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## The COINS Act: What Investors Need to Know About the Forthcoming Expanded Outbound Investment Restrictions

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The Comprehensive Outbound Investment National Security Act of 2025 (the “[COINS Act](#)” or the “[Act](#)”), enacted on December 18, 2025 as part of the FY 2026 National Defense Authorization Act, transforms outbound investment screening from an executive-order program into a permanent statutory regime. The Act largely codifies and expands the existing Outbound Investment Screening Program (“[OISP](#)”) under 31 C.F.R. Part 850 (the “[Final Rule](#)”), which has been in effect since January 2, 2025.

The Treasury Department has until March 13, 2027 (450 days from the enactment of the COINS Act) to issue implementing regulations. The current OISP rules remain in force until then. Notably, the COINS Act is set to sunset after seven years unless reauthorized by Congress.

The three most significant changes for investors are:

- Geographic expansion beyond China (including Hong Kong and Macau) to Cuba, Iran, North Korea, Russia, and Venezuela
- Two new covered technology sectors: high-performance computing/supercomputing and hypersonic systems
- Broader “covered foreign person” definition: dropping the 50% financial metrics test in favor of entities “subject to the direction or control” of a country of concern

### Current OISP Framework

The current OISP framework is governed by the U.S. Department of the Treasury’s Final Rule on outbound investment screening, which went into effect on January 2, 2025. The framework is designed to address national security risks posed by certain U.S. outbound investments that may materially contribute to the development or enhancement of sensitive technologies in countries of concern.

### Who Must Comply?

- Any U.S. citizen, lawful permanent resident, or entity organized under U.S. law (including foreign branches)
- Any person physically present in the United States
- Controlled foreign entities (CFEs): foreign subsidiaries of U.S. companies, i.e., foreign entities where a U.S. person holds more than 50% voting interest, serves as the general partner or managing member, or acts as the investment adviser to a pooled investment fund

Importantly, U.S. persons must take “all reasonable steps” to prevent their CFEs from engaging in transactions that would be prohibited if done by a U.S. person regardless of where the CFE is incorporated.

**Covered Foreign Person and Country of Concern.** A "covered foreign person" is defined as a person of a country of concern that engages in a “covered activity”, a person that indirectly or directly has a board seat, voting interest, or any contractual power to direct the management or policies with respect to a person of a country of concern engaged in a “covered activity” (or derives more than 50% of its revenue, net income, capital expenditure, or operating expenses therefrom), or a person of a country of concern who participates in a joint venture engaged in a “covered activity.”

Currently, only China, including Hong Kong and Macau, is identified as a "country of concern."

**Covered Transactions.** U.S. persons are prohibited from entering or required to notify the government if they enter into certain "covered transactions" with a "covered foreign person" or that create a "covered foreign person" for the purpose of engaging in certain enumerated prohibited or notifiable activities.

The six broad categories of covered transactions include:

- (1) acquisition of equity interest or contingent equity interest;
- (2) debt financing where such financing affords the U.S. person an interest in profits, the right to appoint board members, or other comparable financial or governance rights characteristic of equity;
- (3) conversion of a contingent equity interest into an equity interest acquired on or after January 2, 2025;
- (4) acquisition, leasing, or other development of operations, land, property, or other assets in a country of concern;
- (5) entrance into a joint venture formed with a person of a country of concern; and
- (6) acquisition of limited partner or equivalent interest in pooled investment funds likely to invest in covered activities.

**Covered Activities.** Under the current OISP framework, the definition of “covered activities” is currently confined to certain activities in three sectors: (1) semiconductors and microelectronics (2) sophisticated AI systems and (3) quantum information technologies. The OISP employs a two-tier system based on the sensitivity of the activities, categorizing transactions as either prohibited or notifiable. If an activity is not specifically described as prohibited or notifiable, it is outside the scope of the rule, and thus, permissible.

NOTE: all transactions involving quantum computing are prohibited.

<b>Prohibited Activities</b>		
<b>Semiconductors and Microelectronics</b>	<b>Artificial Intelligence</b>	<b>Quantum Information Technologies</b>
<ul style="list-style-type: none"> <li>▪ Develops or produces specified automation software for the design of integrated circuits or advanced packaging.</li> <li>▪ Develops or produces equipment for semiconductor fabrication equipment, equipment for performing volume advanced packaging, or other technology designed exclusively for use in or with extremely ultraviolet lithography fabrication equipment.</li> <li>▪ Designs integrated circuits meeting or exceeding specified performance parameters.</li> <li>▪ Packages integrated circuits using advanced packaging techniques</li> </ul>	<ul style="list-style-type: none"> <li>▪ Develops AI systems designed for exclusivity for or intended to be used for a military, government intelligence or mass surveillance use</li> <li>▪ Develops AI systems that are trained using a quantity of computing power greater than 10<sup>25</sup> computational operations, or 10<sup>24</sup> computational operations using primarily biological sequence data.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Develops, installs, sells or produces supercomputers enabled by advanced integrated circuits that exceed specified performance and criteria.</li> <li>▪ Develops a quantum computer or produces critical components required to produce a quantum computer.</li> <li>▪ Develops or produces a quantum sensing platform designed or intended for military, government intelligence or mass surveillance end uses.</li> <li>▪ Develops or produces certain quantum networks or quantum communication systems intended to be used for networking to scale up the capabilities of quantum computing, secure communications or other application that has a military, government intelligence or mass surveillance end use.</li> </ul>

Notifiable Activities		
Semiconductors and Microelectronics	Artificial Intelligence	Quantum Information Technologies
<ul style="list-style-type: none"> <li>Develops, fabricates and packages certain integrated circuits that do not meet the specifications for prohibited transactions.</li> </ul>	<ul style="list-style-type: none"> <li>Develops an AI system that does not meet the criteria to make the transaction a prohibited transaction, but nevertheless is:               <ul style="list-style-type: none"> <li>Designed to be used for a military end use, government intelligence or mass surveillance end use.</li> <li>Intended to be used for cybersecurity applications, digital forensic tools, penetration testing tools, or the control of robotic systems.</li> <li>Trained using computing power greater than <math>10^{23}</math> computational operations.</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>All transactions are prohibited</li> </ul>

**Excepted Transactions.** Certain transactions are excepted from the prohibition or notification requirements. These include:

- investments in publicly traded securities on an exchange or over-the-counter; securities issued by registered investment companies or business development companies;
- limited partner (LP) or equivalent investments in pooled vehicles where the LP's committed capital does not exceed \$2 million or the LP has binding contractual assurances that its capital will not be used for prohibited or notifiable transactions;
- derivatives that do not confer rights to acquire equity or assets of a covered foreign person;
- full buyouts of any person of a country of concern; intracompany transactions to support non-covered activities;
- transactions pursuant to binding capital commitments entered into prior to January 2, 2025;
- employment compensation in the form of equity awards;
- certain syndicated loan acquisitions; and
- transactions exempted by the Secretary of the Treasury.

### Key Changes Under the COINS Act

- Expanded Technology Coverage.** The COINS Act broadens covered sectors beyond the existing OISP's three categories (semiconductors and microelectronics, AI, and quantum information technologies) to add two new sectors: (1) high performance computing and supercomputing and (2) hypersonic systems. Treasury has been granted rulemaking authority to designate and define certain technologies as prohibited or notifiable technologies and to add categories to the prohibited technology list.
  - High Performance Computing and Supercomputing.** Under the existing OISP framework, prohibited activities include developing, installing, selling, or producing supercomputers enabled by

advanced integrated circuits that exceed specified performance and criteria. The COINS Act elevates this to a standalone technology sector, and Treasury will issue implementing regulations to further define the scope of prohibited and notifiable activities within this category.

- **Hypersonic Systems.** The COINS Act adds hypersonic systems as a newly covered technology sector. Treasury must specify prohibited and notifiable activities within this category in its promulgation regulations.
- **Additional Categories.** Treasury has been granted the authority to designate and define certain technologies as prohibited or notifiable technologies and to add categories to the prohibited technologies list. This deviates from the current regime on designating “critical technologies” by the Department of Commerce under Export Control Reform Act of 2018 (“ECRA”) and Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”).
- **Geographic Expansion.** The definition of “country of concern” expands beyond China (including Hong Kong and Macau) to include Cuba, Iran, North Korea, Russia, and Venezuela. Investors should note these countries are already covered by the U.S. sanctions regime, so the practical impact may be limited.
- **Revised Definition of Covered Foreign Persons.** The COINS Act broadens this definition to include members of the Central Committee of the Chinese Communist Party or political leadership of a country of concern. The financial metrics test (50% or more of revenues, net income, operating expenses, or capital expenditure) is replaced with direct or indirect 50% ownership test. It also includes persons “subject to the direction or control” of a country of concern. “Direction” and “control” are not defined in the Act, leaving uncertainty until Treasury issues implementing regulations.
- **Knowingly Directing Expansion.** Under the current OISP, a U.S. person is prohibited from “knowingly directing” a non-U.S. person to undertake a prohibited transaction. The COINS Act expands this prohibition to also apply to notifiable transactions. U.S. persons in decision-making roles must recuse themselves from deliberations, approval processes, transaction documents, and negotiations when they become aware a transaction is prohibited or notifiable.
- **Expanded Exceptions.** The COINS Act adds to and modifies the list of excepted transactions to include:
  - *De minimis* transaction values (the current OISP has a \$2 million threshold; Treasury may establish a new threshold)
  - Ancillary financial institution services (e.g., payments clearing, custody, foreign exchange), including underwriting services involving temporary entity acquisition for underwriting
  - Ordinary or administrative business transactions
  - Secondary transactions (e.g., certain contractual arrangements, bank lending, debt rating services, global custody)
  - Transactions completed before December 18, 2025
  - Any category of transaction that the Secretary of the Treasury determines is in the U.S. national interest

## New Compliance Mechanisms

- **Advisory Opinion Process.** The COINS Act directs Treasury to establish a process for parties to request non-binding feedback on a confidential basis as to whether a transaction would constitute a covered national security transaction in a prohibited technology. There is no similar mechanism for

notifiable transactions. Once operational, this will be a valuable tool for U.S. investors to mitigate the risk of inadvertently violating the OISP when there is ambiguity if the target engages in “covered activities.”

- **Potential Public Database.** Treasury is authorized, but not required, to establish a publicly accessible, non-exhaustive database of covered foreign persons engaged in prohibited or notifiable technologies, along with a petition process for entities seeking removal.
- **Non-Notified Activity.** The COINS Act directs the Secretary of the Treasury, working with the Department of Commerce, to create a process to identify covered national security transactions involving prohibited or notifiable technologies where no required filing was made, similar to the CFIUS non-notified process.

## Penalties

Violations of the COINS Act may result in civil penalties up to twice the transaction value or approximately \$368,000 (whichever is greater), with willful violations carrying criminal penalties of up to \$1 million and 20 years' imprisonment. Violators may also face forced divestment and remedial measures directed by the President or Treasury designed to unwind or mitigate the effects of prohibited investments. Enforcement risk is real and growing as Commerce's Bureau of Industry and Security received a 23% budget increase in FY 2026, with funds specifically designated for export control and investment screening enforcement.

## Practical Implications for Private Equity and Investors

- **LP Exception:** LP investments are excepted if: (1) committed capital is less than \$2 million (aggregated across investment and co-investment vehicles) (the threshold may change in Treasury's implementation of the COINS Act), or (2) the LP obtains binding contractual assurances that its capital will not be used for prohibited or notifiable transactions. The exception for LPs if they obtain a binding contractual assurance has resulted in the inclusion of OISP-specific side letter provisions in fund formations.
- **Publicly Traded Securities Safeharbor:** Investments in publicly traded securities, registered investment companies, and business development companies are excepted, providing relief for passive investors in public markets and index funds with incidental exposure. Note that the safeharbor does not exclude stock exchanges in countries of concern.
- **Knowledge-Based Standard:** Investing in a fund as an LP does not automatically count as investing in a restricted foreign company just because the fund later makes that investment. It only becomes covered if, at the time of investment, the investor knows the fund is likely to invest in a restricted foreign company engaged in covered activities.
- **Due-Diligence Standard:** Due Diligence Standard: "Knowledge" includes actual knowledge or information obtainable through reasonable inquiry; Treasury considers inquiries made, reps/warranties obtained, and use of databases.
- **Fund Documentation:** Expect U.S. LPs to increasingly require binding contractual assurances in partnership agreements or side letters or opt-out rights for proposed investments involving covered foreign persons.
- **Controlled Foreign Entity Obligations:** U.S. persons must take "all reasonable steps" to prevent controlled foreign entities from engaging in prohibited transactions; Treasury assesses compliance via internal controls, training, and auditing.

- **Recusal Requirements:** The COINS Act will expand the "knowingly directing" prohibition to notifiable transactions; U.S. persons in decision-making roles must recuse when aware a transaction is covered.
- **Monitoring and Notification:** No ongoing monitoring is required but U.S. persons should notify Treasury within 30 days of acquiring actual knowledge post-closing that would have made the transaction covered. Notably, the post-closing knowledge standard is narrower than the pre-transaction standard: it applies only to actual knowledge acquired after closing, not constructive knowledge or "reason to know."

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If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to the authors:

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