

ALERT

UPDATE: CFIUS Reform Bill Proposed by U.S. Senator Cornyn and U.S. Rep. Pittenger Has Garnered Significant Support Outside of Congress

December 20, 2017

On November 8, 2107, draft legislation from U.S. Senator John Cornyn (R-TX) and U.S. Representative Robert Pittenger (R-NC) was introduced that could significantly alter the U.S. government's review of foreign investments in the United States. See a link to a prior client alert describing the bill in greater detail, as well as a link to the bill itself.

In 2018, the path forward for the Cornyn/Pittenger bill will be difficult given that it is an election year. Moreover, the Congressional schedule is already congested, as several major pieces of legislation are likely to consume significant Congressional attention in 2018. Such issues include immigration reform, additional hurricane and disaster relief packages, and the U.S. debt ceiling. That schedule becomes even tighter if two current Congressional priorities—tax reform and a spending bill to continue funding the government—are not finalized neatly in either late 2017 or early 2018. That said, the Cornyn/Pittenger bill has started to win significant support outside of Congress.

For instance, several Administration officials have voiced approval of the legislation. The U.S. Department of Treasury Secretary, Steven Mnuchin, has come out publicly in favor of the Cornyn/Pittenger bill, stating that he “support{s} the goals of FIRRMA, which will help ensure that the Committee on Foreign Investment in the United States (CFIUS) has the tools necessary to protect the national security of the United States, while simultaneously maintaining our open investment

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environment.” Similarly, the U.S. Department of Defense Secretary, James Mattis, has written in support of the legislation, noting that it “would help close related gaps that exist in both the {CFIUS} and export control processes, which are not presently keeping pace with today’s rapid technological changes.” U.S. Attorney General Jeff Sessions has also written in support of the bill, highlighting “(1) the expansion of CFIUS’s authority to review certain transactions that may pose national security concerns; (2) an expanded list of national security factors that CFIUS should consider; and (3) mandatory disclosures of certain investments by state-owned enterprises.”

This degree of support from the Administration is largely unprecedented and could spur leaders of the U.S. House of Representatives (House) and the U.S. Senate (Senate) to take up this legislation in 2018 and under regular order. The House Financial Services Committee has already held one hearing on the bill and plans to have more. It is likely that the Senate Banking Committee will hold a similar hearing.

Beyond the Administration, leaders in the business community and prominent former government officials have voiced support for the legislation. For example, former Director of National Intelligence and Commander of U.S. Pacific Command, Admiral Dennis C. Blair, has commented that “{b}y expanding the scope of CFIUS reviews, FIRRMA provides better tools to analyze foreign investments and thus will strengthen the protection of America intellectual property from theft by foreign actors.” Furthermore, one of the country’s largest tech companies, Oracle Corporation, has offered its backing of the bill, noting that “FIRRMA strikes a balance of protecting national security while not chilling the benefits of foreign investment in the United States.” Such support outside of the Administration may similarly motivate Congressional leaders to consider this legislation more quickly.

Wiley Rein has an unparalleled ability to assist clients on investments that raise national security concerns. We have more than two decades of experience handling matters involving CFIUS and the Defense Security Service (DSS) and have counseled clients in transactions that involve nearly every industry sector subject to CFIUS review. Our attorneys and consultants have served in nearly every CFIUS department, including the U.S. Departments of Treasury, Homeland Security, Justice, Defense, State, and Commerce, as well as the National Security Council. Senior Public Policy Advisor Nova J. Daly, who served as the Deputy Assistant Secretary for Investment Security and Policy at Treasury from 2006 to 2009, ran the CFIUS process, oversaw the reviews of over 350 cases, and negotiated the Foreign Investment and National Security Act of 2007 (FINSIA) and implemented its regulations. Partner Daniel B. Pickard is a CFIUS expert and provides comprehensive guidance on multiple trade and investment issues, including compliance with the National Industrial Security Program (NISP) as well as on foreign ownership, control, or influence (FOCI) issues.