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**August 14, 2023**

**Biden Administration Issues Executive Order Restricting U.S. Investment in China for Sensitive Information Technologies**

On August 9, 2023, the Biden Administration issued an Executive Order ("E.O.") restricting U.S. private outbound investment in China, including Hong Kong and Macau, in several sensitive information technologies, including artificial intelligence ("AI"), advanced semiconductors and quantum computing. The E.O. can be found [Here](#).

The U.S. already restricts export of the technologies targeted by the E.O. The E.O. is intended to restrict and prohibit U.S. private outbound investment in China to prevent China from "indigenizing" those technologies. The E.O. directs the Secretary of the Treasury, in concert with the Secretaries of Commerce, State, Defense, Energy, Homeland Security, the Attorney General and other department and agency heads to issue regulations that require U.S. persons to give notification of certain transactions ("Notifiable Transactions") and prohibit U.S. persons from engaging in certain transactions ("Prohibited Transactions") involving persons or entities in China or owned by Chinese persons or under Chinese control, with a clear focus on M&A, Private Equity and Venture Capital, Joint Ventures, convertible (to equity) debt, and related transactions in AI (especially AI with military or intelligence applications), semiconductors and microelectronics usable in supercomputers, and quantum computing. The Treasury regulations are also to provide a penalty scheme for violations.

At the same time as the E.O. issued, the Treasury Department issued an Advanced Notice of Proposed Rulemaking, or "ANPRM," intended to flesh out the scope of the program and solicit public comment on its implementation. The ANPRM can be found [Here](#). The ANPRM, which

does not implement the E.O. or propose regulations itself, is intended to provide transparency as to the upcoming regulatory process. Treasury is specifically considering creating an exception to Notifiable Transactions and Prohibited Transactions for certain types of passive investments that would not convey intangible benefits to China in the targeted industry sectors, such as investment in publicly traded securities, index funds, mutual funds and inter-company transfers from a U.S. parent to its Chinese subsidiary. Comments on the ANPRM will be due by September 28, 2023, 45 days after publication in the Federal Register.

**Note:** Apart from any critical breaking legal/regulatory corporate and commercial events, we are pausing our publication schedule for three weeks. Of course, our professional legal services remain available at all times. Have a good remainder of the summer, and we'll see you after Labor Day!

Owen D. Kurtin

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