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Global Trade in 2025: Outbound Investment Restrictions

The Capital Commitment on **May 16, 2025**

Motivated by a rapidly evolving geopolitical climate, governments around the globe have increasingly scrutinized and intervened in transactions under foreign direct investment (FDI) screening regimes in recent years. Rising protectionism, concerns over cybersecurity threats, Covid-19 and the desire to protect critical domestic industries have driven the expansion of FDI regimes beyond purely national security or defense specific industries.

More than 100 jurisdictions now apply FDI screening in some form. The notification triggers and review processes vary significantly between these regimes, and their proliferation has significantly increased complexity for investors planning cross-border investments.

The New Frontier: Outbound Investment Screening

Having spent the last few years building and/or refining inward investment screening, governments are now turning to outbound investment screening, amidst concerns about economic dependence and technology leakage. Governments are increasingly concerned about offshoring of critical capabilities, which can facilitate the development of sensitive technologies in potentially hostile states and lead to over reliance on third countries, creating economic dependencies that can be exploited for geopolitical purposes.

The People’s Republic of China (PRC), Japan, South Korea and Taiwan already have outbound investment screening for domestic entities, primarily in sectors considered critical to national security and technological competitiveness. The US and Europe are now catching up, with US screening for outbound investments into certain sectors in “Countries of Concern” applicable from January 2025, and the EU launching an outbound investment monitoring exercise in similar categories of critical technology. While the EU and UK have not implemented formal outbound investment screening, each has signaled its concerns.

US: Outbound Investment Program (Executive Order 14105)

Regulatory expansions to maintain US technological leadership have included rules to monitor and restrict outbound investment – so-called “reverse CFIUS.” On August 9, 2023, President Biden issued Executive Order 14105 – “Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern.” On October 28, 2024, the US Department of the Treasury issued final regulations implementing Executive Order 14105, which address investments by US persons in certain identified technologies in “Countries of Concern”, including PRC and the Special Administrative Regions of Hong Kong and Macau.

The regulations, which became effective January 2, 2025, prohibit certain transactions by US persons implicating highly strategic technologies, and create a post-closing notification requirement for certain other transactions. Under the regulations, the obligations on US persons will apply if such person has actual or constructive knowledge of relevant facts or circumstances relating to a transaction. A US person has such knowledge under the regulations if it possesses actual knowledge that a fact or circumstance exists or is substantially certain to occur; an awareness of a high probability of the existence or future occurrence of a fact or circumstance, or could have possessed such awareness through a reasonable and diligent inquiry.

The categories of covered transactions include the acquisition of an equity interest or a contingent equity interest, certain debt financing that grants certain rights to the lender, the conversion of a contingent equity interest, certain “greenfield” investments (building a new facility) or other corporate expansions, the entry into a joint venture, and certain investments as a limited partner or equivalent (LP) in a non-US person pooled investment fund. Excepted transactions include investments in publicly traded securities, certain LP investments with a threshold of $2,000,000, derivatives, buyouts of country of concern ownership, intracompany transactions, certain pre-final rule binding commitments, certain syndicated debt financings, and equity-based compensation.

The regulations apply to the conduct of US persons only and defines a US person as “any United States citizen, lawful permanent resident, entity organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entity, or any person in the United States.” Under the America First Investment Policy issued in February 2025, the US administration is considering new or expanded restrictions on US 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.

EU: Market Monitoring to Inform Future Policy on Outbound Investment Screening

On January 15, 2025, the European Commission published a *Recommendation* on reviewing outbound investments in technology areas critical for the economic security of the Union. The *Recommendation* asks EU Member States to review investments made between January 2021 and June 2026 by EU-based investors into third countries in three critical technologies for economic security: semiconductors, artificial intelligence and quantum technologies.

The EU *Recommendation* applies to acquisitions, mergers, “greenfield” investments, joint ventures, venture capital investments and the transfer of certain tangible and intangible assets, including IP or know-how. Non-controlling investments limited to seeking a return on invested capital are excluded. Member States are requested to gather information through mandatory or voluntary notification processes, and to perform a risk assessment of covered transactions with the European Commission.

The EU *Recommendation* covers the same three technologies as the US outbound regulations, although some of the definitions are narrower. The US outbound regulations also apply to non-controlling investments, although in other respects the EU *Recommendation* is wider because it covers all third countries as well as IP licensing.

This will be a significant information gathering exercise for transaction parties, Member States and the European Commission, with Member State progress reports due in July 2025 and final reports in July 2026. The review will inform a decision on whether further action is needed to regulate outbound investment at EU and/or national level.

In the meantime, Member States are continuing to expand FDI screening regimes for inward investment, with Ireland's the latest to come into force in January, and Greece publishing its proposed screening framework in April. On May 8, 2025, the European Parliament endorsed revised rules for screening foreign investments into and within the EU. Under the proposed new rules, certain sectors such as critical raw materials and transport infrastructure will be subject to mandatory FDI screening by Member States. National procedures will be harmonized, and the Commission will have the power to intervene. Member States are now negotiating the text of the legislation, currently aiming to reach agreement in June.

UK: Position on Outbound Investment

In May 2024, the UK government published updated guidance on the National Security and Investment Act (NSIA), emphasizing that it can apply to "outward direct investment" from the UK. The NSIA may apply to the acquisition of an entity or asset outside the UK if the entity carries on activities in the UK or supplies goods or services to the UK, or the asset is used for these purposes.

This is not a change. It has been the position since the NSIA came into force in January 2022. However, it is noteworthy that the UK government chose to underline these powers and provide examples of when the NSIA would apply to acquisitions of a non-UK entity or asset.

The UK government has indicated that it is considering more substantive rules on outward investment screening, to complement the existing tools of export controls and inbound investment screening.

Strategies For Asset Managers to Mitigate Risks to Deal Certainty, Timelines and Costs

1. Conduct outbound investment reviews early in the deal process to assess exposure to "countries of concern" (e.g., China, Hong Kong, Macau).
2. Screen for sector sensitivity — artificial intelligence, quantum technology and semiconductors.
3. Include side-letter language addressing outbound investment screening compliance.

4. Diligence efforts should conform to the knowledge standard in the US outbound regulations and include:
    1. inquiries to the relevant counterparty (e.g. the prospective portfolio company, fund manager or seller).
    2. contractual representations or warranties that the target portfolio company does not engage in the in-scope technologies; or that the target fund is not a covered foreign person.
    3. consideration of relevant public and non-public information, including the use of available public and commercial databases to verify information provided by the counterparty.
5. Monitor the evolving regulatory landscape and be prepared to adjust investment strategies and structures accordingly. Understanding the underlying policy drivers will enable investors to navigate regimes more effectively and reduce execution risk.
6. And finally…reconsider your government relations strategy: governments are trying to strike a balance between protecting national interests and encouraging investment, so they are continually seeking feedback and there are many opportunities to shape the policy debate.

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