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Outbound Investment Review Swiftly Takes Shape Amid China Worries

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As information trickles out about how the government will implement an outbound investment review program or “reverse CFIUS,” Gibson Dunn attorneys Stephenie Gosnell Handler, Annie Motto, and Chris Mullen say the program should be narrowly tailored to critical technologies used in national security.

Late last year, Congress directed the Treasury Department to submit a report explaining what resources would be needed to establish and implement an outbound investment review program, the so-called “reverse CFIUS.”

CFIUS (the Committee of Foreign Direct Investment in the United States) has authority to review the national security implications associated with certain foreign investments in or acquisitions of US businesses.

In contrast, a “reverse CFIUS” mechanism is expected to give the US government authority to screen and monitor outbound investment from the United States to “countries of concern”—most notably China—in order to review the flow of US capital that would directly support the use of critical technologies by China’s military or civil sector.

Recently released reports from two federal agencies on this topic, the Biden administration’s proposed fiscal year 2024 budget, recent statements by the Secretary of Commerce, and research by non-governmental groups highlight key aspects of what are expected to define any potential regime.

Regardless of what the regime ultimately looks like, there is broad consensus that a successful outbound investment review program should be grounded in clear policy objectives and narrowly tailored to critical technologies implicating national security. To that end, proposals for interim outbound investment review measures should be focused on finding the right regime to balance national security concerns without unnecessarily stifling innovation.

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Gibson Dunn’s lawyers are available to assist in addressing any questions you may have regarding these developments. Please contact the Gibson Dunn lawyer with whom you usually work, any member of the firm’s International Trade practice group, or the authors:

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