

Committee on Foreign Investment in the United States (CFIUS)

The President of the United States has the statutory authority to block or unwind foreign investment that he or she believes impairs the national security. Authority to review transactions and proposed transactions for national security purposes is vested in the Committee on Foreign Investment in the United States (CFIUS), which is an inter-agency committee housed in the Department of Treasury.

Through the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), Congress has modernized the CFIUS process to reflect both the expanded concept of the country's national security and the increasingly complex way that foreign businesses and governments invest in the U.S. As a result, more transactions – and more types of transactions – now fall within CFIUS' regulatory purview. Further, FIRRMA imposes a mandatory “declaration” requirement on certain classes of transactions.

Polsinelli's CFIUS Team has extensive experience in guiding clients through all stages of the CFIUS process, including:

- Structuring investment to avoid CFIUS jurisdiction
- Revising acquisition terms to minimize potential national security concerns
- Negotiating deal terms relating to CFIUS filings and risk
- Advising on whether a mandatory declaration is required
- Working with clients to determine whether it would be advisable to submit a voluntary notification to CFIUS
- Gathering facts and data and drafting notifications and declarations to CFIUS
- Interacting extensively with CFIUS representatives in connection with particular transactions
- Negotiating the terms of mitigation agreements
- Guiding the review process to a resolution

Our CFIUS experience spans a variety of industries, including defense, homeland security, technology, environmental remediation, transportation, real estate and natural resources. Examples of our representations before CFIUS include:

- Acquisition of a US defense and homeland security contractor by a UK concern
- Acquisition of a US national resources entity by a Chinese provincial government concern
- Acquisition of a US transportation infrastructure company by an Italian concern
- Acquisition of a US weapons system component manufacturer by a UK concern
- Acquisition of a US environmental and construction firm performing classified work
- Investment in US oil and gas interests by a Chinese concern
- Acquisition of a US manufacturer of detector technology by a UK concern
- Acquisition of a public US engineering and infrastructure firm by a UK public company
- Acquisition of US solar technology provider by a Chinese concern
- Investment in US biological research company by a Japanese public company
- Acquisition of US biometric software manufacturer by a Chinese concern

- Acquisition of US defense manufacturer by UK concern
- Acquisition of US electric motor manufacturer by Danish public company
- Investment in US Electronics Manufacturing Services software provider by a Finish public company