



CFIUS Reform: Amendment of Executive Order 11858 on January 23, 2008

Executive Order 11858 of May 7, 1975, as amended, elaborates on Executive Branch rules for the Committee on Foreign Investment in the United States (CFIUS) and implements Section 721 of the Defense Production Act (Section 721). Following enactment of the Foreign Investment and National Security Act of 2007 (FINSAs), the President issued Executive Order 13456 on January 23, 2008, to amend Executive Order 11858. The amendments to Executive Order 11858 reflect the United States' strong and continuing commitment to safeguarding U.S. national security while maintaining an open investment climate.

Expands CFIUS Membership Beyond Those Members Listed In Section 721:

- *Non-Statutory Members*: The United States Trade Representative and Director of the Office of Science and Technology Policy are added as full members. The heads of the Office of Management and Budget, Council of Economic Advisers, and National Economic Council, and of the National Security Council and Homeland Security Council staff are added to observe, participate in, and, as appropriate, report to the President on CFIUS's activities.
- *Case-by-Case Members*: The President or the Chair may add relevant members on a case-by-case basis. (FINSAs also authorizes the Secretary of the Treasury, as CFIUS chair, to consult with other agency heads as appropriate in particular cases.)

Ensures Efficient, Robust Reviews:

- *CFIUS Chair*: Defines the Treasury's duties vis-à-vis lead agencies and other members, including acting as the point of contact with outside parties, designating lead agencies for any part of a case, and reviewing material action proposed by a lead agency in order to ensure coordination within CFIUS and provide CFIUS's direction.
- *National Security Reviews*: Ensures that all CFIUS members are able to participate fully in every CFIUS review, specifying that any CFIUS member can trigger an investigation if it believes a transaction under review threatens to impair national security and that threat has not been mitigated.
- *Presidential Decisions*: Provides mechanism for CFIUS to request that the President decide whether a transaction should be suspended or prohibited – which only he may do – where a transaction threatens to impair the national security of the United States and other laws, besides Section 721 and the International Emergency Economic Powers Act, are inadequate or inappropriate to address that threat.

Imposes Additional Analytical and Procedural Disciplines on CFIUS Agencies:

- *Risk-Based Analysis*: Risk mitigation provisions must be justified by a written analysis of the national security risk posed by a transaction, and CFIUS must agree that they are justified.
- *Existing Laws*: Limits CFIUS to seeking risk mitigation agreements or conditions only when other laws besides Section 721 are inadequate and, except in extraordinary circumstances, prohibits the use of mitigation agreements to require a party's recognition of existing legal authorities. Also prohibits CFIUS agencies from using CFIUS's authorities to gain leverage over the parties with regard to enforcement of the agencies' existing legal authorities outside the CFIUS process.

For additional information on CFIUS, please consult [<http://www.treas.gov/offices/international-affairs/cfius/>]