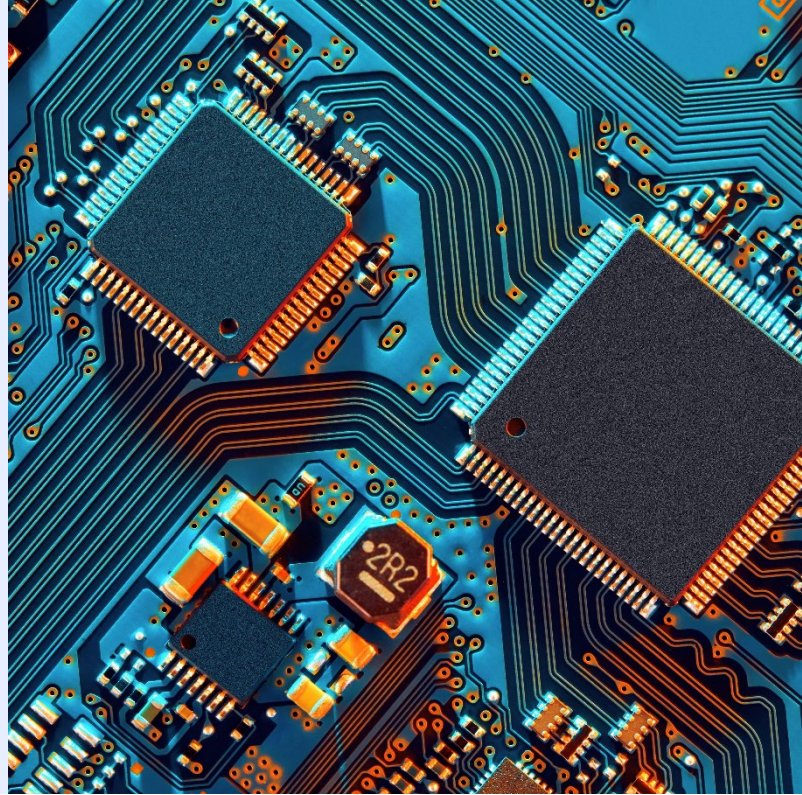


Outbound investment security and US economic sanctions: recent developments and what to expect next

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Over the past year, outbound investment controls out of Washington DC have affected deal structures, diligence, investment approvals and portfolio management, especially in the Asia Pacific region. Now, with the US's outbound investment regulations set to broaden, we explore how the Outbound Investment Security Programme has been enacted so far and what might be about to change in light of the December 2025 COINS Act. We also provide an update on US sanctions developments.

Key takeaways

- 1 More than a year after its enactment, how the US's Outbound Investment Security Program operates is becoming clearer and more standardised, but questions remain.
- 2 Forthcoming changes to the regulations are expected to include broadening the programme to encompass more countries and additional technologies.
- 3 Sanctions in some countries – for example, Syria – have been relaxed but crucial compliance considerations remain.

US Outbound Investment Security Program

The US Outbound Investment Security Program came into effect on 2 January 2025 and imposes notification requirements for, or sometimes prohibits, US persons' investments in particular technologies or products involving "covered foreign persons". For the purposes of the programme, "covered foreign persons" are those connected with "countries of concern" – currently the People's Republic of China, including the Hong Kong and Macau SARs – and who engaged in "covered activities" in certain sensitive technologies. The list of in-scope technologies and products, for now,

runs to three: semiconductors and microelectronics, quantum information technologies and some advanced applications of artificial intelligence.

However, the scope of the programme looks set to broaden to encompass additional countries, technologies and products following the passage of the Comprehensive Outbound Investment and National Security Act in December 2025.

The threshold at which notification is required or a transaction is prohibited is specific to the technology in question. For example, for AI, in addition to rules around certain notifiable or prohibited applications, notification is required where an AI system is trained using a computing power exceeding of 1023 computational operations. Systems trained on 1025 computational operations are prohibited.

Transactions covered by the programme include acquisitions of equity interests, greenfield investments, joint ventures, as well as debt financing transactions. The regulations contain carveouts for some other investments, including those into publicly traded securities, certain LP investments and certain derivatives. Investors can also request exemptions on the grounds of investments serving the national interest.

Notifications becoming more routine

Despite initial resistance to filing notifications with the US Department of Treasury, notifications are becoming more commonplace, and the filing process has become more standardised. "We have seen companies put in notifications. We have also filed notifications, and what we have found are a couple of things," says Megan Gordon, Clifford Chance Partner based in Washington DC. "In the fall, when notifications were being submitted to Treasury, we heard they were doing a full review on most of them. Especially during those times, we heard Treasury was asking a lot of questions, even though there wasn't an approval requirement. I heard from others in the industry that they were receiving several rounds of questions they had to respond to. What we find now is that notifications are going in and much fewer questions are being asked."

While some financial institutions have taken a targeted approach to ensuring OISP compliance, a more blanket approach by others has seen OISP-related language bleed into contracts worldwide. "We have seen these not just with respect to deals involving China, but all over the world. We've seen them in US domestic deals in terms of representations and warranties. We have seen them in continental Europe deals. We have seen them in deals all over Asia, whether or not they involve China."

Changing picture around exemptions

The FAQs published by the US Department of Treasury in December have helped to clear up some hotly debated questions over which investments are exempt from OISP requirements. For example, uncertainty around whether certain investments in publicly traded securities – in particular subscription or underwriting agreements, where shares are not received until they become public – meant a lot of US-based investors, as well as Hong Kong subsidiaries of US investors, shied away from IPO investments. The December guidance confirmed these agreements are exempt.

There was also uncertainty in cases where exemption is dependant on the US investor not exceeding minority shareholder rights, but where an investor might automatically gain nomination rights through a public listing in China (including Hong Kong SAR). The FAQs clarified that these rights are not considered as greater than a minority shareholder interest.

"What that means is they've greatly expanded the interpretation of what is allowed as a publicly traded security, and this has really helped the industry," Forthcoming changes to the regulations are not anticipated to change the Treasury's position as regards publicly traded securities.

Meanwhile, the derivations exception – currently broadly drawn – is set to be somewhat limited by forthcoming changes to the regulations. "At present, the current set of regulations continue to go forward. The COINS Act is not self-implementing, meaning they're going to have to go through notice-and-comment and then put out a final set of regulations," says Gordon. "In some ways, if there are certain deals that you want to get through under the current set of regulations, this is potentially a good time to do it because some of the regulations will be changing going forward."

How will the COINS Act change outbound investment regulation?

The current OISP regulations, which came into effect in January 2025, enacted a Biden-era executive order. The Comprehensive Outbound Investment and National Security (COINS) Act, signed into law by President Donald Trump in December 2025, codifies and expands the US's outbound investment regulations.

Though China remains the greatest focus of the programme, covered foreign persons will no longer be restricted to those connected to China (including the Macau and Hong Kong SARs), but also include those connected to Iran, Cuba, North Korea, Russia and Venezuela under the Maduro regime. The position as regards the latter following the January ouster of President Nicolás Maduro is unclear.

The COINS Act also paves the way for the regulations to encompass investments in additional sectors, namely high-performance computing and supercomputing and hypersonic systems. The Department of Treasury has also been empowered to add to this list. "We are pretty sure that high-performance computing and supercomputing and hypersonic systems will be included as sensitive sectors in the next set of regulations. The question is: what else will be?" says Gordon.

For pointers, we might look to a February 2025 memorandum issued by the Trump administration entitled America First Investment Policy, which mooted biotechnology, hypersonics, aerospace, advanced manufacturing and directed energy weapons as additional sectors that might be included. In February, Republican lawmakers wrote to US Treasury Secretary Scott Bessent to ask for the inclusion of biotechnology, as well as for prohibitions on activities like IPO underwriting and management consulting

"Biotechnology is certainly a concern, and it's one that a lot of companies are focusing on right now. If equity investment by US companies into biotechnology is included within the US outbound investment regulations, that will have a really big impact on the life sciences sector – maybe not as

much for China, I actually think it will have a bigger impact in the US. It might also provide some opportunities for Europeans to invest where US persons may not," says Gordon.

Regulatory updates implementing the COINS Act must be issued within 450 days of its enactment, which would be by mid-March 2027. "What is actually included in the final round of this regulation is going to be highly contested. There's going to be a lot of lobbyists in Washington DC putting energy into this in the next year," Gordon adds.

The COINS Act also provides for additional exemptions including ancillary transactions by financial institutions, certain secondary transactions, including underwriting services, de minimis transactions and "ordinary or administrative business transactions". Other changes include revisions to the definition of "covered foreign person", a mechanism for requesting an advisory opinion on prohibited transactions and the possible creation of a database of covered foreign persons, though the latter of these would likely take several years to develop.

How is the OISP being enforced?

The US Department of Treasury can impose civil penalties of up to US\$377,700 or twice the value of the underlying transaction for non-compliance with the regulations. It can also additionally compel investors to divest from a prohibited transaction and refer cases to the Department of Justice for potential criminal violations.

However, enforcement has yet to get going in earnest. "There haven't yet been any reportable significant matters in terms of failure to comply with the expectations of the programme, but there is a mechanism that was created during the last administration to allow there to be repercussions for failure to comply," says Vasu Muthyala, Clifford Chance Asia Partner, based in Singapore.

Possible violations include:

- Undertaking a prohibited transaction
- Failing to take "all reasonable steps" to prohibit and prevent a prohibited transaction by one's controlled foreign entity
- "Knowingly directing" an otherwise prohibited transaction by a non-US person
- Failing to notify the Treasury Department of a notifiable transaction
- Submitting a required notification late
- Providing incomplete or inaccurate information
- Failing to maintain a copy of the notification filed and supporting documentation

"In a few years once all the programmes are developed and everything is more standardised, people will be looking back to see where potential violations were," Muthyala continues. "Something that is happening today will not get investigated until two or potentially three or four years down the road, so it's very important to stay compliant starting from this juncture."

US SANCTIONS UPDATE

Chinese Military Companies list

We are currently awaiting an update to the US Department of Defense's Section 1260H list, also known as the Chinese Military Companies (CMC) list. This lists Chinese companies operating in the US, which are viewed as contributors to China's military-civil fusion strategy, or as having a connection with the Chinese military. The list is supposed to be published annually and was last updated in January 2025. After a revised list that added some companies while removing others was withdrawn ahead of official publication earlier this year, a new list is anticipated in the coming months.

While the CMC list is not a sanctions list or a list of export-restricted persons, inclusion on it does come with restrictions on contracting with the US government. "In June of this year, the US Department of Defense will be restricted from entering into any new contracts or renewing any existing contracts for goods, services or technology with a company on the section 1260H list or any of their controlled entities," says Counsel Jacqueline Landells, based out of Clifford Chance's Washington DC office. "There are also restrictions which are scheduled under existing law to come into effect later this year or next year."

While this scope might seem limited, the CMC list is having a broader diligence and procurement impact. "A number of counterparties are conducting enhanced due diligence and increased scrutiny of companies listed on the section 1260H list," explains Landells. "They have potential reputational concerns, or they're concerned that listing could lead to a future sanctions or export controls restriction – they're concerned this is just the first step. We are seeing some counterparties asking for increased contractual protections in agreements involving companies on the Section 1260H list as a result."

Lifting of comprehensive sanctions on Syria

The US lifted its comprehensive sanctions on Syria and its government in July 2025 and repealed additional sanctions measures in December 2025. However, sanctions remain in force on targeted individuals and entities designated as Specially Designated Nationals (SDNs) and entities they directly or indirectly own with a 50% or greater stake. These include Bashar al-Assad, the country's former president, and certain associates, though the list is now more limited.

In September 2025, the US Department of Commerce's Bureau of Industry and Security relaxed export requirements for US-origin "goods, software and technology" headed to Syria that have "predominantly civilian uses". In addition, BIS now provides expedited licencing decisions for exports tied to, for example, telecommunications infrastructure, sanitation, power generation and civil aviation. Exports of other dual-use items are being reviewed on a case-by-case basis.

The US State Department has been charged with reconsidering its designation of Syria as a State Sponsor of Terrorism, but no change has yet occurred.

Licensed exports from Venezuela

Since the US removal of President Nicolás Maduro in January, the US Department of Treasury's Office of Foreign Assets Control (OFAC) has issued multiple general licences authorising otherwise prohibited activity involving the Venezuelan government and its owned or controlled entities – for example, oil and gas company Petroleos de Venezuela SA. For instance, licences have been issued authorising the purchase and export of Venezuelan-origin oil, petroleum products and petrochemical products, as well as Venezuelan-origin minerals and gold.

These general licences typically require that funds owed to blocked persons for authorised transactions be paid into so-called 'Foreign Government Deposit Funds' or accounts specified by the US Department of the Treasury, where the funds will be earmarked for trade with Venezuela or to support reconstruction and stability in Venezuela. "This is a deliberate payment control channel, which to my mind indicates that the US government intends to tightly monitor the use of funds going to Venezuela from sales of natural resources under these general licenses," says Landells.

"Overall, the current trend we're seeing come out of the US government in regard to Venezuela is not a wholesale lifting of the current sanctions. Rather, it appears that they are issuing specific licenses to companies who apply to them for certain types of transactions, as well as these general licenses authorizing certain types of activity.

"The general licenses are quite US-focused, sometimes authorising activities just by US persons or related to imports into the US, so non-US companies need to carefully review what would be authorised for them. While they may be authorised to participate in a transaction related to an export of Venezuelan-origin oil, it may be that the actual purchaser has to be a US person." Non-US companies remain exposed to the risk of secondary sanctions for transactions involving certain OFAC blocked persons that is outside the scope of an OFAC general license.

Ongoing sanctions restrictions on Russia

The biggest recent US sanctions development related to Russia was the October 2025 designation of oil and gas companies Rosneft and Lukoil as SDNs. "This was a pretty big escalation for the US sanctions, and it is aimed at reducing Russia's revenue from sales of oil and petroleum products," says Landells.

Besides that, there have been limited changes to the broad sanctions against Russia under the second Trump administration. A temporary general licence authorising the purchase, delivery and offloading of Russia-origin oil, initiated in March and borne out of Iran conflict-related energy pressures, is set to run until 16 May for product loaded prior to 17 April. "These are short term authorisations intended simply to relieve the current crisis," says Landells.

'Maximum pressure' on Iran

The Trump administration has adopted a policy of "maximum pressure" towards Iran, including intense sanctions. Since January 2025, OFAC has added many individuals and entities to its list of SDNs, including non-US

persons facilitating Iranian petroleum, petrochemical and weapons-related activity. These designations often include non-Iranian intermediaries, operating in countries such as India, Türkiye, the UAE, and China (including Hong Kong SAR).

"In terms of what's next, there are no indications of any lifting of the sanctions on Iran," says Landells. "I think we can expect continued maximum pressure for now."

Sham transactions

In March, OFAC published guidance highlighting the risk of sanctions evasion through so-called "sham transactions", which is to say transactions where blocked persons disguise their interest in an entity or property. The guidance highlighted "red flags" that might indicate such transactions, including:

- Commercially unreasonable transactions
- Transfers by a blocked person to family members or close associates
- Transfers with an unclear purpose
- Unduly complex corporate structures involving higher-risk jurisdictions
- Continued involvement of a blocked person
- Transfers near the time of SDN designation
- Evasive responses regarding a blocked person's involvement

The guidance follows three enforcement actions issued by OFAC last year against "gatekeepers" that facilitated transactions involving the family trust of a SDN in which OFAC determined the SDN had a property interest, underscoring the need for professional services providers to look beyond legal formalities.



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