Simpson Thacher

# Report from Washington

## Biden Administration Advances Implementation of Outbound Investment Regime with Federal Funding

March 10, 2023

To read the Budget, please click here.

On March 9, 2023, the Biden Administration released their proposed Budget of the U.S. Government for Fiscal Year 2024, which proposes funding to implement the much-anticipated "outbound" or "reverse CFIUS" investment review regime that the Biden Administration is expected to institute through Executive Order. While the metes and bounds of that anticipated Executive Order are unknown, reports suggest that the Executive Order will regulate investments by U.S. persons involving certain countries of concern that could facilitate the advancement of technologies critical to U.S. national security, such as semiconductors, artificial intelligence, and quantum computing, among others. These efforts are intended to preserve America's leading role in these key sectors and counter the rising threats posed by the development of competing analogous industries in countries such as China.

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The budget specifically includes funding for the International Trade Administration to assist the U.S. Department of the Treasury in scoping and implementing such a program, and comes on the heels of parallel reports issued to Congress by Treasury and Commerce on March 3, 2023, describing the financial resources necessary to do so. Each report anticipates that the regime may involve prohibiting certain investments subject to review and/or collecting information about other investments through a notification process. But it is clear from the announcements that there remains much work to be done across both Departments to design and scope the regime in a manner that achieves the Administration's objectives while avoiding undue burden on U.S. investors.

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The new regime will likely have broad implications for private equity sponsors, asset managers, and global businesses that may invest in technology sectors relating to China. While the Administration has not presently indicated that existing investments will be considered unlawful by virtue of the forthcoming regime, it may nevertheless impact the long-term valuation of such investments in China to the extent that additional regulatory hurdles are imposed on prospective investors or that could delay or otherwise impact exit opportunities. In addition, it remains to be determined whether the program will impact the ability of U.S. investors to provide additional financing or funding to businesses that may operate in these sectors within China. Another key aspect of the forthcoming regime that remains uncertain is the extent to which it will impact only U.S.-based asset managers, or if foreign-domiciled asset managers with U.S. investor participation in their investment funds will also face scrutiny under the regime. Investors subject to the jurisdiction of this new regime will want to consider confirmatory diligence as appropriate to determine if particular transactions must be notified after implementation of the program.

While timing of key policy determinations remains uncertain, it is expected that the new regime will be established preliminarily by Executive Order, and the public will be offered an opportunity to comment on the administrative rulemaking process prior to implementation. Simpson Thacher & Bartlett LLP is experienced in navigating the complexities of foreign investment screening and the CFIUS review process, and continues to follow developments of this new outbound investment regime closely. We are available to discuss further questions on request.

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