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Trump Administration issues America First Investment Policy

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Positive Development for Investors from Allied Nations

In a further solidification of the Administration's efforts to isolate identified adversaries and strengthen U.S. leadership key strategic technologies, the Administration issued the America First Investment Policy Memorandum with the stated aims to maintain the country's "open investment environment" towards allies and partners, while also protecting it from "new and evolving threats" arising from foreign adversaries. *Id*.

The policy comes in the context of prior actions that have curtailed certain outbound investment, including the Biden Administration's Executive Order 14105 and the final regulations issued on October 28, 2024, targeting outbound investment in specific technologies and products in "countries of concern" (mainly, the People's Republic of China (PRC), The Special Administrative Region of Hong Kong, and The Special Administrative Region of Macau). For more information, see U.S. Department of the Treasury issues final regulations implementing Executive Order 14105 Targeting Tech Investment in China – Insights – Proskauer Rose LLP.

America First Investment Policy aims to expand the scope of the Outbound Investment Security Program by outlining more intensive and aggressive restrictions on so-called "foreign adversaries or threat actors", while also facilitating investment by "United States allies and partners" in the interest of ensuring continued U.S. leadership in the development of artificial intelligence and other emerging technologies.

The following key strategies and tools outlined in the policy are noteworthy:

- Facilitators to U.S. "allies and partners":
  - The loosening of restrictions on foreign investors' access to U.S. assets where investors can establish a sufficient lack of ties to "the predatory investment and technology-acquisition practices of the PRC and other foreign adversaries or threat actors";

    - The creation of an expedited “fast-track” process to facilitate greater investment from allied and partner sources in U.S. businesses involved with U.S. advanced technology and other important areas;
    - The expedition of environmental reviews for any investment over $1 billion in the U.S.;

- Obstacles to “foreign adversaries”:
    - The reduction of exploitation of public and private sector capital, technology, and technical knowledge by foreign adversaries such as the PRC;
    - The restriction of PRC-affiliated persons from investing in U.S. technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors;
    - The use of legal instruments to further deter U.S. persons from investing in the PRC’s military-industrial sector and the review of Executive Order 14105.

- General strategies:
    - The cease of the use of overly bureaucratic, complex, and open-ended “mitigation agreements” for U.S. investments from foreign adversary countries, with more administrative resources being directed toward facilitating investments from key partner countries;
    - The welcoming and encouragement of passive investments from all foreign persons;
    - The consideration of new or expanded restrictions on U.S. 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;
    - The review of whether to suspend or terminate the 1984 United States-The People’s Republic of China Income Tax Convention;
    - The determination of whether adequate financial auditing standards are upheld for companies covered by the Holding Foreign Companies Accountable Act;
    - The revision of the variable interest entity and subsidiary structures used by foreign-adversary companies to trade on U.S. exchanges;
    - The restoration of the highest fiduciary standards as required by the Employee Retirement Security Act of 1974, seeking to ensure that foreign adversary companies are ineligible for pension plan contributions.

The Policy is to be implemented through the actions of agents such as the Secretary of the Treasury, in consultation with fellow Secretaries and heads of other executive departments and agencies, as well as the Administrator of the Environmental Protection Agency, the Securities and Exchange Commission and the Public Company Accounting Oversight Board.

The policy includes as "foreign adversaries" 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 Venezuela. While some of the policy pronouncements will require legislation to move forward, others, such as streamlining of CFIUS reviews with respect to investment from closely allied nations, can be implemented in the short term, saving time and cost in the review process for many investors.

The Memorandum can be accessed through this website. The Proskauer Antitrust Team is closely monitoring the development of the new Trump Administration investment policy and will continue publishing guidance on its next steps.

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Special thanks to law intern Felipe Ioschpe for his contributions to the post.

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