WILSON SONSINI

Committee on Foreign Investment in the United States (CFIUS)

HIGHLIGHTS

Deep Government and Private Sector CFIUS Experience

Wilson Sonsini's CFIUS team collectively has 30+ years of CFIUS experience, working on behalf of companies, investors, trade associations, and the U.S. government. The team is comprised of attorneys who have served as CFIUS officials from multiple U.S. government agencies and from other national security agencies and congressional oversight committees, including the Departments of Defense, Homeland Security, Justice, Commerce, and State, as well as CIA, the Army, the Air Force, and the U.S. Senate.

Routinely Recognized for Demonstrated CFIUS Expertise

Wilson Sonsini's CFIUS attorneys have been recognized among the country's top CFIUS experts according to *Chambers Global, Chambers USA, The Legal 500, DCA Live/Bisnow*, and *The Washingtonian*.

Notable Experience at Every CFIUS Phase

Wilson Sonsini is a trusted advisor to U.S. businesses, foreign acquirers and investors, and financing parties on the full range of CFIUS issues. This includes counseling clients on all aspects of CFIUS, including investor structure and foreign person status, national security sensitivities, whether a CFIUS "declaration" or "notice" is required or warranted, negotiating CFIUS language in transaction documents (whether or not a filing is made), drafting submissions to CFIUS, preparing responses to CFIUS questions, negotiating mitigation agreements and post-closing compliance with those agreements. The team also works with clients to engage other key stakeholders in the CFIUS process, including members of Congress, media, and think tanks, as needed.

Diverse and Extensive Representations and Thought Leadership

Wilson Sonsini's CFIUS team has represented the National Venture Capital Association and other associations with respect to CFIUS rulemakings required by the Foreign Investment Risk Review Modernization Act (FIRRMA), the most recent CFIUS legislation. We regularly publish articles and are invited conference speakers on CFIUS and related topics. We are trusted by companies and investors across virtually every industry, including information and communications technology, semiconductors, software and hardware, manufacturing, financial services, critical infrastructure, biotech/life sciences, pharmaceuticals, medical devices, cybersecurity, energy and energy storage, autonomous vehicles, media, advertising, artificial intelligence, robotics, blockchain, and virtual reality. Our team's collective experience covers many hundreds of filed cases and thousands of matters requiring CFIUS counseling.

OVERVIEW

History

In 1975, President Ford issued an executive order establishing the Committee on Foreign Investment in the United States (CFIUS or "the Committee"). CFIUS conducts national security reviews of investments in, or acquisitions of, U.S. companies when the investments are made by non-U.S. individuals or businesses, or when the investor or acquiror is itself subject to foreign control.

For more than a decade after its start in 1975, CFIUS monitored foreign investment trends but had 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

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"control" (subsequently broadly defined) of any U.S. business when such a transaction could threaten national security. The President then delegated to CFIUS the task of reviewing such transactions.

In 2007, the Foreign Investment and National Security Act (FINSA) conferred authority directly on CFIUS, codified CFIUS processes, and regularized congressional oversight regarding these processes. FINSA codified the longstanding practice that CFIUS is chaired by the U.S. Department of the Treasury and includes in its membership the U.S. Departments of Commerce, Defense, Energy, Homeland Security, Justice, and State, as well as the U.S. intelligence community, the U.S. Trade Representative, the Office of Science & Technology Policy, and other agencies.

In 2018, the Foreign Investment Risk Review Modernization Act (FIRRMA) substantially reformed CFIUS to broaden its jurisdiction, create mandatory filing requirements for certain transactions, and to give CFIUS more resources. The Department of the Treasury issued final rules that became effective in February 2020, fully implementing the expanded jurisdiction FIRRMA granted to CFIUS. In particular, the rules issued under FIRRMA give CFIUS jurisdiction over many small minority equity investments (even 1 percent or less) in a broad swath of technology, infrastructure, and data businesses. This is in addition to CFIUS' longstanding jurisdiction to review investments resulting in "control" of any U.S. business. Lastly, the new rules require parties to make filings for certain investments involving "critical technologies" certain investments when a foreign government acquires a "substantial interest."

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