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President Trump's "America First" Investment Policy Memorandum

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On February 21, 2025, President Trump issued a National Security Presidential Memorandum titled "America First Investment Policy," outlining several key strategies aimed at enhancing U.S. national and economic security through investment policy. This memorandum directs several agencies and executive departments, including the U.S. Department of the Treasury, the U.S. Department of Commerce, the Committee on Foreign Investment in the United States ("CFIUS"), the Federal Bureau of Investigation, and the Securities and Exchange Commission to take specific actions to encourage investment from allies and to protect America's national security interests from foreign adversaries, with a particular focus on the People's Republic of China ("PRC").

The White House released an accompanying fact sheet outlining its reasons for issuing the memorandum.

While the memorandum does not implement any immediately effective regulatory changes, it establishes an important framework and plan of action that investors should anticipate eventually coming into effect.

Encouraging Allied Investment

The memorandum encourages foreign direct investment from allied nations by proposing a "fast-track" review process for investments from specified "allied and partner" countries. This is intended to facilitate investments in advanced technology and other strategic areas while ensuring these investors do not partner with U.S. adversaries. Along these lines, the memorandum provides that restrictions on foreign investors' access to U.S. assets "will ease in proportion to their verifiable distance and independence from the predatory investment and technology-acquisition practices of the PRC" and other adversaries. The United States will also expedite environmental reviews for investments exceeding one billion dollars.

Restricting Inbound Investment Linked to Adversaries

The United States "will use all necessary legal instruments," including CFIUS, to block PRC-affiliated investments in strategic sectors like technology, critical infrastructure, healthcare, agriculture, energy, and raw materials. This may result in CFIUS expanding its scrutiny of "covered transactions" with PRC links, potentially lowering thresholds for review and increasing mandatory filings for PRC-linked entities (although certain measures could require congressional action). The memorandum also provides that the Trump administration will consult with Congress regarding expansion of CFIUS review to cover "greenfield" and farmland investments, which are currently beyond CFIUS's authority to review.

The memorandum also directs CFIUS to cease using mitigation agreements for U.S. investments from foreign adversaries, and describes these agreements as "overly bureaucratic, complex, and open-ended." Any mitigation agreements "should consist of concrete actions that companies can complete within a specific time, rather than perpetual and expensive compliance obligations." The memorandum emphasizes that the United States should direct administrative resources toward facilitating investments from key partner countries.

Restricting Outbound Investment Linked to Adversaries

The memorandum also mentions potential new restrictions on U.S. outbound investments to China in sensitive technologies like semiconductors, artificial intelligence ("AI"), biotechnology, quantum, hypersonics, aerospace, advanced manufacturing, and directed energy, and states that the United States will use all necessary legal instruments to further deter U.S. persons from investing in the PRC's military-industrial sector. It also indicates that sanctions may be imposed under the International Emergency Economic Powers Act to address threats swiftly. The memorandum further states that the Trump administration will consider applying restrictions on various types of outbound investment, including private equity, venture capital, greenfield investments, corporate expansions, and investments in publicly traded securities, from sources such as pension funds, university endowments, and limited partner investors. Last, the memorandum notes that the Trump administration is reviewing Executive Order 14105 on outbound investment, issued by President Biden in August 2023, to assess whether it sufficiently addresses national security threats.

Passive Investments

The President's memorandum emphasizes that the United States will continue to encourage "passive investments" from all foreign persons and entities, including non-controlling stakes and shares with no voting, board, or other governance rights and that do not confer any managerial influence, substantive decision-making, or access to sensitive technology or information.

Protecting U.S. Investors

Relevant agencies must review existing auditing standards for foreign companies on U.S. exchanges (*e.g.*, under the Holding Foreign Companies Accountable Act), scrutinize variable interest entities often used by foreign adversary firms, and tighten fiduciary standards to exclude adversary-linked companies from pension plans.

Key Takeaways

The "America First Investment Policy" encourages the realignment and prioritization of investment flows between the United States and allied nations, provided that investors have “verifiable distance” from the PRC. As implementation unfolds, investors and businesses will need to navigate this evolving landscape with agility.

For U.S. companies, the memorandum could unlock significant opportunities and challenges. Firms in strategic sectors like semiconductors, AI, and biotechnology may benefit from increased allied investment and expedited project approvals, boosting domestic innovation and jobs. However, a broader range of transactions (such as greenfield transactions) may be subject to CFIUS review, and if a foreign investor has ties to the PRC that CFIUS considers concerning, it could face heightened scrutiny. (Notably, this already takes place, to an extent.)

For foreign investors, the impact hinges on their origin and affiliations. Investors based in allied countries (*e.g.*, Japan, EU member states) without troubling PRC ties stand to gain from the fast-track process, potentially increasing their U.S. market presence if they comply with anti-adversary stipulations. Conversely, PRC-linked firms face heightened barriers. Investors interested in taking advantage of the fast-track process, once implemented, should consider how to best position themselves for fast-track treatment, including through any appropriate adjustments to operations and third-party relationships with China or other foreign adversaries.

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