HKVCA 私投募資

Hong Kong Venture Capital and Private Equity Association

香港創業及私募投資協會

The Association for Private Capital in Asia

September 28th, 2023

The Honorable Janet Yellen
Secretary of the Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Yellen,

The Hong Kong Venture Capital and Private Equity Association (HKVCA) is pleased to be invited by the U.S. Treasury's Hong Kong representative to comment on the Executive Order of August 9, 2023, "Addressing United States Investments in Certain National Security Technologies and Products in Countries of Concern".

About the HKVCA

With its current membership standing at over 520 firms, the HKVCA has been operating in Asia for over 35 years. HKVCA members include 340 private equity firms, pension funds, funds of funds as well as family offices from the region and selectivity, North America and Europe. Our firms are engaged in venture capital and private equity fund management and invest across the entire Asia-Pacific region in all sectors of Asia's economies, from venture capital, growth and buyouts to secondary transactions. Our members also include the 10 largest global private equity firms as well as small venture capital investors, with a combined US$2 trillion in assets under management.

Overview

A majority of HKVCA members use offshore limited partnership fund structures to invest globally, and particularly in Asia. A significant number of our members manage US dollar-denominated private equity and venture capital funds deploying capital in Greater China, including in mainland China, Hong Kong, Macau and Taiwan. Since China's private equity and venture capital market has outgrown and outperformed those of other Asian countries in the last two decades, China has been one of the most appealing destinations for private capital investors globally.

The Association is grateful that the U.S. government will exclude passive investment, including listed equities and related securities as well as pooled investment funds, that are not making managerial decisions. It helps limit any economic loss to US investors (LPs) due to the prohibition of investment in the country of concern. However, U.S. fund managers (GPs) undoubtedly will forgo profitable transactions in order to avoid potential restricted industries and/or companies. These attractive investment opportunities will without doubt be seized by fund managers from other, non-U.S. countries, including from Asia, the Middle East as well as Europe. From an economic perspective, the U.S. will be hurt by limiting its investment in China.

Capital inflow to China benefits entrepreneurship and innovation as part of the global economy. China is one of the world's most populous countries, and U.S. investors are certainly rewarded by their

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involvement in China's private sector, including in both traditional industries as well as technology. We are concerned that the proposed new rules might limit the scope of investment in high growth, high return businesses simply to avoid being lumped into restricted sectors, potentially harming U.S. revenue in general.

Aside from monetary benefit, engaging in investment and collaboration with the Chinese technology sector allows for greater transparency and information sharing. By participating in the industry development and investment process, U.S. companies can gain insights into China's technological advancements, research, and development activities as well as to exert positive influence over the regulatory environment and practices to encourage stronger intellectual property protection, fair market competition, and adherence to international standards.

In addition, the IMF encourages capital flow to China to support financial liberalization. According to its background paper of August 2020 , IMF Advice on Capital Flows to People's Republic of China and India, China has gradually liberalized its capital account by reducing restrictions on both inflows and outflows, beginning in around 2000. Foreign capital inflow acts as a catalyst to allow the yuan to flow more freely, a benefit to not just global economic growth but also to China's largest trading partner, the U.S.

Finally, the Association agrees with the comments of Congressman Mike Gallagher, Chairman of the House Select Committee on the Chinese Communist Party, on the need for certainty and predictability. The proposed rule has avoided an onerous new case- by-case screening process, which is impractical. At the same time, private equity and venture capital focus on long-term investment strategies in an illiquid business. As currently drafted, the proposed new rules would prohibit or require notification of investments that are purely consumer in nature, with no ties to the military or surveillance industry. We urge the Department of Treasury to reconsider the sweeping language that is currently used in the Treasury's Advanced Notice of Proposed Rule Making (ANPRM) defining covered technologies and products so that it does not inadvertently stifle innovation and entrepreneurship that is essential to a fair and competitive global economy. At the very least, providing clarity and certainty is essential for both GPs and LPs in the industry. The Association urges you to provide clear guidelines and definitions, for instance, as it relates to those restricted industry sub-sectors involving technology use by the military and surveillance industry. This would at least be a more positive and effective move for the private capital industry in the longer run.

As an industry body for the private capital market, the Association is greatly concerned about restrictions to and prohibition of cross-border investment. Financial deglobalization destroys institutional effectiveness, financial development and economic growth. Hence, we strongly advocate the lifting of the proposed restrictions or, at least, narrowing the restrictions amid an economic downturn.

Your Sincerely,

Rebecca Xu
Chairwoman of HKVCA