

Final Regulations Go Into Effect for CFIUS Jurisdiction Expansion

February 24, 2020

The U.S. Department of Treasury has issued final regulations, which became effective February 13, 2020, implementing the Foreign Investment Risk Review Modernization Act (FIRRMA). The final rules, which expand the authority of the Committee on Foreign Investment in the U.S. (CFIUS), are largely consistent with the proposed regulations we reviewed in our [prior client alert](#), with several clarifying changes:

- **Excepted Foreign States Identified:** CFIUS identifies three countries as excepted foreign investors: Australia, Canada, and the United Kingdom. CFIUS recognized these countries based on their national security-based investment review processes, robust intelligence sharing, and cooperation with the United States, and they will remain on the list until February 13, 2022, when CFIUS will reevaluate their positions. Other countries may be identified in the future if they meet similar criteria. However, it is important to keep in mind that this exception pertains only to the regulations and the countries remain subject to CFIUS jurisdiction over “control” transactions.
- **“Principal Place of Business”:** The final regulations include an interim definition for “principal place of business,” which had been left undefined in the proposed regulations. The regulations define “principal place of business” as “the primary location where an entity’s management directs, controls, or coordinates the entity’s activities, or, in the case of an investment fund, where the fund’s activities and investments are primarily directed, controlled, or coordinated by or on behalf of the general partner, managing member or equivalent.” This definition will help to determine which entities qualify as a foreign person. The Treasury Department took public comment on the proposed definition until February 18, and may amend the definition based on those comments.
- **Web-based Map for Geographic Scope:** The final regulations retain the appendices listing military installations and the Committee announced that it anticipates creating a Web-based tool to assist the public with understanding the geographic scope of the real estate regulation.
- **Filing Fees:** CFIUS notes that filing fees will undergo a separate proposed rulemaking at a later date. FIRRMA authorizes the Committee to collect a fee for each covered transaction for which a written notice is submitted. The fee may not exceed 1% of the value of the transaction or \$300,000, adjusted annually for inflation.

Although these regulations provide much-needed clarity to FIRRMA, Treasury reiterates, in a [FAQ Sheet](#), that traditional CFIUS authority remains intact over any transaction that could result in foreign control of a U.S. business that poses potential risks to national security.