

THE FIRST SIX MONTHS OF THE U.S. OUTBOUND INVESTMENT SECURITY PROGRAM: A ROBUST START WITH SIGNS OF UPCOMING EXPANSION

On January 2, 2025, the U.S. Department of the Treasury's ("Treasury") [regulations](#) implementing the U.S. Outbound Investment Security Program ("OISP") entered into force, establishing prohibition and notification requirements for certain transactions by U.S. persons with or for the benefit of China (including Hong Kong and Macau). The OISP focuses on outbound investment transactions related to semiconductors and microelectronics, quantum information technologies, and certain artificial intelligence ("AI") systems.¹

Though the OISP is only six months old, it has emerged as a key regulatory regime that must be considered when engaging in certain transactions. Moreover, all indications are that the Trump administration intends to expand the scope of the OISP. Accordingly, on the OISP's half-birthday, we summarize the major trends and developments since its inception.

- **Application of the OISP in Practice.** The first six months of advising clients on OISP matters have revealed several key takeaways:
 - Conducting a deep dive into a company's research and development is critical for purposes of the "covered foreign person" determination. Understanding the technology that the company uses and develops is key, and how technology subject to the OISP's requirements is developed by the company and/or integrated into a company's products will determine if the company is subject to the OISP's restrictions.
 - A full analysis requires looking beyond the immediate investment and parties. In practice, the OISP may apply to companies globally based on how they are structured and their technological development, so it is important to review a company's organizational and operational structure when conducting OISP analysis.

¹ For a detailed analysis of the OISP and the specific notifications and prohibitions that it mandates, please see our previous [briefing](#).

- Investment banks are likely to conduct their own OISP due diligence before underwriting a company's initial public offering, follow-ons, or private placements. This has become a new significant step in the listing process, especially for listings in Hong Kong and Mainland China.
- Fund managers are taking a very close look at the OISP and integrating due diligence requirements when making investments. OISP provisions have also started appearing in transaction documents for funds, with certain market standards emerging.
- Understanding the given financial product under negotiation and its potential OISP risks is key. While not all products have risk under the OISP, a large number of products, including various debt instruments, are subject to these requirements.

The first six months have also shown that Treasury is proactively providing guidance to the public about implementation and compliance, as well as conducting inquiries into investments that it thinks may be subject to the OISP.

- **FAQs to Provide OISP Guidance**. On January 17, 2025, Treasury released its first iteration of [Frequently Asked Questions \("FAQ"\)](#) to guide investors and the U.S. business community in navigating the OISP. Since then, Treasury has continued to issue new FAQs on a rolling basis (e.g., in May 2025, Treasury issued FAQs about American Depositary Receipts (ADRs) and bank transfers for covered transactions). The indication is that additional FAQs will be forthcoming, including in areas where recurrent inquiries have likely been raised by parties and their counsel. The current FAQs address various practical and legal compliance issues relevant to industry, including questions such as how to interpret the OISP's defined terms, how U.S. persons may "knowingly direct" prohibited transactions, the need for effective recusal policies, and the contours of the "reasonable and diligent inquiry" that Treasury expects U.S. persons to make of counterparties. As companies work to comply with OISP requirements, it is critical to stay aware of the latest guidance and market practice.
- **OISP Enforcement Begins**. On January 17, 2025, Treasury also issued an [Enforcement Overview and Guidance](#) document. Over the last several months, Treasury has started initiating outreach to U.S. persons that may have participated in a prohibited or notifiable transaction in violation of the OISP. This initial outreach has involved sending inquiries to U.S. persons suspected of engaging in covered transactions under the OISP, following a procedure similar to that used by the Committee on Foreign Investment in the United States ("**CFIUS**") with respect to non-notified transactions. This indicates that, while the OISP is still relatively new, Treasury is focused on ensuring compliance, thereby emphasizing the importance of parties carefully considering OISP applicability and requirements in their transactions.

The Trump administration and Congress have both signaled that they are interested in expanding the scope and reach of the OISP.

- **America First Trade Policy & America First Investment Policy Indicate Forthcoming OISP Expansion.** On his first day in office on January 20, 2025, President Trump released the [America First Trade Policy](#) (“AFTP”), directing Executive Branch departments to initiate a number of investigations and policy reviews across a range of trade-related matters. As related to the OISP, the AFTP ordered the Secretary of the Treasury to review whether Treasury’s [Final Rule](#) implementing the OISP “includes sufficient controls to address national security threats” or should be subject to potential modification. This was followed on February 21, 2025, with the issuance of the [America First Investment Policy](#) (“AFIP”), which directed Treasury, in concert with other agencies, to consider expansions to the scope of the OISP. The AFIP identified biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and “other areas implicated by the PRC’s national Military-Civil Fusion strategy” as additional sectors for consideration to be incorporated into the OISP, in addition to potential expansion of the currently covered technology areas. The AFIP also instructed that further restrictions be considered for investments in private equity, venture capital, greenfields, corporate expansions, and publicly traded securities.
- **Bipartisan Legislation Introduced to Codify and Expand the OISP.** The OISP is currently authorized under an [Executive Order](#) issued by President Biden. On March 13, 2025, a bipartisan group of U.S. senators [introduced](#) the *Foreign Investment Guardrails to Help Thwart (FIGHT) China Act*, which would codify the OISP. While the bill retains much of the OISP’s current structure, it also proposes changes that would (a) expand the OISP’s prohibitions to include hypersonics, high-performance computing and supercomputing, and additional activities within the currently covered technology sectors, (b) accelerate the notification timeline to 14 days (as compared to the OISP’s 30-day timeline), and (c) significantly modify the types of transactions currently subject to exceptions under the OISP. On May 7, 2025, Treasury Secretary Scott Bessent [stated](#) that the administration is working with Congress on the legislation, with a goal of having clear rules that establish a “red light or green light” system specifying what is and is not allowed, and eliminating any ambiguous “yellow zone” for outbound investments. As of mid July 2025, the [bill](#) remains under committee consideration. It appears that legislative efforts are working in parallel with the Trump administration’s direct efforts to expand the OISP.
- **Nomination of Assistant Secretary for Investment Security.** The Assistant Secretary of the Treasury for Investment Security will play a key role in both implementing the current program and any expansion of the program. On June 2, 2025, President Trump [nominated](#) Chris Pilkerton to serve as the Assistant Secretary of the Treasury for Investment Security. The Assistant Secretary for Investment Security oversees both the OISP and CFIUS. Mr. Pilkerton is currently serving as the Acting General Counsel at Treasury. He previously served as the Acting Administrator and General Counsel at the U.S. Small Business Administration during the first Trump administration. Mr. Pilkerton’s nomination is subject to Senate confirmation, which is expected later this year.

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Six months in, the OISP appears to have taken root. Though initiated during the Biden administration, it is clear the Trump administration is committed to enforcing and expanding the OISP. The European Union has also signaled its interest in managing outbound investment in critical technologies and has [launched](#) an outbound investment monitoring initiative focusing on the same three critical technology areas currently covered by the OISP (i.e., semiconductors, quantum technologies, and AI). Overall, the OISP has become a key issue for parties to consider in transaction due diligence to ensure compliance, particularly as implementation priorities and the regulatory landscape continue to evolve.

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