



CFIUS One-Page Issue Spotter

This checklist is designed to help M&A professionals determine whether CFIUS may have jurisdiction over a transaction. If CFIUS may have jurisdiction, only then is it necessary to analyze whether a filing is necessary. No one-pager can encompass all potential issues; please plan to discuss any questions with counsel.

You should undertake further analysis if both #1 AND #2 are true:

1. The investor is “foreign” for CFIUS purposes, including:

- a. A non-U.S. citizen;
- b. An entity ultimately “controlled” by non-U.S. citizens; or

Notes:

(i) Any non-passive foreign participation can trigger a finding of control, in particular if it involves 10% or more of the investment vehicle’s voting securities;

(ii) CFIUS looks through to the ultimate controlling entity/person(s)

c. An investment fund that:

- i. Has one or more non-U.S. persons as managers/principals of the fund;
- ii. Has a substantial amount of non-U.S. capital or that otherwise affords non-U.S. investors substantial formal or informal influence over the fund’s operations; or
- iii. Affords non-U.S. investors access to nonpublic information about portfolio company technology.

2. The transaction will provide the foreign investor with:

- a. “Control” of the target;

Note: As above, any non-passive investment can trigger a finding of control, in particular if it involves 10% or more of the target’s voting securities

- b. Membership or an observer on the target’s board of directors;
- c. Access to material nonpublic information about the target’s technology; or
- d. Any other substantial influence, formal or informal, regarding the target’s technology.