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Washington's New Asia Map: Five International Risk Themes to Watch

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State visits are usually long on pageantry and short on substance — boardrooms can be forgiven for paying little attention to them. However, President Trump's recent visit to Asia comes at a different time: the U.S.-China bilateral relationship is under stress; a crisis on the Korean peninsula continues to confound the U.S. and its allies; and the U.S. is trying to reinvigorate a "free and open Indo-Pacific" amid some skepticism of its long-term economic commitment to the region.

Washington's new Asia map — a region which accounts for 50 percent of the world's trade and 60 percent of the world's growth — will continue to absorb U.S. policymakers for the foreseeable future. It will also present boardrooms, general counsel and compliance officers with unique challenges in the near- and medium-term.

To help companies evaluate the possible commercial impacts of these developments on their business, we have identified a number of Asia-related international risk themes that have the potential to materially impact enterprise risk management, corporate development strategy, business operations and legal compliance. Here are five of them:

1. **FCPA and Chinese corruption-related enforcement risks will remain elevated in connection with business activities in or with China. These risks will be especially acute in business models that rely on the use of third parties (e.g., agents, distributors, resellers).**

   During the recent 19th National Party Congress of the Communist Party of China, President Xi Jinping highlighted the success of China's anti-corruption campaign — which has resulted in punitive action against nearly 1.4 million people over the past five years — and called upon the Chinese government to establish a new commission to implement *additional* anti-corruption reforms and enforcement efforts. Going forward, these efforts will likely ensnare both Chinese and non-Chinese companies alike.

2. **There is a high likelihood of additional economic sanctions designations relating to the crisis on the Korean peninsula. These designations, driven primarily by the U.S., will primarily elevate the OFAC- and AML-related enforcement risk of certain financial transactions and business activities in or with China, Russia, Malaysia, India and Thailand in particular.**

   The president's public support of Japan and South Korea — among the most stalwart U.S. allies in Asia — and his subsequent designation of North Korea as a state sponsor of terrorism, lays the groundwork for future efforts aimed at addressing North Korea's nuclear capabilities. The likelihood of additional U.S. action is particularly high in light of North Korea's recent test of an ICBM that was, according to reports, capable of reaching the White House.

As a result, the U.S. is likely to pursue new and different means of pressuring North Korea. Any such efforts would widen the effective impact of North Korea-related sanctions, and raise the complexity of managing the various legal risks for financial institutions and companies doing business in Asia. As a practical matter, these efforts would effectively require companies planning corporate transactions with a nexus to East Asia to factor in higher due-diligence and going-forward compliance-related costs related to such business.

3. **The Chinese government's domestic focus on cybersecurity and data protection will have the effect of stoking U.S. government concerns over "forced technology transfer."**

   China's new data protection law will impose broad new requirements on the storage of certain types of data within China and, in some cases, may permit Chinese law enforcement personnel to access the sensitive business data and intellectual property of non-Chinese companies. The U.S. government, through a variety of actions, has expressed its serious concerns about the ability of U.S. companies to engage in ordinary course of business without risking the integrity of their data and intellectual property in China in light of the breadth of the new law.

4. **For companies with value chain exposure to China, the specter of U.S. trade enforcement actions against China — and possible Chinese retaliation — raises top-line and bottom-line commercial risks.**

   Recently, the U.S. Department of Commerce self-initiated a new probe into China's potential dumping of aluminum sheet, which is worth more than $600 million per year in imports. Self-initiated antidumping/anti-subsidy investigations are rare. The vast majority of such investigations are undertaken at the request of U.S. industry players, and the last self-initiated investigation occurred in 1991. These actions allow the U.S. government to impose duties on offending products more quickly than industry-initiated cases. This makes sense: It would be odd for the government to decline to impose duties at the end of an investigation it itself chose to initiate.

   As the U.S. implements its own trade enforcement agenda, the risk that China will take retaliatory action will increase accordingly. To date, China's public criticism of the U.S.' trade rhetoric has been fierce.

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5. **The landscape for certain Chinese investment in the U.S., Europe and elsewhere may become more challenging.**

   Just a few weeks ago, in the midst of the president's trip to China, a bipartisan group of lawmakers in the Senate and House introduced legislation to reform the Committee on Foreign Investment in the United States (CFIUS), the interagency body that conducts national security reviews of foreign investment transactions involving U.S. businesses.

   The bipartisan push for reform of CFIUS is driven in large part by a desire to counter Chinese acquisitions of U.S. companies that present risk vectors ranging from the possession of genetic information of U.S. citizens to the development of civilian products and technologies that support U.S. military overmatch capabilities. The timing and roll-out of the CFIUS reform effort is an example of Congressional performance art that will not be lost on Beijing.

   The U.S. may also seek to formally or informally encourage countries in the Indo-Pacific and elsewhere to take stock of their economic relationships with China. On this score, the CFIUS reform legislation provides a hint: Hidden in plain sight amid 79 pages of text is language that would encourage the president to push U.S. allies to implement or strengthen CFIUS-like foreign investment regimes in their own countries. Countries like Australia — with strong security relationships with the U.S. and strong economic relationships with China — would be among the first stops for a U.S. delegation.

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