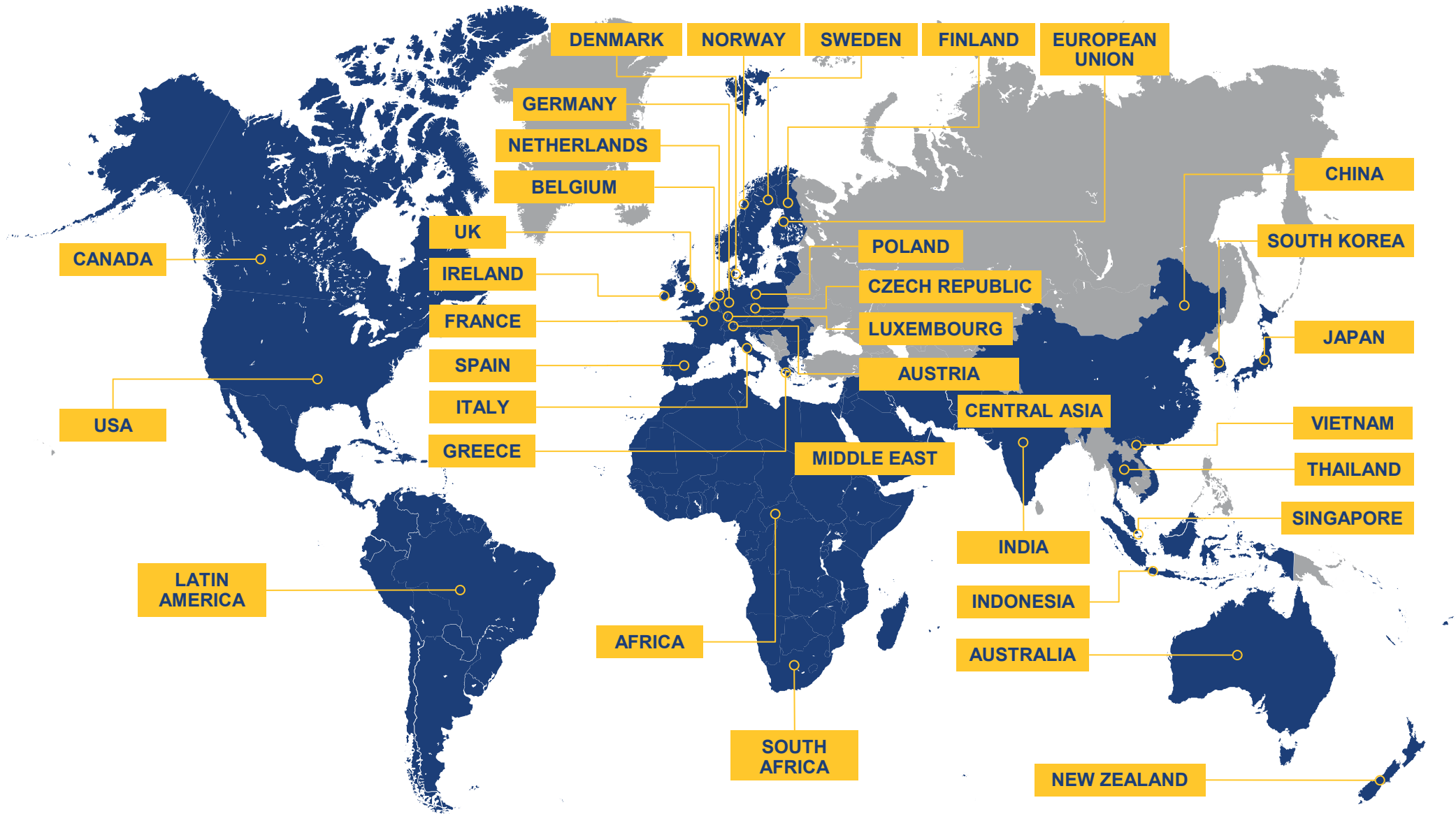




Foreign investment regulation: country by country guide

 Interactive map





Australia



WORLD MAP

← Back

Next →

Key applicable laws

Foreign Acquisitions and Takeovers Act 1975 (**FATA**).
Foreign Acquisitions and Takeovers Regulation 2015 (**FATR**).

Competent authority

The Foreign Investment Review Board (**FIRB**) reviews qualifying foreign investments and advises on implications for the national interest and/or national security. The Treasurer, advised by FIRB, takes the decision as to whether to permit, impose conditions on, or prohibit the transaction.

The process is separate to the merger control review process before the Australian Competition and Consumer Commission.

Sectors covered

All sectors.

However, investments in some sectors and asset classes are subject to particularly strict regulation, in particular:

- investments in national security businesses and land. 'National security business' is a broad concept - it extends considerably beyond businesses with military / intelligence adjacencies and includes critical infrastructure (widely defined to include various categories of assets considered critical to the economy in sectors such as utilities, fuels, ports, banking, financial markets, data processing, domain names, health, education, food & grocery, freight and transport) and certain telecommunications businesses; and
- investments in media businesses.

Acquisitions of interests in agricultural, commercial and residential land (including leases and licences over 5 years) and in mining/production tenements (and in some cases exploration tenements) also fall within the scope of the regime.



Australia



WORLD MAP

← Back

Next →

Transactions covered

Monetary thresholds (entity and business investments)²

Investor	Form of investment in Australian ³ business/assets	Target valuation threshold ⁴
All foreign persons	National security businesses	≥ A\$0
	Media business	≥ A\$0
	Exploration tenements over national security land	≥ A\$0
Foreign government investors (FGI)	All businesses	≥ A\$0
Non-FGI foreign persons (without FTA status – see below)	Agribusiness	≥ A\$75m (£37m/US\$50m approx.)
	Other businesses	≥ A\$347m (£172m/US\$233m approx.)
	Service businesses (non-sensitive and for India only)	≥ A\$560m (£278m/US\$375m approx.)
Non-FGI foreign persons from key FTA partners – includes Canada, Chile, China, Japan, Hong Kong, Malaysia, Mexico, New Zealand, Peru, Singapore, the Republic of Korea, UK, USA, Vietnam, Brunei Darussalam	Agribusiness	≥ A\$75m (cumulative) (£376m/US\$50m approx.)
	Sensitive business ⁵	≥ A\$347m (£172m/US\$233m approx.)
	Non-sensitive business	≥ A\$1,498m (£743m/US\$233m approx.)

NB - The investing entity itself must be registered in an FTA partner country (not just controlled from there)

For control thresholds see 'Notification' below.

² Separate thresholds apply to land acquisitions.

³ May cover foreign-to-foreign transactions where target has Australian subsidiaries/assets.

⁴ Calculated by reference to (i) consideration for the acquisition, (ii) target assets (total asset value/assets of entities or businesses), or (iii) total issued securities value, depending on the type of action taken.

⁵ 'Sensitive business' in this context includes media, telecoms, transport, defence / military, encryption & securities technologies and communications systems, extraction of uranium / plutonium and operation of nuclear facilities.



Transactions covered cont.

Foreign person

This is defined as:

- an individual not ordinarily resident in Australia; or
- a foreign government or foreign government investor; or
- an entity⁶ in which an individual not ordinarily resident in Australia, foreign corporation or foreign government holds $\geq 20\%$; or
- an entity in which two or more foreign persons hold $\geq 40\%$.

Foreign government investor

This is defined as an entity in which:

- a foreign government or separate government entity holds $\geq 20\%$; or
- foreign governments or separate government entities of more than one foreign country hold $\geq 40\%$, except where:
 - the entity operates a passive investment fund or scheme for members; and
 - no individual member can influence any individual investment management or decisions; and
 - no foreign government investor from any one country holds $\geq 20\%$ in the entity.

Importantly, governments or government entities from the same country are treated as associates and aggregated for these purposes (regardless of whether they are in fact acting in concert or have any constitutional relationship with each other).

⁶ The regime captures corporations, trusts and limited partnerships.



Notification

Notifiable actions

For 'notifiable actions', pre-completion notification and approval is **mandatory**.

Notifiable actions include:

- acquisitions by foreign persons of **≥ 20%**⁷ in an Australian corporation or unit trust;
- acquisitions by foreign persons of interests in Australian land; or
- foreign government investors starting an Australian business,

in circumstances where the applicable monetary threshold is met (see before).

Notifiable national security actions

For 'notifiable national security actions', pre-completion notification and approval is also **mandatory**.

Notifiable national security actions include the following actions taken by a foreign person:

- starting a national security business; or
- acquiring **≥ 10%** (lower in some circumstances) in a national security business.

A **nil monetary threshold** applies to notifiable national security actions.

See 'sectors covered' previously for what constitutes a 'national security business' – this is broad in scope and not confined to businesses with military / intelligence adjacencies.

Significant actions and reviewable national security actions

There are intermediate categories ('significant actions' and 'reviewable national security actions') which are not subject to mandatory notification unless falling within the notifiable categories described above. In these cases, notification is **voluntary**, but the Treasurer has broad 'call in' powers to intervene / unwind in the absence of notification if later assessed to be contrary to the national interest / national security.

⁷ Stricter rules apply in relation to foreign government investors (regardless of sector) and to all foreign investors in certain high-focus sectors (such as media and agribusinesses). In these cases, the acquisition threshold generally falls to ≥10% but can be even lower depending on the circumstances.



Review procedure and time limits

Notification and review procedure

Notifications are made to FIRB, which consults with relevant government departments and agencies before advising the Treasurer. The Treasurer will then decide whether to grant a (conditional or unconditional) 'no objection' notification or to prohibit the transaction.

Time limits

Strictly, the Treasurer has 30 calendar days from notification to make a decision (plus 10 calendar days to notify). However broad extension powers exist and in practice applicants are frequently asked to 'voluntarily' accept extensions. Median real world decision times are 30+ days although this is usually for very simple FIRB applications.

Assessment criteria

Whether or not the proposal is in the 'national interest', taking into account factors including national security, competition, other Australian government policies (including tax), economic impact, community impact, employees, and the character of the investor.

National security-related proposals are assessed against a narrower 'national security' test including consultation with defence and intelligence agencies.

Enforcement powers and penalties

Enforcement mechanisms

FIRB has a range of enforcement powers and mechanisms including:

- infringement notices for all actions;
- monitoring and investigative powers;
- enforceable undertakings;
- compliance directions;
- revoking approvals for false or misleading information; and
- requiring notification of actions taken under a no objections notice.



Australia



WORLD MAP

← Back

Next →

Enforcement powers and penalties cont.

Criminal penalties

Criminal sanctions (≤ 10 years' imprisonment, a fine of \leq A\$4.95m for individuals (£3.94m/US\$3.32 approx.) or a fine of \leq A\$49.5m for corporations (£24.55m/US\$33.17m approx.)) may be imposed if:

- an investor gives false or misleading information to FIRB;
- a notifiable action or notifiable national security action is taken without receipt of a no objection notification;
- a significant action or reviewable national security action is notified, and that action is taken without receipt of a no objection notification or before expiration of the period 10 days after the decision period; or
- an investor fails to comply with a power or contravenes an order of the Treasurer, or a condition of that order. Liability extends to parties that incite others to commit an offence (which could include company officers).

Civil sanctions of \leq A\$825m (£409m/US\$553m approx.) may also apply.

Orders

The Treasurer may make orders prohibiting an action from being taken if the Treasurer deems the proposed action to be contrary to the national interest or national security (as applicable).

If an action has already been taken without FIRB approval, and the Treasurer deems the action contrary to the national interest or national security (as applicable), the Treasurer may make a 'disposal order' to effectively unwind the action by requiring disposal of the interest held.

Last resort power

The Treasurer may review any actions (including actions approved by FIRB) to determine whether a national security risk relating to the action exists.

The Treasurer may exercise this power only if there has been a false or misleading statement by the investor or material changes to the business, activities, or market in which the investor operates.

The Treasurer must obtain and have regard to advice from national intelligence agencies and negotiate with the investor to reduce the risk.

If the risk is not adequately reduced or eliminated, the Treasurer may impose, vary or revoke conditions, prohibit or undo an action, or require divestment.



Judicial review

No right to appeal/judicial review.

Current trends and outlook

FIRB portal launched

The Treasury's Foreign Investment Portal launched in May 2025 and is now fully functional. All FIRB applications and associated communications with case officers are required to be undertaken via the Foreign Investment Portal.

As is common for a new portal, there have been some transitional challenges as practitioners (and FIRB) become accustomed to the new way of working although as familiarity with the new system has increased, the transitional challenges have reduced.

FIRB approval conditions continuing to trend

It remains common for the Treasurer to impose conditions on a FIRB application, with conditions being attached to 33% of FIRB approvals for commercial investments in the quarter ended 31 December 2024. Foreign investors should engage with FIRB early in the investment process about any likely conditions that may be imposed, so that these can be ventilated and agreed early on to prevent holding up an investment timeline, which can cause angst for all parties involved. It is not uncommon for transaction documents for M&A deals to address FIRB approval conditions, in order to enable the parties to pre-agree specific FIRB conditions which are deemed to be acceptable – thereby enhancing certainty around a FIRB condition precedent.

Greater scrutiny of tax arrangements

On 14 March 2025, the Treasury released an updated 'Tax conditions' guidance note, signaling the Australian Government's increased scrutiny of tax arrangements. The update emphasises that tax risks in foreign investment proposals, and their potential impact on Australian tax revenue, are central to national interest considerations.

The updated guidance reflects a material change in Treasury's approach to tax conditions. Rather than applying a standardised set of tax conditions to most transactions, FIRB and the ATO will now develop tailored tax conditions specific to each investment proposal and its particular tax risk profile.

This shift has significant implications for transaction planning and documentation. Previous "standard" form tax conditions are no longer relevant, and transaction parties will need to adapt their FIRB-related condition precedent drafting in sale agreements to reflect this new framework.

The guidance explicitly identifies four areas that will attract greater scrutiny from a tax review perspective as part of a FIRB application:

- acquisitions forming part of global restructures (particularly those that could facilitate subsequent profit shifting or capital gains tax avoidance);



Current trends and outlook cont.

- transactions involving related party financing (including arrangements that may artificially defer or avoid interest withholding tax or adopt excessive interest rates);
- acquisitions of entities subject to thin capitalisation rules (with particular focus on debt allocation and related party payments); and
- private equity transactions (subject to specific conditions).

The Treasury has also introduced a revised Tax Checklist, which outlines the tax-related information the ATO expects to be included in a FIRB application. The Tax Checklist appears designed to discourage investors from omitting tax submissions in their applications and from adopting a “wait and see” approach until the ATO raises queries in respect of already submitted FIRB applications.

Increased focus on sensitive sectors

The introduction of the 2024-25 Federal Budget saw the Australian Government dedicate additional resources to screening and monitoring “higher risk” FIRB applications that are closely tied to sectors where Australia’s key national interests lie. More resources for screening foreign investment have been dedicated to investments:

- in critical infrastructure;
- in critical minerals;
- in critical technology;
- which involve holding or having access to sensitive data sets; or
- which are in close proximity to Australian government facilities.

The Australian Government has also placed a greater focus on aligning foreign investment settings with other regulatory frameworks to better deal with emerging risks.



Current trends and outlook cont.

Foreign capital inflows into Australia: US largest source country for commercial investment proposals

The US was by far the largest source for approved commercial investments proposals by value for the quarter ended 31 December 2024, constituting A\$14.2 billion of the total A\$54.7 billion approved in the December quarter. Following the US, Saudi Arabia, Canada, Singapore and the United Arab Emirates rounded out the top five largest sources of foreign investment for the quarter ended 31 December 2024.

FIRB processing timelines – a general trend downwards continues

The statutory deadline for FIRB applications is formally 30 days (which commences once the FIRB application fee has been paid). However, the Treasurer may extend the 30-day time frame by up to a further 90 days. In the December 2024 quarterly report, the Treasurers' median processing time fell to 29 days, well below the medians for the previous quarter (34 days) and the financial year ending 30 June 2024 (42 days) and quarter ending 30 June 2024 (41 days).

This is a welcome development which will hopefully be sustained in future quarters (31 December 2024 is the most recent published data available).

That said, processing times for particularly sensitive proposals can still be in the multiples of months. There have been recent examples of protracted decision timeframes resulting in sunset dates in transaction documents being hit and transactions failing on that basis.

It is important that efficient and timely processing times are maintained for FIRB applications noting the critical role that foreign capital plays in the Australian economy.

Contact



Matthew FitzGerald
Partner
Matthew.FitzGerald@hsfkramer.com
T +61 7 3258 6439



Stephen Dobbs
Partner
Stephen.Dobbs@hsfkramer.com
T +61 2 9225 5511



Melissa Swain-Tonkin
Partner
Melissa.Swain-Tonkin@hsfkramer.com
+61 7 3258 6461

Last updated

19 January 2026



Key applicable laws

Section 721 of the Defense Production Act of 1950 (50 U.S.C. § 4565)

Foreign Investment and National Security Act of 2007 (**FINSA**) (Public Law 110-49) (26 July 2007)

Executive Order 11858 (as amended by Executive Order 13456 (23 January 2008))

Executive Order 14083 (15 September 2022)

Foreign Investment Risk Review Modernization Act of 2018 (**FIRRMA**) (Public Law 115-232) (13 August 2018)

Export Control Reform Act of 2018 (**ECRA**) (13 August 2018)

US Department of Treasury CFIUS implementing regulations (31 CFR Parts 800 and 802) (as amended)

CFIUS Enforcement and Penalty Guidelines (20 October 2022)

Guidance Concerning the National Security Review Conducted by CFIUS (73 Fed. Reg 74567, 8 December 2008)

US Department of Treasury interim Pilot Program regulations (31 CFR Part 801) (implementing pilot program for certain transactions involving foreign persons and critical technologies between 10 November 2018 and 12 February 2020)

Competent authority

Committee on Foreign Investment in the United States (**CFIUS**).

CFIUS is a federal inter-agency body whose nine voting members include the: (i) US Departments of Treasury (chair), Commerce, Defense (War), Energy, Homeland Security, Justice, and State; (ii) Office of the US Trade Representative; and (iii) White House Office of Science and Technology Policy. The US Department of Labor and the Director of National Intelligence are non-voting ex officio members. A further five White House offices have observer status. Other federal government departments and agencies may be included in reviews of specific transactions. Reflecting the US government's concerns regarding non-US acquisition of agricultural lands, the US Department of Agriculture (per recent legislation) will be a CFIUS member agency on a "case-by-case" basis for transactions involving "agricultural land, agriculture biotechnology, or the agriculture industry (including agricultural transportation, agricultural storage, and agricultural processing)."

Ultimately, the President makes the final decision and generally approves the CFIUS determination regarding a transaction.



Sectors covered

All sectors: CFIUS can review any “covered transaction” which may impact US national security.

National security is not strictly defined and thus can be broadly interpreted, but CFIUS is particularly concerned with transactions involving:

- Critical infrastructure
 - This is generally defined as a “systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security”. (In the context of TID US businesses, discussed below, critical infrastructure includes enumerated items in a variety of sectors including telecommunications services, submarine cables and related systems, data centers, utilities, refineries/LNG terminals/pipelines, energy, air and seaports, internet protocol networks and transport-related systems, etc.).
- Critical technologies
 - This is defined to include export-controlled defence articles or services covered by the United States Munitions List (**USML**) (as set out in the International Traffic in Arms Regulations (**ITAR**)); items on the Commerce Control List (**CCL**), set forth in the Export Administration Regulations (**EAR**); certain nuclear-related equipment, materials, software, technology and facilities; items covered by select agents and toxins regulations; and “emerging and foundational technologies” controlled under ECRA. (now referred to as “**Section 1758 technologies**”), which technologies are subject to continuing export control regulations issued by the US Department of Commerce’s Bureau of Industry and Security (**BIS**).

In February 2024, the White House Office of Science and Technology Policy updated its Critical and Emerging Technologies List (the **CET List**) to reflect technologies (by field and sub-field) deemed potentially significant to US national security. Absent further regulations by US regulatory agencies (eg BIS and/or the US Directorate of Defense Trade Controls (**DDTC**)), the CET List did not implement immediate changes to the CFIUS review process, but it indicated technology areas of particular interest/importance to the US government. The US Defense Department’s research and engineering head announced in November 2025 that the Pentagon intended to narrow its prior technology focus areas to six technologies deemed most critical to defence and warfighting, namely applied artificial intelligence; biomanufacturing; contested logistics technologies; quantum and battlefield information dominance; scaled directed energy; and scaled hypersonics, which areas per the Defense Department “address the most pressing challenges facing the modern battlefield” and will empower forces “to overcome adversarial threats and maintain operational dominance.”



Sectors covered cont.

- Sensitive personal data
 - “Sensitive personal data” includes various enumerated categories of data that may be maintained or collected by a US business that (i) “targets or tailors” products or services to US federal agency employees (including contractors) and US military members with intelligence, national security or homeland security responsibilities; (ii) collects or maintains such data on at least one million individuals in the year before the earliest of the transaction closing date or other significant dates (eg the execution of a binding written agreement establishing the material terms of the transaction) or the date of filing a CFIUS notice or declaration, unless the US business can demonstrate that at the time of closing it will have neither the capability to maintain nor the capability to collect any identifiable data within the enumerated categories on greater than one million individuals; or (iii) has a “demonstrated business objective” to maintain or collect such data on greater than one million individuals and such data is an integrated part of the US business’s primary products or services.
 - Sensitive personal data includes certain financial data, consumer report data, health information, geolocation data, and biometric data. Genetic testing information is also considered “sensitive personal data” regardless of whether (i), (ii), or (iii), above, apply (though the regulations exempt genetic testing data derived from databases maintained by the US Government and routinely provided to private parties for research).

In addition to transactions in the military/defence/aerospace industries, CFIUS frequently reviews and can investigate transactions in various sectors including, but not limited to, the following areas:

- Telecommunications
- Energy (eg oil and gas refining and transmission, utilities, power generation, nuclear)
- Computers/software/semiconductors/information technology/sensitive data
- Banking and financial services
- Agriculture and food



Sectors covered cont.

- Transportation (including bridges and ports)
- Mining
- Water/water treatment
- Chemicals
- Construction
- Manufacturing

The CFIUS process is separate to the US antitrust Hart Scott Rodino (**HSR**) merger control review process before the US Federal Trade Commission or Department of Justice.

Transactions covered

CFIUS has jurisdiction to review: (1) “covered transactions” resulting in control of US businesses by foreign persons; (2) certain non-controlling “covered investments” in technology, infrastructure, and data (**TID**) US businesses; and (3) “covered real estate transactions”. The analysis is transaction-specific, and no turnover or deal value thresholds apply.

Covered transactions (controlling investments)

CFIUS has jurisdiction over “any transaction... by or with any foreign person, which could result in foreign control of any US business, including such a transaction carried out through a joint venture.”

- “Control” for these purposes is not defined by reference to a particular shareholding or Board representation.
 - Control exists where the transaction will enable the non-US person, either directly or indirectly, to “determine, direct, or decide important matters” affecting the US business.
 - This includes the power to make decisions regarding: the sale, lease or transfer of the US business’ assets; reorganisation, merger or dissolution of the US business; closing or relocating US production, operational or research facilities; major expenditures or investments; issuance of debt or equity; appointment/dismissal of officers or senior personnel; and execution or termination of contracts.
 - The control threshold for CFIUS is lower than would apply under the HSR merger control regime and could certainly apply to a holding of < 50% of voting securities or voting board representation.



Transactions covered cont.

- A “foreign person” is defined as: (i) any foreign national, foreign government, or foreign entity; or (ii) any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.
- The US business need not be the direct target of the transaction – thus, transactions between non-US deal parties can still implicate CFIUS jurisdiction to the extent the transaction would result in non-US control of the target’s US subsidiary or affiliate.

Covered investments (non-controlling investments)

FIRRMA expanded CFIUS jurisdiction to include non-controlling “covered investments” in TID US businesses.

A “TID US business” is a US business that (i) produces, designs, tests, manufactures, fabricates or develops critical technology; (ii) performs enumerated functions with respect to covered investment critical infrastructure; or (iii) maintains or collects sensitive personal data of US citizens that, if exploited, could threaten US national security.

A non-controlling investment is considered a covered investment, and thus within CFIUS jurisdiction, if it involves a TID US business and affords the non-US investor certain rights, including (i) access to any material non-public technical information in the possession of the TID US business (including technical know-how); (ii) membership or observer rights in the US business; or (iii) any involvement (other than voting shares) in the business’s “substantive decision making” (which includes pricing for the sale of sensitive personal data, supply arrangements, corporate strategy, R&D, and access to critical technologies or infrastructure, etc.).

Covered real estate transactions

CFIUS has jurisdiction to review the purchase or lease of “covered real estate” that affords at least three of the following rights: the right to (i) physically access, (ii) exclude, (iii) improve or develop real property, or (iv) to attach fixed structures or objects. Covered real estate encompasses real estate that is located within, or will function as part of, a “covered port”; is located within “close proximity” of certain military installations or other US Government property, within the “extended range” of certain military installations, or in certain counties or geographic areas; or is any part of certain military installations. (Subsequent US Department of Transportation lists will identify the relevant airports and maritime ports.) The regulations limit “close proximity” to locations within one mile of the facility, with a lower security profile potentially attaching to foreign investments in real estate located within an “extended range” (between one to 99 miles) of the location.



Transactions covered cont.

Relevant lists of airports and maritime ports can be found via the CFIUS/real estate portion of the Treasury Department's [website](#). CFIUS also maintains a "[Geographic Reference Tool](#)" to help parties determine whether a real estate transaction includes or is near potentially sensitive US locations. CFIUS has stated that the tool is solely for reference and should not be considered an advisory opinion from CFIUS.

Under the regulations, real estate transactions that are part of a "covered transaction" under the general (part 800) regulations (discussed above) are excluded from the real estate (part 802) regulations. Additionally, certain transactions in urban areas, the purchase, lease or concession of single housing units, and certain commercial office space transactions are excluded from the real estate regulations. Various US states have enacted limitations or prohibitions on non-US ownership of real estate and in particular agricultural land.

CFIUS also has jurisdiction over transactions resulting in a change in the rights that a foreign person has with respect to a US business in which the foreign person has an investment, if that change could result in (1) a covered control transaction or (2) a covered investment, as described above. In addition, CFIUS jurisdiction is triggered with respect to any transaction, transfer, agreement or arrangement designed to "evade or circumvent" CFIUS jurisdiction, and any covered transaction, covered investment, covered change in control, or evasive transaction that arises pursuant to a bankruptcy proceeding or other form of default on debt.

Transactions not covered

General exceptions

Certain transactions fall outside CFIUS jurisdiction, including:

- Solely passive investments where the non-US investor holds <10% of the voting interest in the US business (subject to the "covered investment" provisions described above).
- Asset acquisitions unless the acquired assets constitute a US business.
- Passive, indirect investments by foreign persons in TID US businesses via investment funds (eg PE funds), where the foreign investors receive memberships (as limited partners) on the fund advisory board. To be exempt, the investment fund must meet the following criteria: (i) the fund must be exclusively managed by a US general partner; (ii) the fund's advisory board cannot approve, disapprove or control the fund's investment decisions, or decisions by the US general partner regarding the fund's portfolio companies; and (iii) the foreign limited partner: (a) does not and cannot control the investment fund (which includes the ability to approve, disapprove or control investment decisions, decisions of the US general partner related to entities in which the fund invests, or the selection/dismissal/compensation of the US general partner); (b) does not have access to material non-public technical information of the TID US business; and (c) does not have membership or observer rights on the board of the TID US business, or any involvement (other than by voting shares) in the TID US business's substantive decisions.



Transactions not covered cont.

- Greenfield or start-up investments, to the extent not captured by the recent CFIUS real estate regulations (see above), though recent Presidential policy statements propose to expand CFIUS part 800 jurisdiction to include greenfield transactions.
- Long-term leases unless the non-US lessee controls the leased US business, to the extent not captured by CFIUS' real estate jurisdiction (see above).
- Debt transactions unless the loan conveys an interest in the profits of the US business, the right to appoint members of the board of directors of the US business, or other comparable financial or governance rights characteristic of any equity investment but not of a typical loan. Likewise, an acquisition of voting interest or assets of a US business upon default or other condition involving a loan is not a covered transaction, provided that the loan was made by a syndicate of banks in a loan participation where the foreign lenders need the majority consent of the US participants in the syndicate to take action, and cannot initiate unilateral action vis-à-vis the debtor; do not have a lead role in the syndicate; and are subject to a provision in the loan or financing documents limiting their ability to control (as that term is defined by CFIUS) the debtor, and to exercise any access, rights, or involvement identified in the covered investment provisions (above).
- Non-controlling covered investments by “excepted investors” (see below).

Excepted foreign states/Excepted investors

The regulations create limited filing exemptions for covered investments in TID US businesses (and covered real estate transactions) by “excepted investors”, defined as investors with substantial ties to “excepted foreign states”. Because of the potentially significant implications for US national security, CFIUS initially designated only three countries as “excepted foreign states”: Australia, Canada, and the United Kingdom, each a long-time US ally that maintains, per CFIUS, “robust intelligence-sharing and defence industrial base integration mechanisms with the United States”. (For purposes of the CFIUS excepted foreign state designation, the UK does not include the British Overseas Territories or the Crown Dependencies.) New Zealand was added to the list of excepted foreign states as of January 2022, which resulted in each of the US Government’s “Five Eyes” partners having secured excepted foreign state status. CFIUS may expand this list further in the future, but there is no timetable as to when that might occur or what countries may be designated. Critically, investments from all foreign persons and entities, including qualified excepted investors from Australia, Canada, the UK and New Zealand, remain subject to CFIUS jurisdiction when engaging in transactions that could result in foreign control of a US business, though such investors are exempt from mandatory CFIUS filing requirements.



Transactions not covered cont.

“Excepted investor” means a foreign investor that is:

- A national of an excepted foreign state (above), and not also a national of a non-excepted foreign state;
- The government of an excepted foreign state; or
- An entity that meets each of the following conditions with respect to itself and each of its parents (if any):
 - It is organized in the United States or in an excepted foreign state;
 - It has a principal place of business in the United States or in an excepted foreign state;
 - It has a board comprised of 75% or more members, and 75% or more observers, that are nationals of excepted foreign states (and not nationals of non-excepted foreign states) or US nationals;
 - Any foreign person, and each foreign person that is part of a group of foreign persons that in the aggregate, holds 10% or more of the outstanding voting interests of such entities; holds the right to 10% or more of the profits of such entities; holds the right in the event of dissolution to 10% or more of the entities; or otherwise could exercise control over such entities, is a national of an excepted foreign state, the government of the same, or an entity incorporated there and with its principal place of business there or in the United States; and
 - Its “minimum excepted ownership” is held by a US person, a national of an excepted foreign state, the government of the same, or an entity incorporated there and with its principal place of business there or in the United States. With respect to public companies, minimum excepted ownership means a majority of voting interests, a right to the majority of profits, and the right to a majority of assets in dissolution; with respect to private companies, it means 80% or more of the same criteria.
 - As noted above, all of the conditions for companies, including the minimum excepted ownership conditions, apply to each parent of the foreign entity.

Foreign individuals or entities that have violated (or whose corporate parents or subsidiaries have violated) certain US laws or regulations, made material misstatements in a CFIUS filing or breached a CFIUS-related undertaking, will not be considered excepted investors.



United States (US)



WORLD MAP

 Back

Next 

Notification

Mandatory filings

A transaction is formally notified to CFIUS via the filing of a (shorter form) declaration or a (longer form) notice (both discussed below). Historically, notification to CFIUS was voluntary, meaning deal parties did not run afoul of US law if they did not submit a transaction for CFIUS review. Mandatory CFIUS filing requirements were imposed in 2020 in two scenarios: (i) covered transactions that are covered investments in, or that could result in foreign control of, a TID US business, and (ii) certain foreign government transactions involving a TID US business.

1. Covered transactions / covered investments in TID US businesses (critical technology mandatory filing)

A CFIUS filing is required for covered transactions that could result in foreign control of or that constitutes a non-controlling covered investment in:

- A TID US business that
- Produces, designs, tests, manufacturers, fabricates, or develops one or more critical technologies for which a “US regulatory authorization” (eg US export control licenses under the ITAR or EAR, among other items) would be required for the export, re-export, transfer (in-country) or retransfer of such critical technology to foreign persons that are parties to the transaction (unless certain limited license exceptions apply); and
- Those foreign persons: (i) could directly control such TID US business as a result of an acquisition; (ii) are directly acquiring an interest that is a covered non-controlling investment in such TID US business; (iii) have existing ownership rights in the TID US business and changes to those rights could result in a covered control transaction or a covered non-controlling investment; (iv) are a party to any transaction, transfer, agreement, or arrangement designed to evade CFIUS jurisdiction with respect to such TID US business; or (v) individually hold, or are part of a group of foreign persons that, in the aggregate, holds a voting interest of 25% or more in a foreign person described in (i) through (iv), above.

CFIUS regulations exempt certain transactions from mandatory CFIUS filing requirements, including eg a covered transaction by investment funds managed exclusively by and ultimately controlled by US nationals if the investment fund satisfies certain criteria with respect to foreign limited partners on the fund’s advisory board; a covered control transaction by excepted investors from excepted foreign states (discussed below); and covered transactions in which the foreign person’s indirect investment in the TID US business is held solely and directly via certain foreign ownership, control or influence (FOCI) mitigated entities operating under a valid facility security clearance pursuant to National Industrial Security Program (NISPO) regulations.



Notification cont.

Note on prior regulations: For transactions in which key transaction events (eg signing) occurred on or after 13 February 2020 and before 15 October 2020, a mandatory declaration or filing was required for covered investments in, or transactions that could result in foreign control of, a TID US business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies that are: (i) utilized in connection with the TID US business' activity in one or more enumerated industries identified by reference to North American Industry Classification System (**NAICS**) codes; or (ii) designed by the TID US business specifically for use in one or more enumerated industries by reference to NAICS codes, regardless of whether the critical technology also has application for other industries. The enumerated NAICS codes encompass 27 industries and are set out in Appendix B to the Part 800 regulations. These industries include aircraft, electronics, military technologies, nuclear, optics, chemical/petrochemical, power, batteries, nano- and bio-technology, aluminum smelting, and semiconductor manufacturing. An entity's NAICS code is typically self-identified by reference to the code that best characterizes the entity's primary sources of revenue. (CFIUS's Pilot Program Regulations required a mandatory declaration of filing in the same scenario, and would apply to transactions for which certain key transaction events occurred from 10 November 2018 through to 12 February 2020.) The 15 October 2020 regulations, discussed above, did not change the definition of "critical technology" or "TID US business," but rather changed the focus of a critical technology mandatory filing from NAICS code industries to US export control authorizations.

2. Foreign government transactions in TID US businesses

A mandatory declaration or filing is also required for covered transactions resulting in the acquisition of a "substantial interest" in a TID US business by a foreign person in which the national or sub-national governments of a single foreign state (other than an excepted foreign state, discussed above) have a "substantial interest." This means that a CFIUS filing is mandatory where a foreign government has a voting interest, direct or indirect, of 49% or more, in a foreign person that would acquire a voting interest, direct or indirect, of 25% or more in a TID US business. For a foreign entity whose activities are "primarily directed, controlled, or coordinated" by a general partner, a foreign government will be considered to have a "substantial interest" in such entity only if such government holds 49% or more of the interest in that general partner. The rule also provides that when determining the percentage of interest held indirectly by one entity in another entity, any interest of a parent (eg a majority owner) will be deemed to be a 100% interest in any entity of which it is a parent. The term "substantial interest" applies to a single foreign government, which includes both national and subnational governments and their respective departments and agencies..

Under current CFIUS regulations, all mandatory declarations or filings (where required) must be submitted at least 30 days before the completion date of the transaction (noting CFIUS has authority to enjoin the closing of a covered transaction under its review), though in practice a mandatory (or for that matter, a voluntary) CFIUS filing should be submitted as early as practicable.

Parties that do not file a mandatory declaration or notice when required to do so may be assessed a civil monetary penalty not to exceed US\$5 million or the value of the transaction, whichever is greater.



Notification cont.

Voluntary filings

Where a covered transaction does not trigger mandatory CFIUS filing requirements, deal parties still need to assess whether a voluntary filing to CFIUS is warranted for deal certainty purposes, since absent a CFIUS filing, review and clearance, CFIUS may investigate transactions, and block (pre-closing), unwind (post-closing), or impose mitigation conditions on covered transactions subject to its jurisdiction that, in its view, may present US national security risks, noting there is no post-closing deadline or statute of limitations for CFIUS to take such actions. Parties to a covered transaction should assume that CFIUS will have knowledge of a proposed transaction, from its monitoring of public statements (eg press releases) and filings, and other sources.

When undertaking a voluntary CFIUS filing assessment, parties will often look to gauge how CFIUS may view the underlying national security risk profile of the transaction, taking into account, eg, the “threat” to US national security potentially posed by the foreign acquirer; the “vulnerabilities” to US national security presented by the US business subject to the proposed transaction (ie the importance of the target US business to US national security); and the “consequences” to US national security” if the vulnerabilities are exploited by the foreign acquirer. These and related factors are discussed in more detail below (see Substantive Test/Grounds For Intervention). An assessment of these (non-exhaustive) factors, among others, on a transaction-specific basis forms a key part of the deal parties’ voluntary filing analysis.

Review procedure and time limits

Short form declarations

While imposing filing requirements on some investors, CFIUS regulations also provide a mechanism to give certain transactions an expedited path to CFIUS clearance.

Parties are able to file short-form declarations in lieu of full notices (which require significant amounts of information). Using these declarations, parties to transactions with lower national security risk profiles may be able to receive CFIUS clearance more quickly — after a 30-day review period (as opposed to a minimum 45-day review for a full notice filing) — and still receive “safe harbour” generally insulating such transactions from further CFIUS review. In response to a declaration filing, CFIUS can either (i) clear the transaction; (ii) request (in effect, “require”) the parties to file a full notice if it believes the transaction may raise national security considerations; (iii) neither clear the transaction nor request a formal notice (colloquially referred to as the CFIUS “shrug” whereby CFIUS advises it cannot reach a decision based on the declaration and the parties may file a formal notice); or (iv) initiate a unilateral review. Thus, to the extent the CFIUS response to a declaration is anything other than outright clearance, it is quite possible that the declaration process may in fact extend the timing of the overall review process.

Although these declarations require the parties to provide less information than a full, voluntary notice, declarations involving the acquisition of a US business that produces, designs, tests, manufactures, fabricates, or develops one or more critical technologies must describe the items and their export control classification/category.



Review procedure and time limits cont.

Draft joint voluntary notice

Parties normally submit a draft filing in advance of filing a formal joint voluntary notice (JVN) (which draft filing process allows for engagement with CFIUS).

CFIUS is required to provide the parties with comments (often in the form of additional information requests) on a draft filing within 10 business days and to accept formal JVN filings within 10 business days (or else advise if such filings are deemed incomplete), but only if the filing parties stipulate that the deal is a “covered transaction” and thus within CFIUS jurisdiction.

While known as a joint “voluntary” notice, CFIUS regulations expressly permit the filing of a JVN in a mandatory filing scenario, and in practice, parties will often submit the more expansive notice where a filing is mandatory, rather than a declaration, particularly where the prospects of CFIUS clearance under the abbreviated declaration timeline appear less likely given the circumstances of the particular transaction.

Formal JVN filing

The procedure following submission of a formal JVN filing is as follows:

- 45 calendar day initial review period.
 - If no national security risks are identified, or if such risks are resolved, no further action is taken.
- 45 calendar day factual investigation period if national security risks are not resolved in initial review (regulations enable CFIUS to extend the investigation for an additional 15 days in “extraordinary circumstances”, ie “circumstances for which extending an investigation is necessary and the appropriate course of action, in the [CFIUS] Chairperson’s discretion, due to a force majeure event or to protect the national security of the United States”).
 - CFIUS will require an investigation if the transaction raises significant national security issues.
 - Investigation is generally required if a non-US Government would obtain control of the US business or for major energy or critical infrastructure transactions.
- 15 calendar day Presidential review period.
 - If CFIUS cannot reach a decision, or recommends that the transaction be blocked, the transaction is referred to the President (in practice, Presidential referral is rare).



Foreign investment regulation: country by country guide



United States (US)



WORLD MAP

← Back

Next →

Review procedure and time limits cont.

Many cases close and are cleared at the conclusion of the initial review, although CFIUS is increasingly requiring second-stage investigations. Parties can withdraw, and if warranted, resubmit CFIUS notifications at any time during the process.

CFIUS submissions are confidential and the process generally is non-transparent (eg CFIUS does not disclose whether a notice has been filed or the results of its review), though Presidential determinations are public. FIRRMA requires CFIUS, in its annual report to the US Congress (a non-classified version of which is made public) to include greater details about the CFIUS reviews of the covered transactions, including “basic information” about the deal parties and the time required to complete each review.

CFIUS filings and “safe harbor”

Even if a transaction is not subject to mandatory filing requirements, CFIUS can commence an investigation of such transaction on its own initiative at any time (ie before or after a transaction closes), and CFIUS monitors public statements and filings relating to investment activity that is not notified to the Committee. There is no “statute of limitations” on the period which CFIUS can “look back,” and CFIUS has increasingly devoted resources to the investigation of non-notified transactions. In practice, then, seeking CFIUS approval via a voluntary filing is generally advisable in cases where deal parties can foresee CFIUS raising potential US national security concerns (in particular as CFIUS has the power to unwind completed deals (see below)).

Transactions submitted to CFIUS, which CFIUS determines may proceed, generally receive “safe harbour” insulating such transactions from further CFIUS review (though CFIUS is empowered to review a subsequent investment by a foreign person in a previously cleared non-controlling covered investment where the subsequent investment would give the foreign person control over the US business).



Filing fees

Filing fees are required when submitting formal notices for non-US acquisitions of a US business (both control transactions and non-controlling covered investments) and for covered real estate transactions. Receipt of payment generally will be required before CFIUS will accept a formal notice and commence its review of the transaction. Filing fees are required when deal parties (i) elect to file a formal notice for a transaction subject to mandatory filing requirements, or (ii) choose to submit a formal notice for a transaction that is not subject to mandatory filing requirements for deal certainty. Fees are not required in connection with submission of a draft filing for CFIUS review and comment. CFIUS may, in undefined “extraordinary circumstances” relating to national security, waive the filing fee.

Filing fees are not required when parties file a short form declaration, either as a voluntary filing or in compliance with mandatory filing requirements. If CFIUS is unable to clear a transaction based on review of a declaration, it may request or suggest that the parties file a formal notice, in which case a filing fee will be required.

CFIUS filing fees will be assessed as a function of total transaction value as follows:

Total Transaction Value	Filing Fee
Less than \$500,000	No fee
\$500,000 but less than \$5 million	\$750
\$5 million but less than \$50 million	\$7,500
\$50 million but less than \$250 million	\$75,000
\$250 million but less than \$750 million	\$150,000
\$750 million +	\$300,000

The value of a transaction generally will be calculated based on the entire value of the deal, even if the US business being acquired is only one part of a larger cross-border transaction. CFIUS will impose a nominal fee (\$750.00) in a larger cross-border transaction if the value of the US business being acquired is less than \$5 million.



Filing fees cont.

CFIUS will refund filing fees if it determines that it lacks jurisdiction over the notified transaction. The regulations do not provide for the return of fees should the parties withdraw the filing and abandon the transaction, or if CFIUS (via the President) blocks the deal. However, where CFIUS permits parties to withdraw and resubmit a notice (which deal parties, mindful of the tight statutory deadlines for CFIUS to review a transaction, may do to give CFIUS more time to assess a deal), parties are not required to pay an additional filing fee unless CFIUS determines that a material change to the transaction has occurred, or the initial notice contained material inaccuracies or omissions.

Substantive test/grounds for intervention

The test for CFIUS intervention is whether a covered transaction presents a threat to US national security.

National security is assessed on a case-by-case basis, and generally involves:

- “Threat” assessment (acquirer)
 - CFIUS reviews the non-US acquirer’s prior record or intent with respect to US national security issues, taking into account whether it is, or is controlled by, a non-US Government entity.
- “Vulnerability” assessment (target)
 - CFIUS reviews the importance of the target US business to US national security, with focus on the following: classified information or materials; critical infrastructure or technologies; sole source US Government contracts; and proximity of the US business to sensitive US Government facilities.
- Risk assessment / “consequences to national security” (acquirer and target)
 - CFIUS evaluates potential US national security consequences if vulnerabilities are exploited by a non-US acquirer.

In addition, CFIUS may consider other statutorily-enumerated factors when assessing a covered transaction’s national security risk profile (see 50 U.S.C. § 4565(f)), which factors include, for example, the potential impact of the transaction on the “control” of domestic industries that may impact national security or on the sale of certain military goods and technologies; the potential impact of the transaction on US “international technological leadership” in areas affecting US national security; or the potential “national security-related effects” of the transaction on US “critical infrastructure” or “critical technologies,” among others.



Foreign investment regulation: country by country guide



United States (US)



WORLD MAP

← Back

Next →

Substantive test/grounds for intervention cont.

In September 2022, President Biden issued an Executive Order on Ensuring Robust Consideration of Evolving National Security Risks by CFIUS that directs increased CFIUS scrutiny of foreign acquisitions and investments in what the US Government has deemed particularly sensitive sectors of the US economy. Factors emphasized in the Executive Order include (i) a given transaction’s effect on the resilience of critical US supply chains that may have national security implications, including those outside of the defense industrial base; (ii) a transaction’s effect on US technological leadership in critical/sensitive areas affecting US national security; (iii) industry investment trends with potential consequences for a transaction’s impact on US national security; (iv) cybersecurity risks that threaten to impair national security; and (v) risks to US persons’ sensitive data. While the Executive Order did not expand CFIUS jurisdiction nor change its review process, it nevertheless sends a clear signal to deal makers and their advisers that CFIUS will continue to scrutinize such foreign acquisitions/investments especially where the US target business operates in the technology or data sectors. We analysed the Executive Order [here](#).

Enforcement powers and penalties

CFIUS can prohibit a transaction pre-closing (with Presidential approval) if US national security concerns are not resolved to its satisfaction.

CFIUS can impose pre-closing mitigation remedies (which will often be negotiated with the parties), designed to reduce US national security risks, such as:

- Establishing guidelines for handling US Government contracts and other sensitive information or sensitive personal data.
- Ensuring only US citizens handle certain products and services, and/or ensuring that such products and services are located only in the US.
- Notifying the US Government in advance for approval of non-US nationals’ visits to the acquired US business.
- Providing the US Government with the right to review (and object to) certain business decisions that raise US national security issues.

FIRRMA provides CFIUS with the authority to suspend covered transactions that pose national security risks pending the completion of CFIUS review.

CFIUS can unwind a transaction post-closing (with Presidential approval) if US national security concerns are not resolved to its satisfaction.

Compliance with mitigation agreements is monitored by the US Government post-closing. Under regulations that took effect 26 December 2024, penalties for violations of such agreements (including civil monetary penalties US\$5 million (up from US\$250,000), the value of the person’s interest in the US business (or its parent, as applicable) at the time of the transaction or at the time of the violation, or the overall transaction value, whichever is greater). Parties that do not notify CFIUS of a transaction for which notification is mandatory can be assessed a civil monetary penalty not to exceed US\$5 million or the value of the transaction, whichever is greater. Those same regulations also increased the maximum civil monetary penalty amount for material misstatements or omissions made to CFIUS, to US\$5 million (from US\$250,000).

Other enforcement enhancements include changes that enable CFIUS to identify more efficiently potential national security risks of foreign investment into the US, by expanding the information that CFIUS can request from deal parties as well as third parties to a transaction, as well as an expansion of CFIUS subpoena authority. More information is available [here](#).



Foreign investment regulation: country by country guide



United States (US)



WORLD MAP

← Back

Next →

Judicial review

Findings and decisions of the President are not subject to judicial review. However, the process that CFIUS/the President apply in reaching a determination can be subject to a due process (constitutional) challenge. Per FIRRMA, such civil action must be brought in the Federal Appellate Court in Washington, DC.

Current trends and outlook

Notice filings down in 2024. There was a slight decrease in CFIUS notice filings in 2024 (the latest year for which such information is publicly available), with 209 notices filed in 2024, continuing the downward trend seen in 2023 (233 notices) following the high-water mark of 286 notice filings in 2022. This may reflect a softer M&A market generally in 2024. CFIUS undertook investigations in 116 cases in 2024 (around 56% of total notice filings), on par with 2023 (128 investigations, or 55%). Thus, despite reviewing fewer transactions, CFIUS continued to subject slightly more than half to a second-stage investigation. CFIUS approved the withdrawal of 49 notices in 2024 (compared to 57 in 2023) during the investigation period. In most cases, these 2024 withdrawals were undertaken to give the deal parties more time to consider CFIUS mitigation terms, and all but seven of the 2024 withdrawn notices were eventually refiled. Presidential decisions were issued in two transactions for which CFIUS initiated a review in 2024. While such decisions have been seen more in the past few years, they remain relatively rare when compared to overall filing resolutions. Shorter-form declaration filings were up slightly in 2024, with 116 declarations filed in 2024 (compared with 109 declarations in 2023), with CFIUS clearing 91 transactions on the basis of the declaration, requesting a notice in 17 transactions, and unable to conclude action in 7 transactions (this reflects the CFIUS “shrug” scenario where CFIUS does not clear the transaction nor request a notice filing, but advises the parties that they “may” file a notice), on par with 2023 statistics. CFIUS concluded action (i.e., cleared a transaction) after entering into mitigation agreements in 2024 for 16 notice filings (approximately 8% of overall 2024 notices), which represents a substantial decline from 2023, where CFIUS adopted mitigation agreements for 35 notices (around 21% of the distinct 2023 notices). This reduced mitigation activity is consistent with, but actually pre-dates, the “America First Investment Policy” (discussed below) which among other things calls for a stop to “overly bureaucratic, complex, and open-ended ‘mitigation’ agreements” for US investments from “foreign adversary countries,” replaced by (where necessary) more “concrete actions” that parties can complete within a more defined timeframe. This may indicate that in future, CFIUS undertakings will be more reasonable for parties to implement and satisfy, but it also might signal that CFIUS may be unwilling to mitigate transactions that raise more complex national security concerns and instead will simply refuse to clear such transactions.

Increased enforcement, monitoring and penalties. CFIUS is devoting increased resources to investigating non-notified transactions, via its Office of Investment Security Monitoring & Enforcement. In October 2022, CFIUS issued its first-ever Enforcement and Penalty Guidelines, which outline how CFIUS will assess the scope of, and potential penalties for, violations of regulations governing CFIUS reviews of proposed acquisitions of and/or certain investments in US businesses by non-US parties. CFIUS will also assess breaches of mitigation agreements or undertakings entered into between deal parties and the US Government as a condition for CFIUS transaction clearance.



Current trends and outlook cont.

This enforcement trend will continue. Per its public statements, CFIUS issued six civil monetary penalties in 2023 and 2024, for apparent violations of mitigation agreements and for misstatements to CFIUS in filings, with fines ranging from \$100,000 to a \$60 million fine related to data breaches that per CFIUS resulted in harm to US national security. With these fines, CFIUS has issued three times more penalties in 2023/2024 than it imposed over the past 50 years. We prepared an [overview](#) of those updates and an accompanying CFIUS press release underscoring the enforcement actions. Deal parties should anticipate heightened CFIUS scrutiny of transactions, particularly in the technology, semiconductor and telecommunications sectors, even where there are no US deal parties (but the transaction would result in non-US control of the target's US subsidiary and/or US technology portfolio).

US outbound investment prohibition and notification regime. US efforts to enact or impose an outbound investment restriction and/or notification regime reach back to at least 2018, when such restrictions were debated but ultimately not included in the final FIRRMA legislation. Efforts by the US Congress to enact legislation imposing outbound investment restrictions look to have been supplanted, at least for now, by US Treasury Department regulations, issued 28 October 2024 and effective 2 January 2025, that impose a prohibition or a notification requirement regarding certain investments by US persons in Chinese entities engaged in activities related to certain technology (ie semiconductors and microelectronics, quantum information technologies, and artificial intelligence). These regulations implement President Biden's August 2023 "Executive Order on Addressing US Investments in Certain National Security Technologies and Products in Countries of Concern" (the **EO**), which declared a "national emergency" under federal law to address what the EO deemed an "unusual and extraordinary threat to [US] national security" in respect of the advance by "countries of concern" (meaning, China and including the Hong Kong and Macau administrative regions) in sensitive technologies and products critical to military, intelligence, surveillance, or cyber-enabled capabilities. A summary of the EO can be found [here](#).

The Outbound Investment Security Program (**OISP**) is administered, not by CFIUS, but by the Office of Global Transactions, which sits within the US Treasury's Office of Investment Security. The OISP rules regulate investments in certain sectors by "U.S. persons" (any US citizen, permanent resident, entity organized under US law (including any foreign branch of US entity), or any person in the US) in a "country of concern" (currently defined as the People's Republic of China, including Hong Kong and Macau). The OISP regime imposes a notification requirement for, or outright prohibits, certain defined "covered transactions" if the US person has "knowledge" that the transaction involves a "covered foreign person" (defined as "persons of a country of concern" and entities that attribute more than 50% of their revenue, net income, capital expenditure, or operating expenses to persons of a country of concern) engaged in a "covered activity" as referred to in the sections summarizing prohibition and notification requirements. Further, a US person is prohibited from "knowingly directing an otherwise prohibited transaction." We prepared an [overview](#) of the OISP regulations.



Current trends and outlook cont.

The 2026 National Defense Authorization Act (**NDAA**), signed into law in December 2025, included within its provisions the Comprehensive Outbound Investment National Security (**COINS**) Act of 2025, and together codified into law the outbound investment notification and prohibition structures set forth in the OISP regulations. In brief, the NDAA/COINS Act directs the US Treasury Department, in consultation with the US Departments of Commerce and State (among others), to issue regulations within 450 days (by or before 13 March 2027) that will modify certain aspects of the existing OISP. Among various provisions, these include (i) expanding the covered technology sectors to add “high-performance computing and supercomputing” technologies, as well as “hypersonic systems,” with Treasury having the authority to expand this list further by regulation; (ii) expanding the definition of “country of concern” to include (in addition to the PRC, Hong Kong and Macau) Cuba, Iran, North Korea, Russia and the Maduro government in Venezuela (given the US sanctions that have long been imposed on these jurisdictions, we do not think this will have a material effect on US investors); (iii) formalising Treasury’s outreach process in respect of non-notified outbound investments, presumably similar to the CFIUS outreach and investigation process for non-notified inbound foreign investments; (iv) extending the scope of the ban on US persons “knowingly directing” a transaction to include both prohibited and, now, notifiable transactions; and (v) amending the “covered foreign person” definition to include a person that is “subject to the direction or control of” a foreign person incorporated in, with its principal place of business in, or organised under the laws of a country of concern; a member of the Central Committee of the Chinese Communist Party or a “member of the political leadership of a country of concern”; the government of a country of concern; and any foreign person that is owned in the aggregate (directly or indirectly) 50% or more by one of these entities. The Treasury Department’s regulations will not take effect until the completion of the regulatory process, which under US law includes the issuance of proposed regulations subject to public consultation, enabling stakeholders to weigh in on the scope and contours of the future outbound investment regulations.

“America First Investment Policy.” President Trump, on 21 February 2025, issued a National Security Presidential Memorandum (the **NSPM**), known as the “America First Investment Policy,” which aims to “promot[e] foreign investment while protecting America’s national security interests” (as set forth in an accompanying White House Fact Sheet). The NSPM does not create any immediate changes to CFIUS rules, process or procedures, but it signals future changes to the US Government’s approach to both inbound, and outbound, investments, with some potentially positive implications for acquirers and investors from US ally and partner nations, and even greater scrutiny of investments from China. We provide more details in our overview [here](#), but briefly, while the NSPM emphasizes that the US remains open to foreign investment, CFIUS clearance of such investment may prove more difficult for “PRC-affiliated persons” to secure, especially in strategic sectors including technology, critical infrastructure, healthcare, agriculture (including farmland), energy, and raw materials, among others (though purely passive investment, with technology access or governance rights, remains welcome). The NSPM also calls for expanding the sectors covered by the OISP to include biotechnology, hypersonics, aerospace, advanced manufacturing, directed energy, and other areas implicated by the PRC’s Military-Civil Fusion strategy, and calls for ongoing review of covered sectors.



Foreign investment regulation: country by country guide



United States (US)



WORLD MAP

← Back

Next →

Current trends and outlook cont.

While the changes called for in the NSPM may portend potential challenges for some investments (eg further scrutiny of PRC investment into the US and of US outbound investment into the PRC), it may signal potential opportunities for others (eg, a “fast track” or other facilitation of US ally/partner investment into the US, noting however such streamlined processes will likely require participants to “avoid partnering with United States foreign adversaries” as a precondition for the fast track program). In the wake of the NSPM, CFIUS (via US Treasury) announced the launch of a Known Investor Program (which we discussed [here](#)) designed (according to US Treasury FAQs) to increase “process efficiencies for repeat filers through collecting information from foreign investors in advance of a filing with CFIUS.”

The recent confirmation of Chris Pilkerton (formerly Acting General Counsel at US Treasury as well as a White House Senior Policy Advisor) as the new CFIUS head may result in further implementation of the NSPM’s priorities, with Mr. Pilkerton echoing the NSPM’s theme that the US remains “open for business” including foreign investment, but with CFIUS guardrails to protect against security risks arising from “foreign adversaries.” During his confirmation hearings, Mr. Pilkerton noted that CFIUS may make increased use of US intelligence and law enforcement resources to support its monitoring of non-filed inbound foreign investments, which could indicate a future increase in CFIUS investigations and filing demands.

Contact



Joseph Falcone
Partner
Joseph.Falcone@hsfkramer.com
T +1 917 542 7805



Scott Balber
Partner
Scott.Balber@hsfkramer.com
T +1 917 542 7810



James Robinson
Partner
James.Robinson@hsfkramer.com
T +1 917 542 7803

Last updated

12 January 2026

Currency conversions to £/US\$ are approximate, for guidance only.

No part of this publication may be used for any purpose, in any format, without the specific permission of Herbert Smith Freehills Kramer LLP.

The contents of this publication, current at the date of publication set out in this document, are for reference purposes only. They do not constitute legal advice and should not be relied upon as such. Specific legal advice about your specific circumstances should always be sought separately before taking any action based on this publication.

Herbert Smith Freehills Kramer LLP and its affiliated and subsidiary businesses and firms and Herbert Smith Freehills Kramer, an Australian Partnership, are separate member firms of the international legal practice known as Herbert Smith Freehills Kramer.

© Herbert Smith Freehills Kramer LLP 2025 29370/04-02-2026

For a full list of our global offices visit [HSFKRAMER.COM](https://www.hsfkramer.com)
