
Executive Order Previews New Restrictions on Investments in China

Overview of the Executive Order

On August 9, 2023, President Biden issued an [Executive Order](#) (“EO”) outlining plans to limit direct U.S. investment in certain Chinese entities that develop semiconductors and other microelectronics, quantum computers, and artificial intelligence. The EO aims to restrict China’s ability to develop advanced technologies by targeting certain outbound U.S. investments that, according to government reviews, could enhance the development of critical technologies with military, intelligence, and surveillance applications. Although there are no new restrictions imposed by this EO that have immediate effect and implementing regulations are forthcoming, the EO will add to the compliance challenges that U.S. companies must prepare for and navigate when investing in China. In particular, U.S. technology companies looking to invest in China (including Hong Kong and Macau) through joint ventures, private equity funds, and venture capital firms are likely to face added complexity.

The EO contemplates two different approaches to covered transactions: a narrow set of transactions will be prohibited when the new restrictions are implemented and a broader set of transactions will require that notification be provided to the U.S. government. It is anticipated that “covered transactions” will extend to acquisitions of equity interests, such as mergers and private equity or venture capital investments, greenfield investments, joint ventures, and some convertible debt financings, and that the restrictions will apply broadly to U.S. companies and their foreign branches. Depending upon the final formulation of the implementing regulations, which are likely to be shaped in some measure by public comments expected to be received by the U.S. Department of the Treasury, there are likely to be a number of transaction types that will be carved out of the restrictions, such as passive investments by a limited partner, in an amount below a to-be-determined threshold, in a fund that invests in a Chinese entity that is covered by the regulations.

There are several variables that will need to be fleshed out in forthcoming rulemaking and regulation that will affect how this EO impacts the compliance landscape for U.S. companies. For example, the definition of “Artificial Intelligence” articulated by the implementing regulations likely will have a significant impact on the scope of covered transactions and may leave ongoing uncertainty as to the bounds of the restrictions. Additionally, multinational support will be needed for the EO to fully achieve its national security aims, and the Biden administration is likely to urge U.S. allies to implement similar restrictions. The EO follows the release of a [communiqué](#) issued by the G7 countries on May 20, 2023 in which the members recognized, with respect to China, “the necessity of protecting certain advanced technologies that could be used to threaten our national security.” Similarly, on May 31, the U.S. and EU issued [a joint statement](#) signaling a common interest in controlling certain outbound investments in sensitive technologies, in light of international peace and security concerns. Any such complementing restrictions by U.S. allies are likely to further complicate the compliance landscape for investment funds with affiliates outside the U.S.

Preparing for the New Regulations

In preparation for the new regulations, companies with current and/or planned exposure to China should consider reviewing their investment portfolios and pipelines to identify any investments that may fall within the scope of the technical areas targeted by the EO, so that the new regulations can factor into investment decisions. Furthermore, as mentioned above, the U.S. Department of the Treasury is seeking public comment as part of its rulemaking process and has outlined 83 specific questions on which it is seeking input. Companies that may be impacted by the regulations should consider commenting in an effort to shape the contours of the forthcoming regulations.

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If you have any questions about the issues addressed in this memorandum, or if you would like a copy of any of the materials mentioned in it, please do not hesitate to call or email authors Brock Bosson (partner) at 212.701.3136 or bbosson@cahill.com; Jennifer Potts (counsel) at 212.701.3390 or jpotts@cahill.com; or Ryan Maloney (associate) at 212.701.3269 or RyanMaloney@cahill.com; or email publications@cahill.com.

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