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US Outbound Investment Enforcement Is Now Live

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Despite uncertainty amid talks of reforming the Outbound Investment Security Program (OISP), the US Department of the Treasury is already actively pursuing enforcement actions against transaction parties that may have violated the nascent OISP regime.

About the OISP

The OISP, which became effective on January 2, 2025, prohibits or imposes notification requirements for certain "covered transactions" involving "US persons" and entities with a qualifying nexus to China (including Hong Kong and Macau) and specified "covered activity," including work with semiconductors, quantum computing or certain artificial intelligence (AI) technologies. Violations of the OISP can result in civil monetary penalties in amounts up to twice the value of the transaction at issue. Willful violations can lead to imprisonment for up to 20 years. Treasury also can nullify, void or otherwise compel divestment with respect to any prohibited transaction.

New OISP enforcement actions

Treasury has been actively monitoring transactions for potential OISP violations and has begun reaching out to US investors that may have participated in a prohibited or notifiable transaction in violation of the OISP's complex regulations. In just the first week of May, we have seen early OISP enforcement outreach, with Treasury sending multiple enforcement inquiries to US investor clients suspected of involvement in transactions implicating the OISP regime. These enforcement inquiries follow a pattern first developed by the Committee on Foreign Investment in the United States (CFIUS):

- Treasury first reaches out with an email to the US investor on behalf of the "Office of Global Transactions," requesting a phone call with the US party or their counsel to discuss a "confidential and time-sensitive matter."
- The initial email will not disclose specifics about the proposed violation (including the target of the investment or acquisition in question). Treasury will share these details and others by telephone.
- Following the initial telephone conference, Treasury will provide by email a preliminary list of questions seeking information about the transaction to determine if the parties engaged in a "covered transaction" in violation of the OISP.
- Note that among the preliminary questions from Treasury is a request for the parties to the transaction to "describe how the applicability of [the OISP regime] was considered during the diligence process of the investment." Because the OISP regulations require parties to conduct appropriate diligence to determine whether a contemplated transaction is "notifiable" or "prohibited" under the OISP regime, the parties should be prepared to answer this question **in advance** of any OISP post-closing outreach.

For those acquainted with the CFIUS post-closing (i.e., "non-notified") inquiry regime, the OISP enforcement outreach regime will seem familiar. Indeed, the three-person team at Treasury administering the OISP enforcement regime are former CFIUS officials with deep experience in cross-border transaction dynamics. Additionally, the OISP team operates under the same management umbrella as CFIUS within Treasury's Office of Investment Security.

Signals of change to OISP regime

Shortly after taking office in January 2025, President Donald Trump issued the America First Trade Policy memorandum, which directed the Treasury secretary to assess whether the OISP (which became effective in the

final days of the Biden administration) “should be modified or rescinded and replaced.” That memorandum also required an assessment of whether the OISP “includes sufficient controls to address national security threats.”

Weeks later – on February 21 – the president issued the America First Investment Policy (AFIP) memorandum instructing the Treasury secretary to “consider new or expanded restrictions on United States outbound investment in [China] 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.” (See our March 17 AFIP client alert.)

In early May, Bloomberg reported that Treasury Secretary Scott Bessent is working with Congress on “outbound” investment rules for China that would make clear what is allowed and what is prohibited. Bessent spoke with US legislators about the “importance of establishing a [sic] either red light or green light, and not having a yellow zone, for outbound investment.” He went on to say that the OISP is “an important national security tool in our effort to restrict [China] from exploiting the benefits of U.S. investment.”

Next steps for transaction parties

It is clear that the OISP regime will evolve in the coming months – either through new legislation or regulatory updates, or some combination of both. These changes are likely to broaden the scope of the OISP to cover additional technologies and industries (i.e., beyond the currently covered semiconductor, quantum computing and AI sectors). Hopefully, the new outbound rules also will include clear definitions and guardrails for transaction parties.

In the meantime, despite the ambiguous “yellow zone” in the current OISP regulation, Treasury has shown a determination to enforce existing restrictions. For that reason, transacting parties – particularly, US persons (including US citizens, lawful permanent residents, any entity organized within the US or any person in the US) – need to consider OISP restrictions before acquiring equity in a company, even when the target company may not have obvious connections to China.

If you receive an OISP enforcement inquiry from Treasury, or if you believe you may have been party to a transaction subject to the OISP, reach out to a member of the Cooley OISP team for assistance.

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Key Contacts

Christopher Kimball Washington, DC	ckimball@cooley.com +1 202 842 7892
Annie Froehlich Washington, DC	afroehlich@cooley.com +1 202 776 2019

Dillon Martinson Washington, DC	dmartinson@cooley.com +1 202 728 7092

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