

**FDI Guide**  
**United States**

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**Foreword:** The Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) expands the jurisdiction of the Committee on Foreign Investment in the United States (CFIUS). CFIUS is an interagency committee authorised to review certain transactions involving foreign investment in the US and certain real estate transactions by foreign persons, in order to determine the effect of such transactions on the national security of the US.

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1.	<b>Principle</b>	Describe if the FDI regime is built by exception to a principle of freedom of investment or whether restrictions to transferring funds to and from your country apply generally.	<p>Generally, the United States observes the freedom of investment principle. However, the US restricts foreign investments that pose national security concerns. National security is not a precisely defined term. As such, any determination is based on a risk-based analysis, conducted by the Committee on Foreign Investment in the US (CFIUS), of the effects of the covered transaction on the national security of the US. Any such risk-based analysis shall include credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities and consequences to national security related to the transaction. The risk analysis shall include and be informed by consideration of the following elements:</p> <ul style="list-style-type: none"> <li>• the <i>threat</i>, which is a function of the intent and capability of a foreign person to take action to impair the national security of the US;</li> <li>• the <i>vulnerabilities</i>, which are the extent to which the nature of the US business presents susceptibility to impairment of national security; and</li> <li>• the <i>consequences to national security</i>, which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.</li> </ul> <p>The Organisation for Economic Co-operation and Development (OECD) 2020 FDI Regulatory Restrictiveness Index (the ‘FDI RRI Index’) assigns a 0.09 score to the US (the average score is 0.06).<sup>1</sup></p>

<sup>1</sup> The FDI RRI is a composite index that takes values between 0 and 1, with 1 being the most restrictive. [www.oecd.org/investment/fdiindex.htm](http://www.oecd.org/investment/fdiindex.htm) accessed 6 January 2023.

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2.	<p><b>Legal regime</b></p> <p><b>Authority(ies) in charge</b></p>	<p>Describe source(s).</p> <p>Name of authority in charge of applying the FDI rules (Minister/Agency/...).</p>	<p>The authority in charge of applying the foreign direct investment (FDI) rules is CFIUS. CFIUS is an interagency committee authorised to review certain transactions involving foreign investment in the US and certain real estate transactions by foreign persons in order to determine the effect of such transactions on the national security of the US.</p> <p>CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended ('Section 721'), and as implemented by Executive Order 11858, as amended, and the regulations in chapter VIII of title 31 of the Code of Federal Regulations (including 31 CFR Part 800 and 31 CFR Part 802).</p> <p>On 13 August 2018, the President signed into law the Foreign Investment Risk Review Modernisation Act of 2018 ('FIRRMA'). FIRRMA strengthened and modernised CFIUS.</p> <p>On 15 September 2022, President Biden signed Executive Order 14083 (EO 14083), which was one of the first CFIUS-related executive orders issued in decades. While not changing the scope of CFIUS jurisdiction, EO 14083 requires that CFIUS focus on fostering supply chain resiliency, preserving US technological leadership, protecting sensitive personal data, assessing cybersecurity risks and examining transactions in the context of broader industry and investment trends (20 September 2022, 87 Fed. Reg. 57,369).</p> <p>Subsequently, on 20 October 2022, the Treasury Department released the first-ever CFIUS Enforcement and Penalty Guidelines ('Guidelines'). Noting that the process for the imposition of penalties is described in 31 CFR. §§ 800.901 and 802.90, the Guidelines describe how CFIUS identifies, processes and assesses violations, including failure to make a mandatory filing, material misstatements or omissions, and breaches of CFIUS mitigation requirements (Treasury Department, CFIUS Enforcement and Penalty Guidelines (20 October 2022) (available at <a href="#">CFIUS Enforcement and Penalty Guidelines</a> (US Department of the Treasury)).</p> <p>The composition of CFIUS includes:</p> <p>nine voting members:</p> <ul style="list-style-type: none"> <li>• Secretary of the Treasury (chair);</li> <li>• Department of Justice;</li> <li>• Department of Homeland Security;</li> <li>• Department of Commerce;</li> </ul>

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			<ul style="list-style-type: none"> <li>• Department of Defense;</li> <li>• Department of State;</li> <li>• Department of Energy;</li> <li>• Office of the US Trade Representative; and</li> <li>• Office of Science &amp; Technology Policy;</li> </ul> <p>five observers who, as appropriate, participate in CFIUS' activities:</p> <ul style="list-style-type: none"> <li>• Office of Management and Budget;</li> <li>• Council of Economic Advisers;</li> <li>• National Security Council;</li> <li>• National Economic Council; and</li> <li>• Homeland Security Council;</li> </ul> <p>there are also two non-voting, ex officio members:</p> <ul style="list-style-type: none"> <li>• the Director of National Intelligence; and</li> <li>• Secretary of Labor.</li> </ul>
3.	<p><b>Transactions that may be subject to FDI</b></p> <ul style="list-style-type: none"> <li>• Type</li> </ul>	<p>Describe the nature of the transactions that may be subject to FDI rules.</p> <p>In the case of share acquisition, specify if the FDI regime is triggered only beyond a certain threshold and, if so, describe such a threshold.</p>	<p><b>1. Covered control transaction</b></p> <p>A covered control transaction is any transaction by or with any foreign person that could result in the foreign control of any US business, including such a transaction carried out through a joint venture, where control is defined as the power (direct or indirect, whether or not exercised, through the ownership of a majority or dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert or other means) to determine, direct or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach or cause decisions regarding the following matters or any other similarly important matters affecting an entity. Some examples include:</p> <ul style="list-style-type: none"> <li>• the sale, lease, mortgage, pledge or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business;</li> <li>• the reorganisation, merger or dissolution of the entity;</li> <li>• the closing, relocation or substantial alteration of the production, operational or research and development facilities of the entity;</li> </ul>

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			<ul style="list-style-type: none"> <li>• major expenditure or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity;</li> <li>• the selection of new business lines or ventures that the entity will pursue;</li> <li>• the entry into, termination or non-fulfilment by the entity of significant contracts;</li> <li>• the policies or procedures of the entity governing the treatment of non-public technical, financial or other proprietary information of the entity;</li> <li>• the appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner;</li> <li>• the appointment or dismissal of employees with access to critical technology or other sensitive technology or classified US Government information; or</li> <li>• the amendment of the articles of incorporation, constituent agreement or other organisational documents of the entity with respect to the matters described in this list.</li> </ul> <p>However, certain limited minority shareholder rights are not considered independently sufficient to provide control.</p> <p style="text-align: center;"><b>2. Covered investment</b></p> <p>A covered investment is an investment, direct or indirect, by a foreign person other than an excepted investor, in an unaffiliated TID US business that is proposed or pending on or after 13 February 2020. A covered investment is a non-controlling transaction that affords the foreign person:</p> <ul style="list-style-type: none"> <li>• access to any material non-public technical information in the possession of the TID US business;</li> <li>• membership or observer rights on the board of directors or equivalent governing body of the TID US business; or</li> <li>• any involvement in substantive decision-making of the TID US business regarding critical technologies, critical infrastructure or the sensitive personal data of US citizens.</li> </ul> <p>TID US business is defined as a business operating in one of three ‘TID’ sectors, that is, critical technology, critical infrastructure and sensitive personal data, that:</p> <ul style="list-style-type: none"> <li>• produces, designs, tests, manufactures, fabricates or develops one or more critical technologies;</li> </ul>

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			<ul style="list-style-type: none"> <li>• performs certain enumerated functions with respect to covered investment critical infrastructure; or</li> <li>• maintains or collects, directly or indirectly, sensitive personal data of US citizens;</li> </ul> <p>where critical technologies include the following:</p> <ul style="list-style-type: none"> <li>• defence articles or defence services included in the US Munitions List (USML) set forth in the International Traffic in Arms Regulations (ITAR);</li> <li>• items on the Commerce Control List (CCL);</li> <li>• specially designed and prepared nuclear equipment;</li> <li>• nuclear facilities, equipment and material covered by 10 CFR part 100;</li> <li>• selected agents and toxins; and</li> <li>• emerging and foundational technologies.</li> </ul>
<ul style="list-style-type: none"> <li>•</li> </ul>	<p><b>Materiality thresholds</b></p> <p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p> <hr/> <p><b>Rights of evocation</b></p>	<p>Are indirect acquisitions of assets or shares in the jurisdiction subject to the relevant FDI rules (acquisitions in a parent company outside the jurisdiction)?</p> <p>Are share transfers involving a group company internal restructuring covered?</p> <p>Are greenfield investments covered?</p> <p>Does the FDI authority (or another type of governmental authority) have a power of evocation/ex officio/call-in powers? If so, please describe.</p>	<p>Yes, indirect acquisition of assets or shares by a foreign person that results in the control of a US business may be considered a covered transaction that triggers reporting requirements to CFIUS. Control need not be direct for a transaction to be a covered transaction. See the examples in item 3.1 and refer to the definition of control. In addition, the acquisition of real estate assets as described above may be considered a covered transaction.</p> <p>Whether greenfield investments are covered depends on how the greenfield investments are defined or structured. Generally, greenfield investments (a business built from the ground up) are not considered covered investments. However, there may be situations in which CFIUS may interpret certain actions (eg, technology transfer contract) as creating a business and thus subject to CFIUS’s purview.</p> <p>Yes, see the response in item 2. Particularly, the Director of National Intelligence and the Secretary of Labor are non-voting, ex officio members of CFIUS.</p>

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4.	<b>Sectors falling under the FDI scope</b>	Describe the economic sectors for which the FDI regime will apply. If relevant, explain for each sector the level of flexibility that the authority may apply (or not) in evaluating whether FDI rules should apply.	<p>All economic sectors are subject to CFIUS review. Industries that are scrutinised by CFIUS include:</p> <ul style="list-style-type: none"> <li>• aerospace and defence;</li> <li>• automotive;</li> <li>• chemicals;</li> <li>• consumer electronics;</li> <li>• emerging technologies;</li> <li>• life sciences;</li> <li>• minerals;</li> <li>• pharmaceuticals;</li> <li>• oil and gas; and</li> <li>• cybersecurity and privacy.</li> </ul>
		Are there sector-specific stricter limits on foreign investment that will apply, such as a lower threshold or sectors for which no foreign investment is possible? If yes, which sectors (eg, nuclear energy/agriculture)?	<p>CFIUS has jurisdiction over covered investments if a foreign investor gains decision-making rights in a US business involving any of the following:</p> <ul style="list-style-type: none"> <li>• critical technology;</li> <li>• critical infrastructure; and</li> <li>• sensitive personal information of US citizens.</li> </ul>
5.	<b>Qualified investors</b>	Describe the main characteristics of investors that fall under the FDI regime and if there are nuances depending on their origin (eg, EU v not EU).	<p>Any foreign persons not expressly excepted by CFIUS fall under the FDI regime regardless of their country of origin or investment origination. This includes:</p> <ul style="list-style-type: none"> <li>• any foreign national, foreign government or foreign entity;</li> <li>• any entity over which control is exercised or exercisable by a foreign national, foreign government or foreign entity; or</li> <li>• any entity over which control is exercised or exercisable by a foreign person.</li> </ul> <p>Currently, the only excepted states under 800.218 (with the date of excepted foreign state status) are:</p> <ul style="list-style-type: none"> <li>• Australia (13 February 2020);</li> <li>• Canada (13 February 2020);</li> <li>• New Zealand (5 January 2022); and</li> </ul>

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			<ul style="list-style-type: none"> <li>• United Kingdom of Great Britain and Northern Ireland (13 February 2020).</li> </ul> <p>The excepted real estate foreign states are:</p> <ul style="list-style-type: none"> <li>• Australia (13 February 2020);</li> <li>• Canada (13 February 2020);</li> <li>• New Zealand (5 January 2022); and</li> <li>• United Kingdom of Great Britain and Northern Ireland (13 February 2020).</li> </ul> <p>Excepted investors are not subject to mandatory filing rules or CFIUS’s jurisdiction over non-controlling investments and real estate transactions; however, CFIUS still has jurisdiction to review control transactions involving excepted investors. Some examples of excepted investors include a foreign person who is, as of the completion date of the transaction:</p> <ul style="list-style-type: none"> <li>• a foreign national who is a national of one or more excepted foreign states and is not also a national of any foreign state that is not an excepted foreign state;</li> <li>• a foreign government of an excepted foreign state; or</li> <li>• an entity that meets all the conditions set forth in 31 CFR 800.219(a)(3).</li> </ul>
6.	<p><b>Procedure</b></p> <p>6.1 Before or post-closing filing</p>		<p>For transactions subject to a mandatory CFIUS filing requirement, parties must submit the mandatory declaration 30 days before the completion date of the transaction. The parties to a transaction are free to complete a transaction at any time after having been informed in writing by CFIUS that it has concluded all action under Section 721 or that CFIUS is not able to complete the action. CFIUS’s conclusion of the review without formal clearance is not considered a bad outcome. As a practical matter, even without the safe harbour (ie, a cleared transaction precluding action after the post-closing action), parties have the comfort that CFIUS did not raise significant concerns about the transaction. Two categories of transaction trigger a mandatory declaration:</p> <ol style="list-style-type: none"> <li>1. Substantial interest: A covered transaction that results in the acquisition of a substantial interest in a TID US business by a foreign person (25 per cent or more) in which the national or subnational governments of a single foreign state (other than an excepted foreign state) have a substantial interest (49 per cent or more).</li> <li>2. Critical technology: A covered transaction involving (i) a TID US business that produces, designs, tests, manufactures, fabricates or develops one or more critical technologies for which (ii) a US regulatory authorisation would be required for the</li> </ol>

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			<p>export, re-export, transfer (in-country) or retransfer of such critical technology to a person that:</p> <ul style="list-style-type: none"> <li>• could directly control such a TID US business as a result of the covered transaction;</li> <li>• is directly acquiring an interest that is a covered investment in such a TID US business;</li> <li>• has a direct investment in such a TID US business, the rights of such a person with respect to such a TID US business are changing and such a change in rights could result in a covered control transaction or covered investment;</li> <li>• is a party to any transaction, transfer, agreement or arrangement structured to evade filing with respect to such a TID US business; or</li> <li>• individually holds or is part of a group of foreign persons that, in aggregate, holds a voting interest (25 per cent or more) for purposes of critical technology mandatory declarations;</li> </ul> <p>where critical technologies include:</p> <ul style="list-style-type: none"> <li>• defence articles or defence services included in USML set forth in ITARI;</li> <li>• items included on the CCL set forth in Supplement No 1 to part 774 of the Export Administration Regulations (EAR) (15 CFR parts 730–774), and controlled pursuant to multilateral regimes, including for reasons relating to national security, chemical and biological weapons proliferation, nuclear non-proliferation or missile technology, or for reasons relating to regional stability or surreptitious listening;</li> <li>• specially designed and prepared nuclear equipment, parts and components, materials, software and technology covered by 10 CFR part 810 (relating to assistance to foreign atomic energy activities);</li> <li>• nuclear facilities, equipment and material covered by 10 CFR part 110 (relating to the export and import of nuclear equipment and material);</li> <li>• select agents and toxins covered by 7 CFR part 331, 9 CFR part 121 or 42 CFR part 73; and</li> <li>• emerging and foundational technologies controlled under section 1758 of the Export Control Reform Act of 2018 (50 USC 4817).</li> </ul>
7.	6.2 In the case of pre-closing filing	Mandatory/optional filing	Setting aside the waiting period triggered by a mandatory filing requirement mentioned above, absent an interim order prohibiting the parties from doing so, parties are not required to wait until they receive CFIUS clearance before closing a transaction,

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			including in cases of a mandatory filing requirement. However, best practice is to wait until the review process is complete before closing to avoid uncertainty.
8.	6.3 In the case of post-closing, what are the powers of the authority?		CFIUS has the authority to review any closed transaction (whether or not it was notified) and even rescind any prior approval. Usually, this occurs when parties have disclosed material inaccuracies about the transaction. In extreme situations, CFIUS may force a foreign person to divest its interest in a US business. In 2020, there were 117 transactions identified through the non-notified/non-declared process that were put forward to CFIUS for consideration. From the transactions identified, 17 transactions resulted in a request for filing.
9.	6.4 Advance ruling	Explain if it is possible to obtain a pre-ruling from the authority as to whether the transaction falls under the FDI rules and, as the case may be, describe the process to be followed.	Advanced rulings are not available per se. However, a voluntary/mandatory declaration may be considered a short-form or fast-track procedure. CFIUS has 30 days to review a declaration.
10.	6.5 Timing of various steps  (i) Filing	How much lead time is required?	A filing (declaration or notice) triggers statutory time periods within which CFIUS must act. When parties to a transaction file a declaration, CFIUS has a 30-day time period to review. On the other hand, when a notice is filed, CFIUS has a 45-day review period. However, if after accepting a notice, CFIUS determines that investigation is required, it adds an additional 45-day period on top of the previous 45-day review period. CFIUS may also extend the investigation period for an additional 15-day period in extraordinary circumstances. Additionally, it is important to keep in mind that notices and declarations are not automatically deemed accepted by CFIUS. CFIUS has some timing discretion as to when filings are considered accepted. As a practical matter, due diligence should commence as soon as it is determined that the transaction involves a foreign person, especially when the transaction touches on a TID US business. Best practice is to seek a consultation with CFIUS prior to making any filing.
11.	(ii) Review by the authority	Specify the timing available to the authority; indicate if the timeframe is mandatory or not and describe what other flexibility may exist de facto or <i>de jure</i> .	See above.

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12.	(iii) Negotiation with the authority	Describe how to handle the relationship with the authority, including when approval is subject to commitments from, or conditions imposed on, the investor.  Are there any guidelines issued by the authority?	As mentioned above, best practice is to reach out to CFIUS prior to making any formal filings. The extent of a consultation may be as little as answering a couple of questions in a phone call or making a full presentation.
13.	(iv) Filing fees	Is there a filing fee?	Declarations require no filing fees. Parties filing a formal written notice of a transaction with CFIUS shall pay a filing fee as follows: <ul style="list-style-type: none"> <li>• where the value of the transaction is less than \$500,000: no fee;</li> <li>• where the value of the transaction is equal to or greater than \$500,000 but less than \$5m: \$750;</li> <li>• where the value of the transaction is equal to or greater than \$5m but less than \$50m: \$7,500;</li> <li>• where the value of the transaction is equal to or greater than \$50m but less than \$250m: \$75,000;</li> <li>• where the value of the transaction is equal to or greater than \$250m but less than \$750m: \$150,000; and</li> <li>• where the value of the transaction is equal to or greater than \$750m: \$300,000.</li> </ul>
14.	(v) Information needed for filing	What information about the investor is required? Are there any thresholds for the identity and nationality of minority passive shareholders? Information on other FDI approvals by other authorities?	The information required for a filing depends on whether the parties file a declaration or notice. Requirements of declarations are described in more detail in section 800.404. Some requirements include: <ul style="list-style-type: none"> <li>• the name of the foreign person(s) and US business(es) that are parties to or, in applicable cases, the subject of the transaction, as well as the name, telephone number and email address of the primary point of contact for each party;</li> <li>• a brief description of the rationale for and nature of the transaction, including its structure (eg, share purchase, merger or asset purchase);</li> <li>• the percentage of voting interest acquired and the resulting aggregate voting interest held by the foreign person and its affiliates;</li> <li>• the percentage of economic interest acquired and the resulting aggregate economic interest held by the foreign person and its affiliates;</li> </ul>

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			<ul style="list-style-type: none"> <li>• whether the US business has multiple classes of ownership, and if so, the pre- and post-transaction share ownership of the foreign person(s) in the US business broken down by class;</li> <li>• the total transaction value in US dollars;</li> <li>• the status of the transaction, including the actual or expected completion date of the transaction;</li> <li>• all sources of financing for the transaction; and</li> <li>• a copy of the definitive documentation of the transaction, or if none exists, the document establishing the material terms of the transaction.</li> </ul> <p>The requirements of notices are more extensive than those of declarations. They are described in more detail in section 800.502. Some requirements include:</p> <ul style="list-style-type: none"> <li>• a summary setting forth the essentials of the transaction, including a statement of the purpose of the transaction, and its scope, both within and outside the US;</li> <li>• the nature of the transaction, for example, whether the acquisition is by merger, consolidation, the purchase of voting interest or otherwise;</li> <li>• the name, US address (if any), website address (if any), nationality (for individuals), place of incorporation or other legal organisation (for entities) and address of the principal place of business of each foreign person that is a party to the transaction;</li> <li>• the name, address, website address (if any), principal place of business and place of incorporation or other legal organisation of the US business that is the subject of the transaction;</li> <li>• the name, address and nationality (for individuals) or place of incorporation or other legal organisation (for entities);</li> <li>• the name, address, website address (if any), nationality (for individuals) and place of incorporation or other legal organisation (for entities) of each person that will control the US business being acquired;</li> <li>• the actual or expected completion date of the transaction;</li> <li>• the name of any and all financial institutions involved in the transaction, including as advisers, underwriters or sources of financing for the transaction;</li> <li>• a copy of any partnership agreements, integration agreements or other side agreements relating to the transaction;</li> <li>• a statement as to whether the foreign person will acquire access to material non-public information, membership, observer rights or involvement in substantive decision-making in any US business;</li> </ul>

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			<ul style="list-style-type: none"> <li>with respect to a transaction structured as an acquisition of assets of a US business, a detailed description of the assets of the US business being acquired, including the approximate value of those assets in US dollars; and</li> <li>information concerning an entity of which the US business is a parent.</li> </ul>
15.	(vi) Final decision	Indicate if the final decision is to be issued within a set timeframe and what are the consequences if the authority does not issue a decision within the set timeframe.	As discussed above, CFIUS must act within the statutory periods mentioned above. As a practical matter, CFIUS may suggest that the parties voluntarily withdraw and then refile their notice, thereby extending the statutory timeline for CFIUS review. If CFIUS cannot make a determination by the end of the investigation period, it must make a formal recommendation to the President as to the action the President should take with respect to the transaction. The President then has up to 15 additional days to decide whether to clear, suspend, prohibit or impose conditions on the deal.
16.	<b>Conditionality of approval</b>  (i) Type of conditions or commitments	Describe the type of conditions or commitments to which FDI approval may be subject. Specify their usual duration. Specify what powers the authority may exercise to control/monitor the satisfaction of such conditions/commitments.	CFIUS may determine that certain transactions represent a threat to US national security. In this case, such a determination does not mean an automatic block of the transaction. CFIUS may impose conditions or demand that parties enter into a mitigation agreement to reduce the perceived risks to national security. The conditions may take many forms. By way of example, CFIUS may prohibit or limit the transfer of intellectual property, demand that only authorised persons (US persons) have access to certain sensitive information or exclude assets from a transaction. According to CFIUS's most recent annual report to Congress (2020), CFIUS adopted mitigation measures and conditions with respect to 23 notices of covered transactions (approximately 12 per cent of the total number of 2020 notices). <sup>2</sup>
17.	(ii) Level of discretionary power of the authority	Indicate if it exists and, if so, describe exceptional circumstances that have led to the use of such discretionary power.	CFIUS has broad unfettered discretion of authority. Its risk-based analysis includes credible evidence demonstrating the risk and an assessment of the threat, vulnerabilities and consequences to national security related to the transaction. The risk analysis includes the consideration of the following elements: <ul style="list-style-type: none"> <li>the threat, which is a function of the intent and capability of a foreign person to take action to impair the national security of the US;</li> <li>the vulnerabilities, which are the extent to which the nature of the US business presents susceptibility to impairment of national security; and</li> </ul>

<sup>2</sup> See <https://home.treasury.gov/system/files/206/CFIUS-Public-Annual-Report-CY-2020.pdf> accessed 6 January 2023.

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			<ul style="list-style-type: none"> <li>the consequences to national security, which are the potential effects on national security that could reasonably result from the exploitation of the vulnerabilities by the threat actor.</li> </ul> <p>CFIUS's Office of Investment Security Monitoring and Enforcement oversees mitigation measures. If at any time after a mitigation agreement or condition is entered into or imposed, CFIUS determines that a party or parties to the agreement or condition are not in compliance with the terms of the agreement or condition, CFIUS may:</p> <ul style="list-style-type: none"> <li>impose penalties and unilaterally initiate a review of any covered transaction;</li> <li>negotiate a plan of action for the party or parties to remediate the lack of compliance; or</li> <li>seek injunctive relief.</li> </ul>
18.	(iii) Risk of veto	Describe a topical case. Statistics	<p>In 2020, CFIUS conducted an assessment<sup>3</sup> with respect to 126 declarations of covered transactions (including under the Pilot Program):</p> <ul style="list-style-type: none"> <li>two of these submissions were real estate declarations;</li> <li>based on stipulations provided by parties, 34 declarations were subject to mandatory filing requirements;</li> <li>CFIUS requested that the parties to 28 declarations file a written notice, following an assessment;</li> <li>CFIUS informed the parties to 16 declarations that CFIUS was unable to complete action;</li> <li>CFIUS notified the parties to 81 declarations that CFIUS had completed all action under Section 721;</li> <li>the parties withdrew one declaration for business reasons; the parties to this declaration submitted a notice related to a substantially similar covered transaction in 2021; and</li> <li>CFIUS did not reject any declarations.</li> </ul>
19.	<b>Role of other national authorities</b>	Indicate if other authorities or administrations (eg, Army or Defence Minister) can get involved and, if so, how (by the authority or otherwise) and how much influence they may exercise.	Yes, other government agencies may get involved. The level of influence depends on the specific subject matter of the transaction. For example, the Department of Energy may take a lead role in transactions that are related to the acquisition of utilities. Please see the response in item 2.

<sup>3</sup> *Ibid*, pp 4–5.

	Topic	Explanation/Description of what is expected	United States
20.	<b>Sanctions</b>	Describe the type of sanctions that may be imposed by the authority in the case of:	
		<ul style="list-style-type: none"> <li>breach of conditions and/or commitments attached to the approval; and</li> </ul>	<p>Penalty for submitting a material misstatement or false information: A person who submits a declaration or notice with a material misstatement or omission, or makes a false certification under any declaration or notice may be liable to the US for a civil penalty not to exceed \$250,000 per violation. The amount of the penalty imposed for a violation is based on the nature of the violation.</p> <p>Penalty for failure to comply with a mitigation agreement: Any person who violates a material provision of a mitigation agreement entered into on or after 11 October 2018, with a material condition imposed on or after 11 October 2018, or an order issued on or after 11 October 2018 by the US under Section 721(l) may be liable to the US for a civil penalty not to exceed \$250,000 per violation or the value of the transaction, whichever is greater.</p>
		<ul style="list-style-type: none"> <li>investment carried out without prior approval.</li> </ul>	<p>Penalty for a person who fails to submit a mandatory declaration requirement: A person who fails to comply with the requirements of a mandatory declaration (section 800.401) may be liable to the US for a civil penalty not to exceed \$250,000 or the value of the transaction, whichever is greater. The amount of the penalty imposed for a violation shall be based on the nature of the violation.</p>
21.	<b>Covid – special regime</b>	Please describe specific rules applicable as a result of the Covid-19 pandemic.	None.

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