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Florida Governor Signs Law Restricting Investment by Certain Foreign Entities and Individuals

On May 8, 2023, Florida Gov. Ron DeSantis signed into law [Senate Bill \(SB\) 264](#) relating to interests of foreign countries. The new law, effective July 1, 2023, generally restricts the issuance of state-level government contracts or economic development incentives to, or real property ownership by certain individuals and entities associated with foreign “countries of concern.” According to the law, the foreign countries of concern include the People’s Republic of China, the Russian Federation, the Islamic Republic of Iran, the Democratic People’s Republic of Korea, the Republic of Cuba, the Venezuelan regime of Nicolás Maduro, and the Syrian Arab Republic. The restrictions apply to investors from these “countries of concern,” whether or not they are governmental entities, state-owned enterprises, private companies, or individuals making investments in their personal capacity.

Florida Foreign Investment Review Restrictions

The law prohibits Florida governmental entities from contracting with entities of foreign countries of concern and entering into contracts for an economic incentive with the foreign entity. Further, Florida governmental entities may not knowingly enter into a contract with an entity that would give access to an individual’s personal identifying information if (i) the entity is owned by the government of a foreign country of concern; (ii) the government of a foreign country of concern has a controlling interest in the entity; or (iii) the entity is organized under the laws of or has its principal place of business in a foreign country of concern.

Additionally, beginning Jan. 1, 2024, a governmental entity may not accept a bid on, a proposal for, or a reply to, or enter into a contract with an entity that would grant the entity access to an individual's personal identifying information unless the entity provides the governmental entity with an affidavit signed by an officer or representative of the entity under penalty of perjury attesting that the entity does not meet any of the criteria in the new statute.

Further, beginning July 1, 2025, a governmental entity may not extend or renew a contract with one of the restricted entities if the contract would give the foreign entity access to an individual's personal identifying information. For purposes of compliance with this measure, when a foreign entity from a country of concern extends or renews a contract with a Florida governmental entity that would grant the foreign entity access to a U.S. individual's personal identifying information, the foreign entity must provide the Florida governmental entity with an affidavit signed by an officer or representative of the foreign entity under penalty of perjury attesting that the foreign entity does not meet any of the criteria of a restricted entity under the new statute.

Florida Real Estate Development Restrictions

The law additionally places restrictions on the purchase of real estate in Florida by certain foreign parties. First, the law prohibits a foreign principal from a country of concern from owning or acquiring agricultural land in the state. Additionally, a foreign principal from a country of concern is prohibited from owning or acquiring any interest in real property within 10 miles of any military installation or critical infrastructure in the state. Examples of critical infrastructure include chemical manufacturing facilities, refineries, power plants, airports, and telecommunications central switching offices.

The Florida law's real estate investment restrictions are not 100% consistent with federal Committee on Foreign Investment in the United States (CFIUS) national security review provisions, under which foreign investments even farther from sensitive sites may be ripe for notification to and review by CFIUS. This reinforces the importance of reviewing all proposed investments by investors from these countries against both the state law and federal provisions under CFIUS.

Restrictions on Chinese Investment

The law expressly prohibits China, Chinese Communist Party or other Chinese political party officials or members, Chinese business organizations, and persons domiciled in China but who are not citizens or lawful permanent residents of the United States from purchasing or acquiring any interest in real property in Florida.

Immigration Restrictions

Under U.S. EB-5 investor provisions, foreign investors may be eligible (under federal law) to obtain an EB-5 based green card in the United States if they invest \$1,050,000 or \$800,000 into U.S. businesses and/or commercial real estate developments that generate 10 jobs per investor. The new law will impact Regional Center EB-5 program participants who may be apprehensive as a result of real estate investment opportunities in Florida. Direct EB-5 applicants whose investment involves the purchase of real estate in Florida may not be able to proceed with their immigrant visa applications.

Lawmakers added an exception that allows foreign nationals with non-tourist visas to buy a Florida residential property of up to two acres if it is not located on or within five miles of a military installation. However, the law may adversely impact other non-immigrants from the identified countries that are coming to or are currently in the United States in work-authorized status like H-1B workers or L-

1A multinational managers or executives in terms of their ability to conduct current business operations or to open new enterprises that may involve the purchase of commercial real estate in Florida. The law likewise does not address the question of dual nationals or grandfathering foreign applicants with pending immigration applications.

Potential Penalties for Violations of Florida Investment Restrictions

The law authorizes the Florida attorney general to bring a civil action in any court of competent jurisdiction against an entity that violates the law. Violations of the law may result in:

- A civil penalty equal to twice the amount of the contract for which the entity submitted a bid or proposal for, replied to, or entered into.
- Ineligibility to enter into, renew, or extend any contract, including any grant agreements, with any Florida governmental entity for up to five years.
- Ineligibility to receive or renew any license, certification, or credential issued by a Florida governmental entity for up to five years.
- Placement on the suspended vendor list for Florida state contracts

Key Takeaways

The law makes clear the state of Florida's intention to target foreign investment from countries of concern. Some of these measures appear to address specific national security concerns. Some of these measures are reminiscent of, but not identical to, the national security review goals of CFIUS, and it will be interesting to see the interplay between potential foreign investments that could fall under scope of both the Florida law and CFIUS jurisdiction.

Some of these measures are consistent with (at least in spirit if not letter) U.S. federal economic sanctions measures and foreign policy objectives. It remains to be seen, however, whether any particular investors or stakeholders may seek judicial challenges to any of the measures (including, for example, parsing the countries of concern and how they are defined in the legislation).

Both investors and U.S. targets of potential investment in Florida must carefully review all potential investments to determine whether any portion of a potential transaction is in scope for these restrictions, as well as the federal CFIUS national security review measures.

Authors

This GT Alert was prepared by:

- [Kara M. Bombach](#) | +1 202.533.2334 | Kara.Bombach@gtlaw.com
- [Kate Kalmykov](#) | +1 973.443.3276 | Kate.Kalmykov@gtlaw.com
- [Timothy F. Stanfield](#) | +1 850.222.6891 | stanfieldt@gtlaw.com
- [Madeline Orlando](#) | +1 916.442.1111 | orlandom@gtlaw.com

Additional Contacts

- Fred W. Baggett | +1 850.425.8512 | baggettf@gtlaw.com
- Brigid F. Cech Samole | +1 305.579.0752 | Brigid.CechSamole@gtlaw.com
- Hayden R. Dempsey | +1 850.521.8563 | dempseyh@gtlaw.com
- Sergio M. Eslait | +1 305.579.0873 | eslaits@gtlaw.com
- Fred E. Karlinsky | +1 954.768.8278 | karlinskyf@gtlaw.com
- Yosbel A. Ibarra | +1 305.579.0706 | Yosbel.Ibarra@gtlaw.com
- Elliot H. Scherker | +1 305.579.0579 | scherkere@gtlaw.com

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