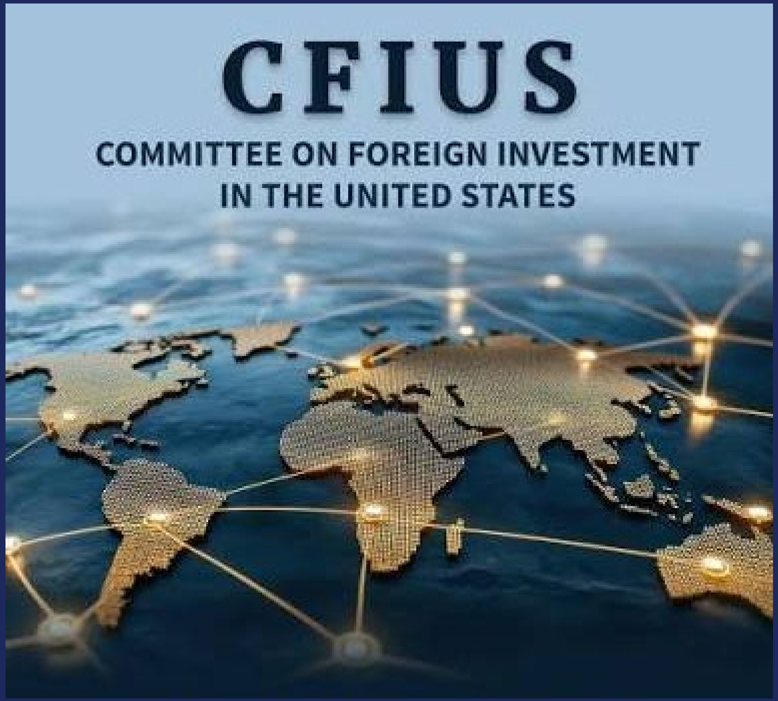


הוועדה להשקעות זרות בארה"ב

Guy Ben Ami

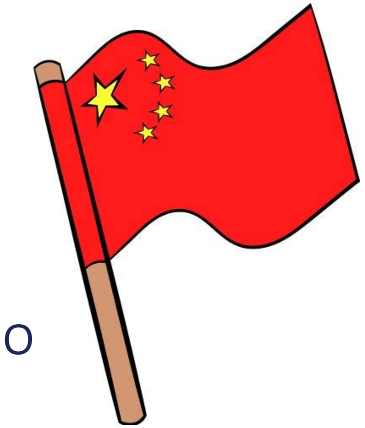
July 22, 2026

CARTER LEDYARD

History

- President Ford in 1975, the Committee on Foreign Investments in the United States, popularly referred to as "CFIUS," has monitored national security reviews of investments in or acquisitions of U.S. companies by non-U.S. persons or businesses and foreign government-controlled persons, purchasing U.S. assets perceived to be critical to the national security of the U.S.
- no enforcement capabilities.
- In 1988, in response to rising concerns over the effects of foreign direct investment on U.S. national security, Congress amended the Defense Production Act of 1950. This "Exon-Florio Amendment" authorized the President to examine and block transactions resulting in foreign "control" (subsequently broadly defined) of any U.S. business when such a transaction could threaten national security.

Initial Focus



- Since 2007, the primary concern has been about the acquisition of and access to technology by foreign entities, especially the Peoples Republic of China. Historically, CFIUS did not have the authority to review investments in U.S. real estate or to review non-controlling foreign investments in U.S. businesses that give the non-U.S. investor certain governance rights or access to sensitive information.
- The increasing use of Chinese joint ventures into which U.S.-origin technology was transferred and the concern that transactions were being structured to circumvent CFIUS, prompted calls for expanding CFIUS's review powers.
- President Trump signed into law the Foreign Investment Risk Review Modernization Act of 2018, known as "FIRRMA".
- January 13, 2020, September 15, 2020, introduced principal changes to the old CFIUS regime – minority review / critical technologies / real estate.

CFIUS Jurisdiction over Covered Control Transactions

Covered Control Transactions

any transaction that could result in foreign **control** of a U.S. business. Covered control transactions within the scope of **CFIUS's** authority include:

- A transaction that, irrespective of the actual arrangements for control provided for in the transaction, results or could result in **control** of a U.S. business by a **foreign person**.
- A transaction in which a **foreign person** conveys its **control** of a U.S. business to another **foreign person**.
- A transaction that results or could result in control by a **foreign person** of any part of an entity or of assets, if that part of an entity or those assets **constitute a U.S. business**.
- A **joint venture** in which the parties enter into a contractual or other arrangement, including an agreement to establish a new entity, but only if one or more of the parties contributes a U.S. business and a **foreign person** could **control** that U.S. business through the joint venture.

CFIUS Jurisdiction over Covered Control Transactions

Foreign Persons

The regulations define **foreign person** as any **foreign**:

- **National.** Any individual other than an individual who:
  - is a U.S. citizen; or
  - Owes permanent allegiance to the U.S.
- **Government.** Non-U.S. government or body exercising governmental functions
- **Entity.** An entity formed under a **foreign state** if its principal place of business is outside the U.S. or equity securities are primarily traded on a foreign exchange;
  Foreign entities do not include entities in which a majority of the equity is ultimately owned by U.S. nationals.

A **foreign person** also includes any entity over which control is exercised or exercisable by a foreign national, government, or entity.

CFIUS Jurisdiction over Covered Control Transactions

Entity Control Test

The regulations define **control** as the direct or indirect power to determine, direct, or decide important matters affecting an entity through:

- The ownership of a majority or a dominant minority of the total outstanding voting interest.
- Board representation.
- Proxy voting.
- A special share.
- Contractual arrangements.
- Formal or informal arrangements to act in concert.
- Other means.

"WE HAVE TO REMOVE 2 BOARD MEMBERS. IF YOU'LL STAND UP, WE'LL START OUR FIRST ROUND OF MUSICAL CHAIRS.

CFIUS Jurisdiction over Covered Control Transactions

Exceptions to Covered Control Transactions

The regulations set out numerous **exceptions** from the definition of **covered control** transactions. Transactions that are not covered control transactions include:

- A transaction that results in a foreign person holding **ten percent or less** of the outstanding voting interest in a U.S. business (regardless of the dollar value of the interest acquired), but only if the transaction is solely for **passive investment**.

- An acquisition of any part of an entity or of assets, if that part of an entity or those assets **do not constitute a U.S. business.**

- The purchase of securities by a securities underwriter in the ordinary course of business and in the process of underwriting.

CFIUS Jurisdiction over Covered Investments

Covered Investments

Any U.S. business that:

- Produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies
- Performs certain functions (such as owns, operates, manufactures, supplies, or services) regarding covered investment critical infrastructure.
- Directly or indirectly maintains or collects sensitive personal data of U.S. citizens that may be exploited in a manner that threatens national security.

Critical Technologies includes:

- Munitions;
- Certain agents and toxins;
- Controlled chemical and biological weapons;
- Other similar weapon technologies; and
- Emerging and foundational technologies that are essential to national security.

Critical Infrastructure

Includes systems and assets, both physical and virtual, so vital to the U.S. that their destruction would have a debilitating effect on national security. Appendix A to the CFIUS regulations gives specific examples of critical infrastructure and functions performed regarding such infrastructure that give CFIUS jurisdiction.

CFIUS Jurisdiction over Covered Investments

Covered investments include any direct or indirect **non-controlling investment** by a **foreign person** (other than an excepted investor) in a **TID U.S. business** that affords the foreign person:

- **Access** to any material **nonpublic technical information** in the possession of the **TID U.S. business**
- Membership or observer rights on or the right to nominate an individual to a position on the board of directors of the **TID U.S. business**.
- Any involvement, other than through the voting of shares, in substantive decision-making of the **TID U.S. Business** regarding:
  - the use, development, acquisition, safekeeping, or release of **sensitive personal data** of U.S. citizens maintained or collected by the TID U.S. business;
  - the use, development, acquisition, or release of **critical technologies** or
  - the management, operation, manufacture, or supply of covered investment **critical infrastructure**

Covered investments are not passive investments but instead **grant important rights of ownership** (even if those rights are not exercised) in sensitive U.S. businesses. Transactions can be covered investments within the scope of **CFIUS's** authority **irrespective of the percentage of voting interest** acquired.

Investors Excepted from CFIUS’s Jurisdiction over Covered Investments

Excepted Investors

Excepted Investors are not subject to CFIUS’s covered investment jurisdiction (or to mandatory filings) **but are still subject to CFIUS’s review of control transactions**.

A foreign entity from a foreign state included in the list of excepted foreign states is considered an excepted investor if it and its parents:

- Are organized under the laws of an excepted foreign state or the U.S.
- Have its principal place of business in an excepted foreign state or the U.S.
- **Have 75 percent or more of both the members and the observers** to its governing body who are:
  - U.S. nationals; or
  - foreign nationals exclusively from one or more excepted foreign states.

Investors Excepted from CFIUS's Jurisdiction over Covered Investments

- Each foreign person that holds ten percent or more of the voting or economic interest or could otherwise control that entity is:
  - a foreign national who is exclusively a national of one or more excepted foreign states;
  - a government of an excepted foreign state; or
  - an entity organized under the laws of and with its principal place of business in an excepted foreign state or the U.S.

If at any time during the three-year period post-completion of the transaction the foreign person fails to satisfy the regulatory criteria and is no longer considered an excepted investor, **CFIUS** may begin a subsequent review of the transaction.

Currently, the designated excepted foreign states are Australia, Canada, New Zealand, and the United Kingdom.

Exception for Investment Funds

<u>Investment Funds</u>

indirect investment by a foreign person in a TID U.S. business through an investment fund that affords the foreign person membership as a limited partner on an advisory board or a committee of the fund will not be considered a covered investment if:

- managed exclusively by a general partner, a managing member, or an equivalent that is not a foreign person.
- advisory board or committee does not have the ability to approve, disapprove, or otherwise control:
  - investment decisions of the investment fund; or
  - decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested.
- foreign person does not otherwise have the ability to control the investment fund, including the authority to:
  - approve, disapprove, or otherwise control investment decisions of the investment fund;
  - approve, disapprove, or otherwise control decisions made by the general partner, managing member, or equivalent related to entities in which the investment fund is invested; or
  - unilaterally dismiss, prevent the dismissal of, select, or determine the compensation of the general partner, managing member, or equivalent.

CFIUS Jurisdiction over Covered Investments

- The foreign person does not have access to material nonpublic technical information because of its participation on the advisory board or committee.

- The investment does not afford the foreign person any of the access, rights, or involvement specified in the definition of covered investment.

Composition of CFIUS

To File or Not to File

Filing and Review Process

- If a transaction qualifies as a covered transaction (i.e., either a covered control transaction or a covered investment), the parties must decide whether to submit the transaction for CFIUS review. FIRRMA introduced a process in which the parties can file a short-form declaration with basic information regarding the transaction or a more formal written notice.

- Except for declarations regarding certain covered transactions involving a TID U.S. business, filing with CFIUS is voluntary.

- However, CFIUS can independently review a transaction pre- and post-closing and impose mitigation measures. Whether to file a voluntary declaration or notice before closing is a decision the parties must carefully consider, accounting for the overall transaction parameters and their risk tolerance regarding the potential for independent CFIUS review.

HOW TO FILE

How to File

- All declarations and notices, including draft notices, must be submitted electronically through the **CFIUS Case Management System** ("CMS") which is a secure Web portal hosted by the Department of the Treasury through which parties and counsel/representatives are required to submit declarations and file notices and any other transaction-related information.

- The regulations recommend **consulting with CFIUS before filing** a notice and, where appropriate, filing a draft notice to provide CFIUS with the opportunity to request additional information.

- In either case of both a voluntary short from declaration or a voluntary long form notice, a **draft filing** is made with CFIUS to which CFIUS responds orally or in writing with comments, asking for further information and changes until it is satisfied that the draft is ready for formal filing. This preliminary back and forth with CFIUS in the draft stage can take a few months. CFIUS generally is required to provide comments on draft notices within 10 business days.

- Once the parties revise the notice to address any feedback and CFIUS indicates it is satisfied, they file a formal version of the notice.

Choosing Between a Short Form Declaration and a Long Form Notice

Choosing Between Voluntary Declarations and Voluntary Notices

A party to any proposed or completed transaction may submit to CFIUS a voluntary short form declaration regarding the transaction instead of a voluntary long form notice.

The transaction parties should carefully consider the relative advantages and disadvantages of filing a short form declaration versus a long form notice. Filing a short form declaration may be an attractive option in low-sensitivity cross-border deals in which the parties do not expect CFIUS to object to the transaction. Potential advantages of filing a short form declaration rather than a long form notice include:

- It's a shorter form and requires less information.
- The review period is 30 days versus 45 days or longer if additional information is required.
- There is no filing fee.

However, CFIUS has broad discretion in response to declarations, including requiring a notice filing that can further delay the review period.

Choosing Between a Short Form Declaration and a Long Form Notice

- In deals that are not obviously free of national security concerns, parties should consider whether going through the declaration process will only delay completion of the CFIUS review.

- If CFIUS is likely to request submission of a formal notice, the parties may be better off using their time preparing that notice because the parties can submit draft notices and expect comments back within a short period of time.

Mandatory Filings

Foreign-Government-Linked Transactions

The transaction parties must submit a declaration if **a covered control** transaction or a **covered investment** results in the direct or indirect acquisition of a substantial interest **in a TID U.S. business** by a foreign person in which a **foreign government** has, directly or indirectly, **a Substantial Interest**. **Substantial Interest means**, in the context of:

- An acquisition of an interest in a U.S. business, a direct or indirect voting interest of 25 percent or more.
- A foreign person in which a foreign government has an interest, a direct or indirect voting interest of 49 percent or more.

Mandatory Filings

Critical-Technology-Linked Transactions

The filing of a declaration or a notice is also mandated for any covered control transaction or covered investment involving a TID U.S. business that **produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies** for which a U.S. export license would be required for the export of the critical technology to a person that:

- Could directly control the TID U.S. business because of the covered transaction.
- Is directly acquiring an interest that is a covered investment in the TID U.S. business.
- Individually holds or is part of a group of foreign persons that holds a voting interest of 25 percent or more in a business described above.

The range of critical technology businesses triggering this mandatory declaration is based primarily on the technology's export control status. The key question is whether an export license would be required to export the critical technology to the country of the buyer of the target.

Mandatory Filings

<u>When an Export License is Required</u>

To determine whether an export license is required, one must consider the following questions:

- What item are you exporting?
- Where is the item going?
- Who is receiving it?
- What are the item's end use?

- Let's take by way of example the following transaction. An Icelandic company wishes to buy a Norwegian company which has the technology to design and develop <u>software</u> which it uses to develop intrusion software. It then delivers the intrusion software to its clients for the purpose of testing their own platforms to see if they are vulnerable to hackers. The client may be an Amazon who wants to know that its payment platforms that collect credit card numbers of purchasers are secure. The Norwegian company has a U.S. Subsidiary which does the same thing for the target's U.S. clients.

What are you Exporting?

The first step to determine whether an export license is required depends in part on whether the item has a specific Export Control Classification Number ("ECCN") on the Commerce Control List. The Commerce Control List is a list of items that the U.S. Department of Commerce regulates for export and it is published by the Bureau of Industry and Security ("BIS") which is part of the U.S. Department of Commerce that manages export controls.

- The Commerce Control List ("CCL") contains every item subject to the Bureau of Industry and Security's jurisdiction.
- The Commerce Control List is divided into 10 categories.
- Each category is divided into five (5) product groups.
- The exporter must decide under which of the 10 categories his item falls. The exporter must then review the relevant product group and check if the item falls within the scope of a specific Export Control Classification Number.
- Certain items have a specific Export Control Classification Number ("ECCN") which describes the item and indicates the licensing requirements. Items with an ECCN Number may require an export license if no exemption can be found.
- All Export Control Classification Numbers are listed on the Commerce Control List. The Export Control Classification Number is an alpha-numerical code, for example, 4D004 which describes the item and the licensing requirements.
- See next slide for an example of an Export Control Classification Number.

The CCL Product Groups and Categories

Five Product Groups

A. Systems, Equipment & Components
B. Test, Inspection & Production Equipment
C. Material
D. Software
E. Technology

Commerce Control List Categories

0 = Nuclear Materials, Facilities & Equipment (and Miscellaneous Items)
1 = Materials; Chemicals, Microorganisms & Toxins
2 = Materials Processing
3 = Electronics
4 = Computers
5 = Telecommunications and Information Security
6 = Sensors and Lasers
7 = Navigation and Avionics
8 = Marine
9 = Aerospace and Propulsion

What are you Exporting?

Software

4D004 "Software" "specially designed" or modified for the generation, command and control, or delivery of "intrusion software."

License Requirements

Reason for Control: NS, MT, RS, CC, AT

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

List of Items Controlled

The list of items controlled is contained in the ECCN heading.

ECCN 4D004 above requires an export license for the export to certain listed countries outside of the U.S. of "software," "specially designed" or "modified" for the generation, command and control or delivery of intrusion software.

What are you Exporting?

Technology

4E001 "Technology" as follows (see List of Items Controlled).

License Requirements

Reason for Control: NS, MT, RS, CC, AT

Control(s)	*Country Chart (See Supp. No. 1 to part 738)*
NS applies to entire entry, except for technology for 4A003.z, 4A004.z,4A005.z, 4A090 or "software" specified by 4D001 (for 4A003.z, 4A004.z or 4A005.z), 4D090	NS Column 1.

In addition, ECCN 4E001 requires an export license for the export to certain listed countries outside the U.S. of technology for the development of intrusion software.

To check whether an item has an Export Control Classification Number, one needs to know which of the 10 broad categories of the Commerce Control List includes the item in question, review the relevant product group, and check if the item falls within the scope of a specific Export Control Classification Number in that group.

Where is the Item Going?

Once you have determined that the item has an Export Control Classification Number, the next step in determining whether a license is needed, is to determine the reasons for the item's control and the country to where the item is being exported.

To do this, one must compare the reasons for control specified in the item's Export Control Classification Number against a list of destination countries in the Commerce Country Chart.

Each Export Control Classification Number lists the reasons why the export of the item included in the Export Control Classification Number is controlled. The destination countries listed in the Commerce Country Chart are the countries for which a license is required if the item is being exported to such countries. For example, for ECCN 4D004, the reason an export license is required is NS = National Security and AT = Anti-terrorism.

4D004 "Software" "specially designed" or modified for the generation command and control, or delivery of "intrusion software"

License Requirements

Reason for Control: NS, AT

NS = National Security
AT = Anti-Terrorism

Control(s)	*Country Chart (See Supp. No. 1 To part 738)*
NS applies to entire entry	NS Column 1
AT applies to entire entry	AT Column 1

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Where is the Item Going?

The next step is to cross-reference the reason for export control of the item stated in the Export Control Classification Number against the specified column of the Commerce Country Chart to determine the licensing requirements.

If the appropriate box in the Commerce Country Chart is checked with an “X” based on the reason for the item’s control in the row for the destination country, a license is required unless an exception is available.

If there is no “X” in the appropriate box for the country involved on the Commerce Country Chart, an export license is not required, unless the item is being exported to people who appear on certain restricted government lists of prohibited end users, or a prohibited end use is involved.

Where is the Item Going?

In this example, for exports of an Export Control Classification Number 4D004 to Iceland, a license is required since there is an X in the row for NS Column 1. You need only look at NS Column 1 and AT Column 1 because, as shown on the previous slide, those are the country chart designations listed for Export Control Classification Number 4D004 in the Commerce Control List.

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Iceland[3]	X					X		X	X							
India[7]	X			X		X		X	X							
Indonesia	X	X		X		X	X	X	X	X		X		X		
Iran[1]	See part 746 of the EAR to determine whether a license is required in order to export or reexport to this destination.															
Iraq[1]	X	X	X	X	X	X	X	X	X	X		X	X			
Ireland[3 4]	X					X		X	X							
Israel	X	X	X	X	X	X	X	X	X	X		X		X		
Italy[3]	X					X		X	X							
Jamaica	X	X		X		X	X	X	X	X	X	X		X		
Japan[3]	X					X		X	X							
Jordan	X	X	X	X		X	X	X	X	X		X		X		
Kazakhstan	X	X	X			X	X	X	X	X		X	X			
Kenya	X	X		X		X	X	X	X	X		X		X		

Does the Target "Test" Critical Technology?

A filing also may be mandatory if the target does not produce, design, manufacture, or develop critical technology but just "tests" critical technology. The CFIUS rules do not define what constitutes "testing" of critical technology, and there is some uncertainty as to the appropriate scope of this term.

A paradigm case would be a U.S. business that provides testing services for defense contractors – e.g., testing the heat resistance parameters of a fighter jet's nose cone in a heat chamber. The heat chamber is not critical technology, but the nose cone is. The policy behind the rule is that the U.S. business has access to, knowledge of, and interacts with the critical technology through its testing activities.

Cyber intrusion testing of the type engaged in by the Target could fall within the scope of the rule, to the extent that the client's systems that the Target penetrates and is testing constitute "critical technology" that requires a license to export to the destination country.

Part 2 of Category 5 of the CCL entitled "Telecommunications and Information Security" contains numerous examples of information security systems controlled for national security purposes such as ECCN 5B002 entitled "Information Security" test, inspection and "production" equipment. If the clients being tested have such networks, and the Target U.S. personnel testing penetrates and interacts with their networks and obtain knowledge of these networks' vulnerabilities and operating parameters, then a mandatory filing is required.

How to Deal with Grey Areas in CFIUS

Sometimes there are grey areas in which it is difficult to determine whether a mandatory filing applies such as the “testing” example. Additionally, the CCL includes many licensing exemptions and there can be differences of opinion as to their application to a set of given facts.

In such situations, depending on the parties’ risk tolerance, the risk of not filing for CFIUS may be mitigated by Target’s representation in the transaction documents that it does not design, develop, manufacture, fabricate, or test critical technology within the meaning of the CFIUS regulations.

This representation could be backed up by an indemnification, although it is questionable whether this would protect against CFIUS’s authority to levy fines and unwind the transaction.

How to Determine Whether Your Product Has an ECCN#

An exporter can identify the Export Control Classification Number of the item he wishes to export by manually reviewing the Commerce Control List or checking with the product’s manufacturer. An exporter can also submit a formal commodity classification request to the Bureau of Industry and Security to have his item included in an Export Control Classification Number.

Items Subject to Export Administration Regulations That Do Not Have an ECCN#

If an item is subject to Export Administration Regulations but does not fit into any Export Control Classification Number on the Commerce Control List, it is designed as EAR99.

EAR99 items are low technology consumer goods and do not require a license, unless they are exported to an embargoed country, to specific end users of concern, or in support of a prohibited use.

CFIUS Jurisdiction over Covered Investments

Bifurcated Signing and Closings

Certain transaction structures that separate the transfer of ownership and control rights to allow time for completion of voluntary CFIUS reviews can conflict with the mandatory filing requirement.

The FAQ states:

The "completion date" is the earliest date upon which any ownership interest is conveyed, assigned, delivered, or otherwise transferred to a person. In a transaction where the ownership interest is conveyed before the foreign person receives the corresponding rights, the "completion date" is the earliest date upon which the foreign person acquired any of the equity interest. For example, if Company A acquired a 25 percent ownership interest in Company B on July 1, but its right to control Company B was deferred until after CFIUS reviews the transaction, the "completion date" for the transaction is July 1. If the transaction is subject to the mandatory declaration requirement pursuant to the latest date that the parties can file the transaction with CFIUS is June 1.

CFIUS Safe Harbor

Safe Harbor

CFIUS no longer has authority over a transaction if:

- It informs the parties that the particular transaction about which a voluntary notice or declaration has been filed is not a covered transaction.
- It informs the parties that it has concluded all action regarding a covered transaction.

Mitigation Measures

Recent common mitigation measures have included:

- Governance controls to limit foreign influence and ensure compliance.
- Third-party oversight.
- Reporting requirements.
- Technology, systems, and sensitive information security controls.
- Personnel recruitment and hiring restrictions.
- Facility, data storage, and operational restrictions.
- Assurances of continuity of supply to the U.S. government.

CFIUS Jurisdiction over U.S. Investments Overseas

U.S. Outbound Investment Review

On August 9, 2023, President Biden issued an Executive Order on Addressing U.S. Investments in Certain National Security Technologies and Products in Countries of Concern.

The Executive Order declared a national emergency to address the threat posed to U.S. national security by "countries of concern" seeking to develop and exploit "sensitive technologies and products critical for the military, intelligence, surveillance, or cyber-enabled capabilities" of those countries.

The Executive Order also declared that certain U.S. investments abroad risk exacerbating the threat. The categories of national security technologies and products identified are:

- Semiconductors and microelectronics.
- Quantum information technologies.
- Artificial intelligence.

The People's Republic of China, along with the Special Administrative Regions of Hong Kong and Macau, are the first ones identified as a "country of concern."

CFIUS Jurisdiction over U.S. Investments Overseas

The Executive Order directed the Secretary of the Treasury to issue regulations and establish a new national security program to prohibit or require notification of certain outbound investments by U.S. persons into certain entities located in, owned by persons of, or subject to the jurisdiction of a country of concern involved in national security technologies or products.

Concurrent with the Executive Order, the Treasury Department issued an Advance Notice of Proposed Rulemaking (ANPRM) to clarify the intended scope of the program and solicit public comments.

In October 2024, the Treasury Department issued the rule to implement the Executive Order and provide the operative regulations.

The rule became effective January 2, 2025.

CFIUS Jurisdiction over U.S. Investments Overseas

The Rule requires U.S. persons to notify Treasury of certain outbound investment transactions and prohibits certain outbound investment transactions, in each case that involve persons of “countries of concern” that engage in “covered activities” involving certain sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies and artificial intelligence sectors.

These “covered transactions” are the types of U.S. person investments that, according to Treasury, are most likely to convey “both capital and intangible benefits that can be exploited to accelerate the development of sensitive technologies or products critical for military, intelligence, surveillance, or cyber-enabled capabilities of countries of concern in ways that threaten the national security of the United States.”

The People’s Republic of China, including the Special Administrative Regions of Hong Kong and Macau, is the sole identified “country of concern,” though the President may identify additional countries in the future. The Rule took effect on January 2, 2025.

The Rule requires U.S. persons to notify Treasury of – or in some cases prohibits – “covered transactions,” which are specified types of outbound investments in or involving “covered foreign persons.” “Covered foreign persons” are “person[s] of countries of concern” that engage in certain “covered activities” involving certain specified sensitive technologies and products in the semiconductors and microelectronics, quantum information technologies, and AI sectors.

CFIUS Jurisdiction over U.S. Investments Overseas

Knowledge Standard

In order for a particular investment transaction to be subject to the Rule, the participating U.S. person must have “knowledge” that it is engaging in a covered transaction, including knowledge that the transaction involves a covered foreign person.

“Knowledge” is defined as having (1) actual knowledge that a fact or circumstance exists or is substantially certain to occur, (2) awareness at the time of a transaction of a high probability of a fact or circumstance’s existence or future occurrence, or (3) reason to know of a fact or circumstance’s existence.

U.S. Persons and Controlled Foreign Entities

The Rule’s obligations and prohibitions apply to “U.S. persons.

The Rule defines U.S. persons to include U.S. citizens, lawful permanent residents, entities organized under the laws of the United States or any jurisdiction within the United States, including any foreign branch of any such entities, or persons in the United States.

U.S. persons are required to “take all reasonable steps to prohibit and prevent” their “controlled foreign entities” from engaging in a transaction that would be a prohibited transaction if undertaken by a U.S. person.

CFIUS Jurisdiction over U.S. Investments Overseas

Covered Transactions

Under the Final Rule, "covered transactions" include any of the following transactions by a U.S. person, directly or indirectly:

- **Equity interests.** The acquisition of an equity interest or contingent equity interest in a person that the U.S. person knows is a covered foreign person.
- **Debt financing.** The provision of debt financing to a person that the U.S. person knows is a covered foreign person if such debt financing affords the U.S. person an interest in the covered foreign person's profits, the right to appoint members of the board of directors (or equivalent) of the covered foreign person, or other comparable financial or governance rights characteristic of an equity investment but not typical of a loan.
- **Conversion.** The conversion of a contingent equity interest into an equity interest in a person that the U.S. person knows at the time of the conversion is a covered foreign person, where the contingent equity interest was initially acquired by the U.S. person on or after the effective date of the Final Rule.

CFIUS Jurisdiction over U.S. Investments Overseas

- **Joint ventures.** The entry into a joint venture, wherever located, with a person of a country of concern where the U.S. person knows that the joint venture will engage, or plans to engage, in a covered activity.

- **Fund investments.** An investment as a limited partner or equivalent in a non-U.S. pooled investment fund where (1) the U.S. person knows the fund is likely to invest in a person of a country of concern that operates in one or more of the relevant industry sectors and (2) the fund in fact undertakes a transaction that would be a covered transaction if undertaken by a U.S. person.

CFIUS Jurisdiction over U.S. Investments Overseas

<u>Foreign Person</u>

As described above, an outbound investment transaction is not a "covered transaction" subject to the Final Rule unless it involves (or may establish) a "covered foreign person." The Final Rule defines a "covered foreign person" to include:

- a person of a country of concern that is engaged in a covered activity;
- a person that is not otherwise a covered foreign person but:
- has, directly or indirectly, a voting or equity interest in, a board seat (voting or observer) on, or any contractual power to direct or cause the direction of management or policies of, a covered foreign person, and
- more than 50% of the person's annual revenue, net income, capital expenditure, or operating expenses are attributable to covered foreign persons (either individually, or aggregated across all such covered foreign persons from which the person derives or incurs (as applicable) at least $50,000 of the relevant metric); or
- with respect to a joint venture transaction that constitutes a covered transaction, the person of a country of concern that participates in such joint venture.

CFIUS Jurisdiction over U.S. Investments Overseas

<u>Person of a Country of Concern</u>

The Final Rule defines a "person of a country of concern" to include:

- any individual that is a citizen or permanent resident of a country of concern (unless they are also a U.S. citizen or permanent resident);
- an entity with a principal place of business in, headquartered in, or incorporated in or otherwise organized under the laws of, a country of concern;
- the government of a country of concern, any person acting for or on behalf of such government, and any entity with respect to which such government holds individually or in the aggregate, directly or indirectly, 50% or more of the entity's outstanding voting interest, voting power of the board, or equity interest, or otherwise possesses the power to direct or cause the direction of the management and policies of such entity; and
- any entity in which one or more of the persons identified above, individually or in the aggregate, directly or indirectly, holds at least 50% of such entity's outstanding voting interest, voting power of the board, or equity interest.

CFIUS Jurisdiction over U.S. Investments Overseas

<u>Covered Activities.</u>

The Rule categorizes covered transactions (that are not excepted transactions) as either “notifiable” or “prohibited” depending on the type of “covered activity” in which the covered foreign person is (or in the case of a brownfield or greenfield investment or joint venture, will be or plans to be) engaged.

The “covered activities” identified in the Final Rule are certain activities that relate to specifically identified technologies and products in the semiconductors and microelectronics, quantum information technologies or artificial intelligence sectors. A chart detailing the Final Rule’s division of covered transactions into notifiable and prohibited categories, based on the relevant covered activity in which the person of a country of concern engages, is attached as Annex A.

Transactions with a covered foreign person that engages in *any* covered activity—whether referred to in the definition of “prohibited transaction” or in the definition of “notifiable transaction”—are prohibited transactions if the covered foreign person is included on one of several U.S. Government lists, including the Entity List or the Military End User List maintained by the Department of Commerce’s Bureau of Industry and Security or the list of Specially Designated Nationals and Blocked Persons or list of Non-SDN Chinese Military-Industrial Complex Companies maintained by Treasury’s Office of Foreign Assets Control.

CFIUS Jurisdiction over U.S. Investments Overseas

<u>Excepted Transactions</u>

The Final Rule establishes categories of "excepted transactions" that, although covered, are not notifiable or prohibited transactions. Under the Final Rule, an excepted transaction would include an investment by a U.S. person:

- in publicly traded securities that trade on a securities exchange or over-the-counter in any jurisdiction;
- in securities issued by any investment company registered with the Securities and Exchange Commission or any business development company under the Investment Company Act of 1940;
- made as a limited partner or equivalent in an investment fund not otherwise covered by the prior exception, where (A) the limited partner or equivalent's committed capital is not more than $2,000,000, aggregated across any investment and co-investment vehicles of the fund or (B) the limited partner or equivalent has secured a binding contractual assurance that its capital in the fund will not be used to engage in a transaction that would be a prohibited or notifiable transaction if engaged in by a U.S. person; or
- in a derivative, so long as such derivative does not confer the right to acquire equity, any rights associated with equity, or any assets in or of a covered foreign person.

CFIUS Jurisdiction over U.S. Investments Overseas

Timing Requirements

Notifications with respect to notifiable transactions must be filed no later than 30 calendar days following the completion date of the transaction and in accordance with electronic filing instructions that will be posted on Treasury's Outbound Investment Security Program website. If a U.S. person acquires actual knowledge that a previously completed transaction would have been a covered transaction (whether notifiable or prohibited) if the U.S. person had known of relevant facts or circumstances as of the completion date of the transaction, the U.S. person must submit a notification no later than 30 calendar days following the acquisition of such actual knowledge.

Notifications are required to include information similar in scope to what is currently required in filings with the Committee on Foreign Investment in the United States ("CFIUS").

Technologies Associated with Prohibited and Notifiable Transactions

Technologies Associated with Prohibited and Notifiable Transactions		
Technology	Prohibited:	Notifiable:
Semiconductors and Microelectronics	▪ Software for Electronic Design Automation ▪ Integrated Circuit Manufacturing Equipment ▪ Advanced Integrated Circuit Design ▪ Advanced Integrated Circuit Fabrication ▪ Advanced Integrated Circuit Packaging ▪ Supercomputers	▪ Integrated Circuit Design ▪ Integration Circuit Fabrication ▪ Integrated Circuit Packaging
Quantum Information Technologies	▪ Quantum Computers and Components ▪ Quantum Sensors ▪ Quantum Networking and Quantum Communication Systems	▪ N/A
AI Systems	▪ Development of software that incorporated an AI system and is designed to be exclusively used for military, government intelligence, or mass-surveillance end uses; or is trained using a quantify of computing power greater than 10^25 computational operations (or 10^24 computational operations using primarily biological sequence data)	▪ Development of software that incorporated an AI system (that is no outright prohibited) and is (1) designed to be used for any military, intelligence, or mass-surveillance end use; (2) is intended to be used for cybersecurity applications, digital forensics tools, penetration testing tools, and the control of robotic systems; or (3) is trained using a quantity of computing power greater than 10^23 computational operations

Current Administration

- On February 21, 2025, the White House directed an expedited “fast-track” process for specified allied and partner investment and directed use of CFIUS to restrict PRC-affiliated investment in U.S. technology.
- Known Investor Program.
- On June 13, 2025, the President reopened the U.S. Steel matter and amended the earlier prohibition so the deal could proceed if the parties execute, by closing, a national security agreement materially consistent with the government’s June 13 draft NSA and remain in compliance thereafter.
- On July 8, 2025, the President prohibited Suirui’s acquisition of Jupiter and ordered divestment, and Treasury said the identified risk related to the potential compromise of Jupiter products used in military and critical infrastructure environments.
- On January 2, 2026, the President prohibited HieFo’s ownership of EMCORE’s digital chips business assets and ordered divestment after finding that the acquisition, which had closed on April 30, 2024, might threaten national security.
- In February 2026, DOJ sued to enforce the July 2025 Jupiter divestment order after Suirui failed to meet the extended divestment deadline

Jupiter

Thank you.

Contact

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