

# COVID-19 crisis inspires global tightening of Foreign Investment Screening

## United States

Foreign investment reviews in the United States are, and will be, dramatically impacted by the novel coronavirus crisis (COVID-19). New regulations issued under the Foreign Investment Risk Review Modernization Act (“FIRRMA”), which expanded the jurisdiction of the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) to review certain non-controlling and real estate investments in the United States<sup>1</sup>, were adopted in mid February, only weeks before the full impact of COVID-19 began to be felt in the United States. It is expected that the Committee will use the full scope of these new powers, as well as its pre-existing authority, to scrutinize transactions that may pose COVID-19-related national security concerns.

In particular, transactions involving products or technologies critical to an effective US response to COVID-19 and any future pandemics, such as personal protective equipment, ventilators, vaccines, treatments or testing products, will all likely be subject to increased scrutiny by CFIUS. In addition, CFIUS and other US government agencies are very concerned about the potential for China, Russia and other non-allied nations to target sensitive US businesses that are suffering financial distress as a result of COVID-19.

For example, on April 9, 2020, Senate Armed Services Committee Chairman Jim Inhofe (R-Okla.) and 17 other senators sent a [letter](#) to President Trump urging the aggressive use of CFIUS’ powers to curb expected efforts from countries such as China and Russia to “take advantage of the global coronavirus crisis to make investments in small and mid-tier US companies hit hard by the pandemic.” Undersecretary of Defense for Acquisition and Sustainment Ellen Lord similarly expressed her concern to reporters on March 25, 2020 that foreign investors would seek to exploit the COVID-19-related financial hardships of the US defense-related industrial base, which consists of more than 300,000 companies and contractors.

These developments coincide with the creation of a new enforcement bureau within CFIUS and the provision of significant additional staff and other resources for the Committee to utilize in investigating transactions that are not notified to the Committee. CFIUS will inevitably utilize these increased enforcement resources to review and mitigate non-notified transactions that pose COVID-19-related national security concerns.

Aside from increased scrutiny of transactions that pose these types of national security concerns, parties should also anticipate potential delays associated with voluntary notifications to the Committee. Officially, CFIUS continues to review foreign investments in the United States under the same guidelines, policies, and timelines it followed prior to COVID-19. Unofficially however, inevitable delays have occurred as a result of COVID-19, largely due to CFIUS staff working from home and being required to divide their attention with administering various elements of the US economic response to COVID-19, including under the CARES Act.

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<sup>1</sup> Our prior client alerts summarizing the new regulations are available [here](#)

Parties engaging in transactions subject to CFIUS' jurisdiction should, therefore, anticipate delays in CFIUS' acceptance of new notifications and consider an increased likelihood that voluntary declarations could result in a "no-action" decision from CFIUS whereby it states it was unable to conclude all action on the basis of the declaration and, instead, invites the parties to submit a

voluntary notification. These delays could, however, be temporary as new foreign investment in the United States continues to drop dramatically as a result of COVID-19 which will, at least in the near-term, inevitably significantly reduce the number of new filings with the Committee.

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