to expand CFIUS’s role in reviewing purchases of farmland by foreign persons have increased in recent years.

Extend CFIUS jurisdiction, including to greenfield investments. The NSPM proposes to “strengthen CFIUS authority over ‘greenfield’ investments, to restrict foreign adversary access to United States talent and operations in sensitive technologies (especially artificial intelligence), and to expand the remit of ‘emerging and foundational’ technologies addressable by CFIUS.”

Greenfield investments are those that involve establishing a new business rather than acquiring or partnering with an existing business. Providing CFIUS with authority to review greenfield investments would represent a significant expansion of CFIUS’s jurisdiction. Greenfield investments are currently excluded from CFIUS’s purview unless the investment also involves covered real estate subject to CFIUS review. As with some of the other initiatives outlined in the NSPM, expanding CFIUS’s authority to review greenfield investments would

likely require statutory amendments to Section 721.

Restructure mitigation agreements. The NSPM pledges to “cease the use of overly bureaucratic, complex, and open-ended ‘mitigation’ agreements for United States investments from foreign adversary countries.” In general, “mitigation agreements should consist of concrete actions that companies can complete within a specific time, rather than perpetual and expensive compliance obligations.”

The NSPM does not specify any particular “concrete actions” that mitigation agreements under this new approach would entail or could impose. Based on language included in some of the other proposals under the NSPM, however, we expect that at least some of these actions could include requiring parties to limit or sever ties with China. Other concrete actions that CFIUS has historically required parties to take under mitigation agreements include, among other things, establishing a corporate security committee, voting trust, or other mechanism to limit foreign influence; segregating computer networks; relocating sensitive facilities, equipment, or operations to the United States; implementing appropriate security policies; notifying customers and relevant U.S. government parties of the change in ownership; sunset clauses; and requiring the foreign investor to divest certain assets.

While it remains to be seen how this policy objective will ultimately be implemented, we expect that many current and potential foreign investors and U.S. companies would welcome a shift away from mitigation agreements that impose “perpetual and expensive compliance obligations.” Mitigation agreements, particularly those imposed by the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector (Team Telecom), are oftentimes burdensome and costly to implement. They are also commonly viewed as “backdoor regulation,” as they tend to be imposed uniformly on U.S. telecommunications providers with any reportable foreign ownership and are not individually tailored to address the specific U.S. national security threats posed by a particular foreign investment. As even passive minority investments involving U.S. allies can be subjected to nearly identical mitigation agreements as those imposed on investments involving investors from more adversarial nations, many companies within the U.S. telecommunications industry would welcome a reformed process more tailored to the differences in risk posed by different kinds of investments and/or investors.

Further restrictions on U.S. outbound investment. The NSPM calls for the adoption of new rules and the utilization of existing legal authorities to deter U.S. persons “from investing in industries that advance the PRC’s national Military-Civil Fusion strategy.” Such measures may include the imposition of sanctions and consideration of “new or expanded restrictions on United States outbound investment in the PRC in sectors such as semiconductors, artificial intelligence, quantum, biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and other areas implicated by the PRC’s national Military-Civil Fusion strategy.”

Treasury recently established an Outbound Investment Security Program under Executive Order 14105 (the Outbound Order), which became effective on January 2, 2025. The Outbound Investment Security Program prohibits or requires notification for certain types of outbound investments by U.S. persons in China’s

semiconductor, quantum computing, and AI sectors. The NSPM contemplates that the Outbound Order may not include sufficient controls and that new measures, including sanctions under IEEPA, may be necessary to prohibit or otherwise regulate U.S. investments in industries that advance the PRC’s national Military-Civil Fusion strategy. The NSPM further notes that U.S. investment restrictions could extend to greenfield investments, corporate expansions, venture capital, private equity, pension funds, university endowments, limited partner investors and investments in publicly traded securities.

Other objectives. In addition to the inbound foreign investment and outbound U.S. investment policy objectives outlined above, the NSPM proposes the following additional policy changes:

- Expedited reviews concerning environmental issues for any investment over \$1 billion.
- Potential suspension or termination of the 1984 United States-The People’s Republic of China Income Tax Convention (noted in the context of other factors such as China’s admission to the World Trade Organization and providing Most Favored Nation treatment to goods and services from China as having led to the deindustrialization of the United States and the technological modernization of the PRC military).
- Consideration of whether adequate financial auditing standards are upheld for companies covered by the Holding Foreign Companies Accountable Act.
- Review of the variable interest entity and subsidiary structures used by foreign-adversary companies to trade on U.S. exchanges, which “limit the ownership rights and protections for United States investors,” and review allegations of fraudulent behavior by these companies.
- Ensure that foreign adversary companies are ineligible for pension plan contributions.

For any questions regarding the NSPM, please do not hesitate to contact any of the members of our CFIUS and National Security practices listed on this alert.

Wiley’s CFIUS and National Security practices draw on senior government-level experience with CFIUS member agencies and numerous representations of domestic and international companies in complex transactions to help clients navigate U.S. government investment screening processes and stay ahead of the curve in today’s highly volatile trade and investment environment.

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