

McGUIREWOODS

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Committee for Foreign Investment in the United States (“CFIUS”)

- Reviews foreign acquisitions, mergers and takeovers of U.S. businesses that raise national security issues
- Parties to a transaction voluntarily submit the transaction for review
 - CFIUS can initiate review on its own
- Review conducted by nine U.S. agencies (including Commerce, Defense, Justice, U.S. Trade Representative), led by Treasury
- Process involves a 30-day review period, possibly followed by a 45-day investigation period
- Committee may approve the transaction or recommend that the President block the transaction

CFIUS – Key Concepts

- CFIUS focuses solely on addressing national security issues in its review, but “national security” is not defined. CFIUS evaluates
 - Threat posed by buyer (intent and capability); and
 - Vulnerability of assets being acquired (potential to use assets to undermine national security).
- CFIUS applicable to any “transaction which, irrespective of the actual arrangements for control provided for in the terms of the transaction, results or could result in control of a U.S. business by a foreigner person.”
 - Control means the power, direct or indirect, to determine, direct or decide important matters affecting an entity.