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CFIUS Update: FIRRMA Enacted into Law

August 13, 2018

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Earlier today, President Donald Trump signed into law the Foreign Investment Risk Review Modernization Act (FIRRMA) as part of the John S. McCain National Defense Authorization Act. As we have previously reported, FIRRMA will transform the jurisdiction, authority, and operation of the Committee on Foreign Investment in the United States (CFIUS). Our previous detailed analysis of the final version of FIRRMA passed by the U.S. Congress is available here.

Most provisions of FIRRMA took effect immediately upon enactment earlier today, including the extension of the timeline for CFIUS reviews to 90 days (45-day "review" plus 45-day "investigation"), with the option for a 15-day extension in "exceptional" circumstances. However, other important provisions of FIRRMA—including expansions of CFIUS jurisdiction, the new declaratory filing processes, and mandatory declaration requirements—will not take effect until the earlier of 18 months or final promulgation of the regulations, whichever is earlier.

We would typically expect the development of new regulations to take approximately 12-18 months, given the scope and magnitude of the requirements in FIRRMA. Notably, however, FIRRMA also provides CFIUS with authority to conduct one or more "pilot programs" for up to 570 days (i.e., approximately 19 months) to implement any authority that would otherwise require regulations to implement. We expect that CFIUS will seek to implement certain pilot programs, potentially to include mandatory filings for certain transactions. A pilot program may begin 30 days after publication of the scope and procedures of the program in the Federal Register.

We will be closely following the regulations development process, as well as any pilot programs implemented by CFIUS, and will keep our clients updated.

We hope that you find this report useful. Please do not hesitate to contact the following members of our CFIUS practice if you would like to discuss any aspect of the foregoing in further detail:

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