

Life in the Fast Lane: CFIUS-Free Investments, if You're From the Right Country

Article By:

Reid Whitten

All this past week, you have been hearing about FIRRMA, the new legislation that will increase the powers of the Committee on Foreign Investment in the United States that is expected to be signed into law in the coming weeks. As we predicted [here](#) and [here](#), FIRRMA will authorize CFIUS to review non-controlling investments by foreign companies, to enhance restrictions on investment in certain “critical technology,” to target real estate deals in proximity to sensitive U.S. Government sites, and to require mandatory filings for certain investments by foreign government-owned entities.

But FIRRMA also creates a little carveout to make some investments easier: a fast lane, an express check-out for companies from certain countries or, as expressed in the legislation, “certain categories of foreign persons.”

Which Way: Where We See the Entrance to the Fast Lane

The Senate version of FIRRMA contained a paragraph in the definitions section titled, very clearly, “*Exemption for Transactions from Identified Countries*.” That section clearly laid out guidance for CFIUS to select countries with similar national security interests to the U.S., membership in NATO, similar investment review processes to CFIUS, or anything else the Committee thought appropriate, and give those countries an exemption from CFIUS requirements. Apparently that clause was just a bit too far outside the WTO non-discrimination principles to stand (though we may debate whether the extent to which we’ve stretched the National Security exception is reasonable).

In any case, the final FIRRMA that will go to the President hides the on-ramp into the Foreign Direct Investment fast lane. A paragraph titled “*Country Specification*” requires the Committee to further define “foreign person” to limit the application of that category to certain . . . well, foreign persons. CFIUS is to take into consideration “how a foreign person is connected to a foreign country or foreign government, and whether the connection may affect the national security of the United States.”

CFIUS has jurisdictions over transactions where a foreign person controls (or, after FIRRMA, makes certain investments in) a U.S. business. However, if certain foreign persons are not considered foreign persons, then their investments in the United States may proceed outside of the threat of a CFIUS review.

Who Rides: Countries That May Get CFIUS-Free Transactions

Like much of FIRRMA's detailed machinations, the finer work will be done in regulations promulgated by the Committee, so we do not have a list of which foreign countries will be considered non-foreign. However, given the selection criteria we see in the Senate bill, and from our work across national-security related international trade regulation, we would put our money^[1] on the NATO-plus-four countries. That is the 29 members of NATO, as well as South Korea, Japan, New Zealand, and Australia.

Where To: The Fast Lane is not Everything All of the Time^[2]

The CFIUS-free filings will not apply in every transaction. Interestingly, the Country Specification paragraph only creates non-foreign foreign persons for the categories of transactions that FIRRMA adds to CFIUS jurisdiction. So while the NATO+ countries may enjoy a CFIUS-free investment in "critical technologies" or certain real estate transactions, they will still be considered foreign for the purposes of transactions that would have been reviewed by pre-FIRRMA CFIUS: transactions resulting in control of a U.S. company by a foreign person that raise national security concerns over the ownership of U.S. critical infrastructure.

Still, once we see the regulations, we imagine that French real-estate investors and Australian technology PE groups will be quite pleased that their investments may roll through the CFIUS fast lane. We only caution that they may want to check the rules of the road first: seek an expert's analysis of your individual transaction to be certain you can speed ahead on the open road.

[1] We checked with our marketing department and it turns out that the budget for our blog does *not* include funds for betting on the potential outcomes of regulations and that it is probably not legal anyway and get out of my office and get back to work.

[2] With all due respect to Don Henley, Glen Frey, and Joe Walsh.

Copyright © 2025, Sheppard Mullin Richter & Hampton LLP.

National Law Review, Volume VIII, Number 219

Source URL: <https://natlawreview.com/article/life-fast-lane-cfius-free-investments-if-you-re-right-country>