

New CFIUS Legislation Enacted

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For the first time in over a decade, Congress has amended the statutory authority under which the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) reviews inward foreign investment to protect U.S. national security. The Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”) was incorporated into the John S. McCain National Defense Authorization Act for Fiscal Year 2019 and signed into law by President Trump earlier today. Although many of the law’s provisions await the publication of implementing regulations, others, including the time period for CFIUS reviews, take immediate effect. FIRRMA, which has been debated and reviewed by congressional committees for nearly a year, will materially expand the scope of CFIUS reviews, particularly for some types of investment structures outside the traditional M&A context. The legislation will likely result in a much wider range of previously exempt transactions falling within CFIUS’s jurisdiction, including certain “non-controlling” investments and acquisitions of real estate with no underlying “U.S. business.”

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

William H. Aaronson

+1 212 450 4397
william.aaronson@davispolk.com

George R. Bason, Jr.

+1 212 450 4340
george.bason@davispolk.com

John B. Reynolds III

+1 202 962 7143
john.reynolds@davispolk.com

Will Schisa

+1 202 962 7129
will.schisa@davispolk.com

Miranda So

+852 2533 3373
miranda.so@davispolk.com

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