Skadden | National Security Dispatch

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US Treasury's 'Reverse CFIUS' Authority Is Codified and Some Restrictions Are Clarified

Executive Summary

- **What's new:** A new law codifies the Treasury Department's regulatory program for restricting outbound investments by U.S. persons in certain countries and industries, and requires Treasury to expand its regulations to cover several additional countries and industries. No immediate changes were made as a result of the new law, which will be implemented through regulations to be issued by March 2027. Treasury separately issued new guidance clarifying its existing rules and regulations with respect to U.S. persons' foreign investments in public securities and related derivatives.
- **Why it matters:** While we do not expect the immediate or forthcoming changes to have a major impact on U.S. outbound investment flows, they could impact diligence and other compliance risks for U.S. parties engaging in investment activities in covered jurisdictions.
- **What to do next:** U.S. persons investing overseas should monitor actions by Treasury to implement the new law, although we do not expect implementation to take place for several months.

On December 18, 2025, President Trump signed into law the Comprehensive Outbound Investment National Security (COINS) Act of 2025, which will eventually modify the scope of the U.S. Department of the Treasury's existing Outbound Investment Security Program (OISP). The COINS Act largely adopts the existing prohibitions and notification requirements under the OISP, which took effect on January 2, 2025, while expanding the targeted countries and industry sectors. See our November 8, 2024, client alert, "US Treasury Creates the 'Reverse CFIUS' Program, a (Limited) Great Wall on Outbound Investment," for further information on the OISP.

The COINS Act will not take effect until the Treasury Department issues new regulations (subject to notice and comment), which it must do by March 13, 2027, providing Treasury with the opportunity to further amend or expand existing prohibitions and restrictions in accordance with the COINS Act. In the meantime, the existing OISP will remain in effect.

The COINS Act also adds new sanctions authorities, establishes authority to publish a list of "Covered Foreign Persons," defined below, and requires U.S. persons to divest interests in entities listed on the Non-SDN Chinese Military Industrial Complex Companies List.

US Treasury's 'Reverse CFIUS' Authority Is Codified and Some Restrictions Are Clarified

Separately, the Treasury Department released new Frequently Asked Questions (FAQs) on December 23, 2025, retracting some prior guidance on the applicability of the "publicly-traded security" exception to the OISP, clarifying the application of the OISP in initial public offerings (IPOs) and underwriting activities, and updating procedural matters.

We summarize these changes below.

Key Aspects of the COINS Act

- **Delayed implementation.** The existing OISP at 31 C.F.R. Part 850 will remain in place until the Treasury Department promulgates new regulations to implement the COINS Act, which must occur no later than March 13, 2027.
- **Codifies existing OISP.** The OISP currently prohibits U.S. persons from knowingly engaging in a broad range of Covered National Security Transactions involving a number of Prohibited Technologies and Covered Foreign Persons. Although the COINS Act revises some of the key definitions of the current OISP (including the list of covered countries and industries), we do not expect the changes to dramatically expand the scope of the current OISP. The COINS Act provides the Treasury Department with discretion in implementation, which may further limit the likelihood of significant or surprising changes to the current OISP.
- **OISP FAQs.** While parties await implementation of the COINS Act, the Treasury Department clarified the scope of the existing OISP exception for publicly-traded securities to include certain IPO-related activities and derivative financial instruments tied to publicly traded securities. Treasury also clarified when certain rights are considered minority protections in the context of securities and corporate law, protecting the availability of the publicly traded securities exception for otherwise passive investors.

The COINS Act Builds Upon Prohibitions and Restrictions in the OISP

The OISP originated with a August 9, 2023, executive order issued by President Biden directing the Treasury Department to establish a program to prohibit or require notification of certain types of outbound investments by U.S. persons into certain entities located in or subject to the jurisdiction of China, and certain other entities owned by Chinese persons, involved in specific categories of advanced technologies and products. The OISP became effective on January 2, 2025.

The COINS Act codifies the OISP framework while requiring new regulations to be implemented within 450 days of enactment. While we do not expect Treasury to deviate significantly from the existing regulations, the COINS Act does signal some potential changes to certain key definitions including:

- **Countries of Concern.** The definition of a "Country of Concern" for certain provisions will be expanded from China (including the Hong Kong and Macau Special Administrative Regions) to include Cuba, Iran, North Korea, Russia and Venezuela.[1] Given existing restrictions in place under sanctions and other authorities, we do not expect that this expansion will have any significant impact on U.S. outbound investment.
- **Covered Foreign Persons.** The definition of "Covered Foreign Persons" defines the scope of targets that will be restricted from access to certain U.S.-person outbound investments. The COINS Act offers slight alterations to the current OISP definition: It omits the current OSIP's test capturing companies with 50% or more of their revenues, net income, operating expenses or capital expenditures attributable to affiliated covered foreign persons, and applies a direct or indirect 50% ownership rule instead. However, it is unclear whether they will have any material impact once the regulations are implemented.
- **Covered Industries.** The COINS Act adds hypersonic systems to the list of technologies that are prohibited or trigger a notification, subject to further definition by regulations. The COINS Act also includes high-performance computing and supercomputing on the list of notifiable technologies, which may expand the OISP's existing restrictions on supercomputer-related investments. Treasury also retains the authority to add new industry sectors, which is now codified in the COINS Act. We do not expect that these initial updates will have material impacts on U.S. outbound investments given existing China-related restrictions on foreign investment in core defense sectors.

The COINS Act adds new categories of "excepted transactions" to include certain ancillary transactions by financial institutions such as underwriting. Otherwise, the COINS Act largely retains the existing OISP exceptions, penalties and waiver authorities for the president to exempt activities determined to be in the national interest. The COINS Act also directs Treasury to establish an advisory opinion procedure to provide guidance to industry on how to interpret the regulations, though we expect it will be narrow and limited once implemented. The NDAA has authorized up to $150 million to implement the program, but the

[1] We do not expect that recent events in Venezuela will have any immediate impacts to Venezuela's inclusion on this list and other national security regulated regulatory lists without a specific official action or declaration.

current Treasury appropriations' request for implementing the OISP is less than $10 million, with hiring authority for seven new civilians.

Like the executive order establishing the OISP, the COINS Act encourages the heads of federal agencies to engage with U.S. allies and partners to coordinate and develop similar outbound investment programs. The European Union, for example, began considering its own outbound investment program last year, under which member states are expected to issue a report by June 2026. See our January 7, 2026, client alert "EU Advances Update to FDI Regulation: Enhanced Screening Framework Expected."

Additional China-Related Authorities

Sanctions. The COINS Act supplements outbound investment restrictions by authorizing the president to sanction certain Chinese Covered Foreign Persons if they knowingly engaged in significant operations in the defense and related materiel, or surveillance technology sectors of a Country of Concern. We don't expect this new provision to change the president's already broad powers under the International Emergency Economic Powers Act.

The COINS Act further requires Treasury to assess whether entities listed on other national security-related lists such as the 1260H list and Entity List should be included on the Non-SDN Chinese Military Industrial Complex List, which prohibits certain U.S. investments in listed entities.

The COINS Act also adds requirements for U.S. investors to divest interests in entities listed on the Non-SDN Chinese Military Industrial Complex List after a certain divestment period to be defined by regulation.

Public listing. In addition to sanctions-related lists, the COINS Act proposes (though does not require) that the Treasury Department create a publicly accessible list of Covered Foreign Persons. The list will not be exhaustive, so U.S. persons may not rely solely on the list for due diligence purposes. Additional information is forthcoming regarding the process by which entities will be added and removed from the list.

New Clarifications to OISP in Effect Today

On December 23, 2025, the Treasury Department issued a number of important clarifications to the existing regulations impacting the scope of the exceptions for publicly traded securities and derivatives in the OISP.

Derivative financial instruments. The OISP provided that the acquisition of publicly traded securities is exempt, and the acquisition of derivatives is excepted if they do not confer the right to acquire equity or equity-like rights, but it was unclear how the OISP treated derivative financial instruments related to publicly traded securities. The FAQs clarify that:

- Follow-on offerings: The existing exceptions extend to the acquisition of securities in a follow-on offering that is of the same class and fungible with already publicly traded securities, provided it does not grant rights beyond standard minority shareholder protections.
- Contingent equity interests: The acquisition of a contingent equity interest (*e.g.*, a convertible note) that is convertible only into a publicly traded security is excepted, as long as it does not afford rights beyond standard minority protections.
- ADRs: The acquisition of an American Depositary Receipt (ADR) representing ownership in shares of a Covered Foreign Person is an excepted transaction if the ADR is publicly traded.

Minority shareholder protections. As noted, the publicly traded security and derivative exceptions do not extend to transactions where the acquirer obtains rights beyond standard minority shareholder protections. Critically, local securities laws in certain jurisdictions may automatically grant shareholders specific powers — such as the right to nominate directors or issue proxies — once a certain ownership threshold (*e.g.*, 5%) is met. In the preamble to the final rule implementing the OISP, Treasury commented that such statutory rights could be interpreted as exceeding "standard" protections, even if the shareholder does not actually exercise them or gain the level of control typically afforded by a separate, negotiated investment agreement.

Treasury rescinded this prior guidance in the December 23, 2025, updated FAQs, clarifying:

- The right to nominate directors is considered a standard minority shareholder protection if it is generally available to similarly-situated minority shareholders (*e.g.*, all holders above a certain threshold ownership). Treasury also noted that proposal rights generally available to similarly situated shareholders under Chinese statute now qualify as standard minority shareholder protections. This means such rights do not preclude an investment from being an excepted transaction.
- By contrast, the right to appoint a director is not considered a standard minority shareholder protection and would keep a publicly traded security within the scope of the OISP.

Underwriting services. Previous Treasury guidance left open ambiguities with respect to financial institutions' participation in capital raising activities such as underwriting services in connection with IPO and follow-on offerings. The new FAQs clarify that:

- U.S. financial institutions acquiring securities in connection with providing underwriting services for a follow-on offering are also covered by clarifications above, under the same conditions, and would be excepted transactions.
- Services ancillary to IPOs, such as a financial institution temporarily holding equity to facilitate an IPO as part of its underwriting services, would not otherwise constitute a covered transaction under the OISP. We would expect that implementation of the COINS Act regulations would retain this clarification.

Conclusion

The COINS Act directs Treasury to reevaluate, amend and potentially expand the existing OISP, but our expectation is that the COINS Act is largely a codification exercise rather than a fundamental shift in U.S. outbound investment regulations.

U.S. persons should continue to monitor regulatory implementation of the current OISP, as changes in key definitions or new sectors could impact existing compliance obligations for affected investors.

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