

CFIUS REFORM & “EMERGING AND FOUNDATIONAL TECHNOLOGIES”

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1

AGENDA

- CFIUS – What Is It and What Has Changed?
 - CFIUS Overview
 - Summary of New CFIUS Regulations
- Practical Considerations for Filing with CFIUS
- Export Control Reform Act – “Emerging and Foundational Technologies”
- Team Telecom Updates
- Conclusion

2

CFIUS – WHAT IS IT?

- Committee on Foreign Investment in the United States (CFIUS) is an inter-agency committee of the U.S. government that reviews foreign investment for national security concerns
- CFIUS jurisdiction historically was limited to review of transactions in which
 - a foreign person
 - could acquire control
 - of a U.S. business
- CFIUS can act to “mitigate” risk to “U.S. national security” that arises as a result of the covered transaction
- Only the President has authority to block or unwind a transaction
- No statute of limitations on CFIUS review, but approval confers “safe harbor”
- CFIUS process is confidential

3

CFIUS – SUMMARY OF NEW REGULATIONS

- Dual-track filing process with voluntary “declarations” with shorter timelines
- Expansion of CFIUS jurisdiction:
 - **Non-controlling investments (“covered investments”)** in high-risk sectors:
 - critical technology
 - critical infrastructure
 - sensitive personal data
 - **Real estate transactions** – Sale, lease or concession near sensitive U.S. government facilities or that involve air or maritime ports
- Mandatory filing requirements for:
 - certain transactions involving “substantial” foreign government interest
 - transactions involving critical technologies
- White list countries and excepted investors
- Filing Fees - range from \$0 for small transactions up to \$300,000

4

FILING UNDER EXPANDED CFIUS JURISDICTION

- Assessing If and When to File
 - Investment related to “Critical Technologies” or a TID business with foreign government stakeholders may be mandatory
 - TID = Critical Technology; Critical Infrastructure or Sensitive Personal Data
 - How do I assess if my company’s deal involves a TID business?
 - What qualifies as a “foreign government stakeholder”?
- Impact of COVID-19 Pandemic
- Potential for Mitigation
 - What could a mitigation look like under the new Rules?
 - What should a company do to plan in advance of a filing give these new Rules?
 - What are possible considerations related to mitigations in light of new Rules?

“EMERGING AND FOUNDATIONAL TECHNOLOGIES”

- Export Control Reform Act of 2018 (“ECRA”) requires interagency process led by Commerce to identify and place export controls on “emerging” and “foundational” technologies
- 2018 Notice of Proposed Rulemaking sought comment on very broad range of potential emerging technologies, including:
 - Artificial Intelligence (“AI”)
 - Biotechnology
 - Robotics
- Statements from government officials suggest new rules on emerging technologies will be narrowly tailored
- The first AI Export Controls went into effect in January 2020
 - Narrowly tailored to software analyzing geospatial imagery using AI technology
- Impact of forthcoming rules could be significant
- Process for “foundational technologies” expected to be similar

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