

President Trump Blocks Sale of U.S. Company to Chinese Buyers Under CFIUS

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On September 13, 2017 President Trump ordered that the acquisition of Lattice Semiconductor Corporation by Chinese purchasers be prohibited under CFIUS[1] While this is the first publically announced blocking of an acquisition by President Trump under CFIUS, it is consistent with President Obama's blocking of the acquisition involving Aixtron SE by Chinese purchasers on December 2, 2016. This reinforces the importance of reviewing CFIUS issues in any acquisitions of a U.S. business by foreign buyers.

Under CFIUS, the President is authorized to suspend, prohibit and/or rescind acquisitions of U.S. companies by foreign parties that threaten to impair the national security of the U.S.[2] Factors considered in such assessments extend beyond just the impact of transactions on national defense but also on U.S. critical infrastructure, major energy assets, critical U.S. technologies, data security and other factors.[3] In one CFIUS case, the President ordered that the purchase of a U.S. business involved in the development of wind farms in Oregon by two Chinese nationals be rescinded on the grounds that the facilities of the target company were located too close to a U.S. military facility[4] Parties to the transactions can mitigate this risk by filing Voluntary Notices with the CFIUS staff and obtaining CFIUS clearance of their transactions prior to closing.

In the current case Lattice Semiconductor Corporation, the U.S. target company, is a manufacturer of semiconductor products based in Oregon. The proposed purchaser Canyon Bridge Acquisition Company, Inc. is a Delaware corporation with Chinese investors including China Venture Capital Fund Corporation Limited and Yitai Capital Limited. As a result of the CFIUS review of the transaction, President Trump determined that there was credible evidence that the Chinese investors might take action that threatens to impair the national security of the United States, and based on such finding ordered that the transaction be prohibited. In the Treasury Department Statement issued in connection with the President's order, Secretary of the Treasury Mnuchin described the national security risks identified by the President:

CFIUS and the President assess that the transaction poses a risk to the national security of the United

States that cannot be resolved through mitigation. The national security risk posed by the transaction relates to, among other things, the potential transfer of intellectual property to the foreign acquirer, the Chinese government's role in supporting this transaction, the importance of semiconductor supply chain integrity to the U.S. government, and the use of Lattice products by the U.S. government.

CFIUS raises important issues in the acquisition of U.S. companies by foreign parties. If not addressed properly, parties could complete their transaction and wake up to learn that the transaction has been prohibited or rescinded with all of the attendant uncertainties and risks that this provides. Questions that companies can ask in reviewing CFIUS issues include: (i) is my transaction the type that could be prohibited under CFIUS?; (ii) if yes, would it be advisable to obtain CFIUS clearance of the transaction prior to closing to reduce such risks? and (iii) are there ways to structure the purchase of the target company or its assets to reduce the CFIUS risks?

This case is a reminder for parties to put CFIUS on their list of issues to review in their transactions and if risks arise to take appropriate actions.

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[1] Committee On Foreign Investment In the United States. See § 721 of the Defense Production Act of 1950, as amended by the Foreign Investment and National Security Act of 2007 (collectively the "Act").

[2] Under § 721(d)(3) of the Act, to enforce such actions the President may direct the U.S. Attorney General to "seek appropriate relief, including divestment relief, in the district courts of the United States, in order to implement and enforce this subsection."

[3] See § 721(f) of the Act.

[4] The facts of this case are discussed in the court's opinion in Ralls Corporation v. Committee on Foreign Investment In the United States, 758 F.3d 296 (D.C. Cir. 2014).

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