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New Foreign Investment Rules Proposed by Treasury

On April 21, 2008, the U.S. Department of the Treasury ("Treasury") published a proposed regulation governing reviews conducted by the Committee of Foreign Investment in the United States (CFIUS) of transactions involving foreign investment in U.S. businesses (click [here](#) for the regulation).

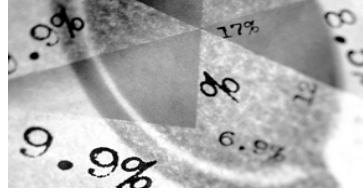
The proposed new regulations would implement amendments made by the *Foreign Investment and National Security Act of 2007* (FINSA, or the "Act") to Section 721 of the Defense Production Act of 1950 (known as the Exon-Florio Provision). We previously reported this event, which went into effect on October 24, 2007, in our Alert of July 31, 2007.

Treasury is accepting public comments to the proposed regulations until June 9, 2008. Treasury also will hold an open meeting on May 2, 2008, in Washington, D.C. for public discussion of the proposed regulations.

The proposed regulations, which are mainly administrative in nature, provide clarification of CFIUS procedures and definitional terms. The following are some highlights of the proposed regulations:

- Definition of terms, including "covered transaction," "control," "U.S. Business," and "foreign person";
- Clarification that CFIUS is to examine all relevant factors when determining whether an acquiring party would have "control" over the resulting entity;
- Concrete examples of what constitutes "control," specifically stating that simply holding 10 percent or less of the voting interests of an entity "solely for the purpose of investment" does not constitute control for purposes of triggering a CFIUS review;
- Clarification of the specific content to be provided in a notification submission to CFIUS, including:
 - personal identifier information for directors and senior managers affiliated with the foreign entity; and
 - organizational chart(s) demonstrating the relationship between the acquiring foreign entity, its parent entity, and all affiliated entities.
- Express requirement for the disclosure of all "critical technology," including items subject to U.S. export control restrictions;
- Requirement that parties to the transaction submit certifications attesting to the accuracy and completeness of the information provided in the notification; and
- Imposition of monetary penalties up to \$250,000 per violation for the submission of false information or certifications.

In addition, the proposed new regulations explicitly encourage parties to file a notification voluntarily with CFIUS. They also advise filers to consult with CFIUS prior to making any formal submission. Further, the proposed regulations reinforce the confidentiality afforded to all information submitted to CFIUS as part of a notification submission.



This *GT Alert* was prepared by Fred Shaheen in Washington, D.C. Questions about this information can be directed to Mr. Shaheen at 202.331.3198 (shaheenf@gtlaw.com).

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