

## U.S. Treasury Department's Final Rule on Outbound Investment Takes Effect

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January 21, 2025

On January 2, 2025, the U.S. Department of the Treasury's **Final Rule** on outbound investment screening became effective. The Final Rule implements **Executive Order 14105** issued by former President Biden on August 9, 2023, and aims to protect U.S. national security by restricting covered U.S. investments in certain advanced technology sectors in countries of concern. Covered transactions with a completion date on or after January 2, 2025, are subject to the Final Rule, including the prohibition and notification requirements, as applicable.

The Final Rule targets technologies and products in the semiconductor and microelectronics, quantum information technologies, and artificial intelligence (AI) sectors that may impact U.S. national security. It prohibits certain transactions and requires notification of certain other transactions in those technologies and products. The Final Rule has two primary components:

- **Notifiable Transactions:** A requirement that notification of certain covered transactions involving both a U.S. person and a "covered foreign person" (including but not limited to a person of a country of concern engaged in "covered activities" related to certain technologies and products) be provided to the Treasury Department. A U.S. person subject to the notification requirement is required to file on Treasury's Outbound Investment Security Program website by specified deadlines. The Final Rule includes the detailed information and certification required in the notification and a 10-year record retention period for filing and supporting information.
- **Prohibited Transaction:** A prohibition on certain U.S. person investments in a covered foreign person that is engaged in a more sensitive sub-set of activities involving identified technologies and products. A U.S. person is required to take all reasonable steps to prohibit and prevent its controlled foreign entity from undertaking transaction that would be a prohibited transaction if undertaken by a U.S. person. The Final Rule contains a list of factors that the Treasury Department would consider whether the relevant U.S. person took all reasonable steps.

The Final Rule focuses on investments in "countries of concern," which currently include only the People's Republic of China, including Hong Kong and Macau. The Final Rule targets U.S. investments in Chinese companies involved in the following three sensitive technologies sub-sets: semiconductor and microelectronics, quantum information technologies and artificial intelligence. The Final Rule sets forth prohibited and notifiable transactions in each of the three sectors:

### Semiconductors and Microelectronics

- **Prohibited:** Covered transactions relating to certain electronic design automation software, fabrication or advanced packaging tools, advanced packaging techniques, and the design and fabrication of certain advanced integrated circuits and supercomputers.
- **Notifiable:** Covered transactions relating to the design, fabrication and packaging of integrated circuits not covered by the prohibited transactions.

### Quantum Information Technologies

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- All Prohibited: Covered transactions involving the development of quantum computers and production of critical components, the development or production of certain quantum sensing platforms, and the development or production of quantum networking and quantum communication systems.

### **Artificial Intelligence (AI) Systems**

- Prohibited:
  - Covered transactions relating to AI systems designed exclusively for or intended to be used for military, government intelligence or mass surveillance end uses.
  - Covered transactions relating to development of any AI system that is trained using a quantity of computing power meeting certain technical specifications and/or using primarily biological sequence data.
- Notifiable: Covered transactions involving AI systems designed or intended to be used for cybersecurity applications, digital forensics tools, penetration testing tools, control of robotic systems or that trained using a quantity of computing power meeting certain technical specifications.

The Final Rule specifically defines the key terms “country of concern,” “U.S. person,” “controlled foreign entity,” “covered activity,” “covered foreign person,” “knowledge” and “covered transaction” and other related terms and sets forth the prohibitions and notification requirements in line with the national security objectives stated in the Executive Order. The Final Rule also provides a list of transactions that are excepted from such requirements.

U.S. investors intending to invest in China, particularly in the sensitive sectors set forth above, should carefully review the Final Rule and conduct robust due diligence to determine whether a proposed transaction would be covered by the Final Rule (either prohibited or notifiable) before undertaking any such transaction.

Any person subject to U.S. jurisdiction may face substantial civil and/or criminal penalties for violation or attempted violation of the Final Rule, including civil fines of up to \$368,137 per violation (adjusted annually for inflation) or twice the amount of the transaction, whichever is greater, and/or criminal penalties up to \$1 million or 20 years in prison for willful violations. In addition, the Secretary of the Treasury can take any authorized action to nullify, void, or otherwise require divestment of any prohibited transaction.

If you have any questions about the Final Rule and its requirements, or the potential implications on your business, please contact the authors of this alert or your Miller Canfield attorney.