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ALERT

CFIUS Reform Legislation Signed into Law – Important Changes Become Effective Immediately

August 13, 2018

President Trump signed the Foreign Investment Risk Review Modernization Act (FIRRMA) into law today, August 13, 2018, as part of the National Defense Authorization Act for Fiscal Year 2019 (NDAA). FIRRMA significantly expands the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS) to review transactions that were not previously subject to CFIUS scrutiny, including certain real estate transactions and non-controlling investments in critical technology companies, critical infrastructure companies, and companies that maintain or collect sensitive personal data of U.S. citizens. The new legislation also allows parties to covered transactions to file short-form "declarations" in lieu of a more detailed notice, requires mandatory filings for certain kinds of transactions, and reforms the CFIUS review process in several other important respects. Our summary of the law's major provisions is available here.

Many provisions of FIRRMA become effective immediately. These include the extension of the initial review period from 30 days to 45 days, provisions relating to mitigation agreements, and the information sharing and funding aspects of the law. Other provisions (including those expanding the scope of what constitutes a "covered transaction" and provisions governing voluntary and mandatory declarations) will not go into effect until the earlier of 18 months after enactment or 30 days after publication in the *Federal Register* of a determination by CFIUS that the regulations, organizational structure, personnel, and other resources necessary to administer the law's provisions are in place.

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Practice Areas

International Trade
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The focus now turns to the rulemaking process, where stakeholders will have an opportunity to submit comments and help shape the regulations that the U.S. Department of Treasury ultimately adopts to implement this sweeping new law. We also expect CFIUS to launch one or more pilot programs in the coming months to implement certain new authorities under FIRRMA. The scope and procedures for any pilot programs under FIRRMA will be published in the *Federal Register* in advance.

Wiley Rein has an unparalleled CFIUS and national security practice that draws on senior government-level experience with CFIUS member agencies and numerous representations of domestic and international companies in complex transactions involving nearly every industry sector subject to CFIUS review. Should you have any questions regarding the immediate impact of FIRRMA on inbound foreign investment, the upcoming notice and comment rulemaking process, or the new CFIUS pilot programs, please do not hesitate to contact one of the members of our CFIUS and national security practice listed on this alert.