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Regulatory Update

Trump Administration Announces Its Investment Strategy With the ‘America First Investment Policy’

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On Friday, February 21, 2025, President Donald Trump issued the “America First Investment Policy” National Security Presidential Memorandum (NSPM), reaffirming the United States’ commitment to promoting foreign investment while announcing means to address threats to U.S. national security posed by investment from countries defined in the NSPM as “foreign adversaries.” The NSPM lists mechanisms by which the United States will both facilitate allied and partner inbound investment and restrict inbound and outbound adversary investment.

Whether the NSPM’s changes are enacted through policy, regulatory update, statutory update or some combination thereof, investors and industry should prepare for a changing regulatory landscape that divides national security approval processes into those for U.S. partners and those for its adversaries. While the NSPM directs agencies and the Committee on Foreign Investment in the United States (CFIUS) to take action to implement the new policy direction — much of which we anticipate in forthcoming agency action and rulemaking or additional presidential action (in some cases in consultation with Congress) — the NSPM’s announced changes give rise to key considerations for investors and industry.

In particular, the NSPM signaled the following key changes:

1. A new fast-track for investments from allied nations that commit to realignment away from partnerships with foreign adversaries such as China;
2. A reduction in the “exploitation” of public and private sector capital, technology and technical knowledge by foreign adversaries through new rules aimed at curtailing both outbound investment in certain Chinese technology and inbound Chinese investment in certain U.S. businesses and technologies;
3. A commitment to strengthen authority over greenfield investments and investments in agricultural land;
4. The termination of “open-ended” mitigation agreements from foreign-adversary investors; and
5. The announcement that the administration will “expedite” environmental reviews for any investment over \$1 billion in the United States.

Given these objectives, foreign investors may anticipate the relative ease or burden of obtaining relevant regulatory approvals will be based in significant part on affiliations with “foreign adversaries.” While the NSPM lists China, North Korea, Cuba, Iran, Russia and Venezuela as foreign adversaries, some of the provisions focus particularly on China.

New Fast-Track CFIUS Process and Incentives to Decouple From China

The NSPM announced a new “expedited ‘fast-track’ process, based on objective standards, to facilitate greater investment” from to-be-determined “specified allied and partner sources.” While the mechanism for achieving this new fast-track was not detailed, the NSPM states that there will be “requirements that the specified foreign investors avoid partnering with United States foreign adversaries.”

The theme of realignment away from China and Russia is also reflected elsewhere in the NSPM, where it underscores that restrictions on investors’ access to sensitive U.S. assets, including critical technologies and infrastructure, will be reduced “in proportion” to an investor’s “verifiable distance and independence from predatory investment and technology-acquisition practices of the PRC and other foreign adversaries[.]” This proposal will be particularly relevant for investment firms with significant limited partner bases that may include Chinese investors, as well as global manufacturing and other operational entities that have significant sales or production operations in China or significant technology supply chain reliance or sourcing from China, as those relationships could be seen by CFIUS as reducing their “distance from” China.

Notably, the CFIUS declaration filing option already provides an abbreviated process. Thus, CFIUS could create a new fast-track process or amend the current CFIUS declaration process to specifically accommodate qualified investors.

New Rules to Curb Inbound and Outbound Investments by and in Chinese entities

The NSPM previews new rules to “stop PRC-affiliated persons from buying up critical American businesses and assets” and to stop U.S. companies from making outbound investments in industries that “advance the PRC’s national Military-Civil Fusion strategy.” Moreover, in consultation with Congress, the NSPM proposes to restrict access to U.S. talent and operations in sensitive technologies, particularly artificial intelligence. As stated by the NSPM, this proposal could be implemented by expanding the list of “emerging and foundational” technologies that trigger CFIUS jurisdiction. Additionally, the outbound policy could be implemented under the existing Outbound Investment Security Program (OISP) by expanding the scope of “covered activities” subject to outbound investment rules beyond semiconductor, quantum and certain AI technologies.

A Commitment to Protecting U.S. Farmland and Real Estate Near Sensitive Facilities and Expanding CFIUS Jurisdiction Over “Greenfield” Investments

Continuing a trend of recent legislative proposals, the NSPM states that the administration will “protect United States farmland” and “real estate near sensitive facilities” while also, in consultation with Congress, enhancing CFIUS’ ability to review “greenfield” investments. CFIUS already has jurisdiction to review certain real-estate acquisitions (including farmland) near sensitive U.S. military facilities, but recent proposed legislation seeks to add investments in agricultural land as a standalone basis for jurisdiction. Further, while CFIUS in practice has generally exempted greenfield investments from the scope of its jurisdiction, it could create new guidance to affirm its jurisdiction over greenfield investments. These actions could have an outsized impact on investors focused on energy or other infrastructure projects as predevelopment acquisition of real estate would become more likely to trigger CFIUS jurisdiction.

Termination of Open-Ended Mitigation Agreements With China

The NSPM instructs CFIUS to terminate “overly bureaucratic, complex, and open-ended” mitigation agreements to address concerns with investments from “foreign adversaries.” Importantly, while the scope of this new policy appears intended to streamline mitigation generally across all investors, including those from allied nations, we note that the NSPM on its face limits the termination of open-ended mitigation agreements to those with foreign adversaries (i.e., a possible interpretation of the plain language would be that mitigation would no longer be a means by which a foreign adversary could obtain

CFIUS safe harbor). Assuming the former interpretation reflects the NSPM's intent, this proposal likely will result in fewer mitigation agreements (e.g., NSAs) and more outright CFIUS blocked transactions involving investors from China.

The NSPM also instructs CFIUS to, in general, use mitigation agreements that require concrete actions which can be completed within specified time frames rather than "perpetual" compliance obligations. This could reduce compliance monitoring burdens on parties and the government by reducing inefficiencies, such as broadly scoped reporting obligations leading to parties submitting frequent notifications that CFIUS agencies must review, with only a select few being relevant to the committee's original concerns.

New Expedited Environmental Reviews for Investments Over \$1 Billion

The NSPM deputizes the administrator of the EPA (in consultation with the heads of other agencies) to carry out the memorandum's announcement of "expedited" environmental reviews. The NSPM is short on details on how such environmental reviews will be streamlined or shortened, but the promise of expedited reviews will be an important area to watch for parties involved in major AI infrastructure build-outs in the United States.

Conclusion

In short, the NSPM signals a shift in the administration's focus that might cascade through to the enforcement and review of investments presented before CFIUS. Accordingly, parties are well advised to consult early to factor in these changes and continuing developments into their overall transaction strategy and timelines.

Key Takeaways

- The NSPM signals a shift in the Administration's focus which might cascade through to the review of investments presented before CFIUS.
- Accordingly, parties are advised to consult early to factor in these changes into their overall transaction strategy and timelines.

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