

Dear friends,

I wanted to make you aware that a few minutes ago, President Trump signed into law the Foreign Investment Risk Review Modernization Act of 2018 as part of the conference report to the John S. McCain National Defense Authorization Act for Fiscal Year 2019. Last Tuesday, August 7, we sent you [our firm memorandum to clients](#) regarding the new statute.

Infrastructure investors and other stakeholders should be aware of the implications of the new statute, as discussed in the memo linked above. In particular:

- Four new categories of “covered transactions” have been added:
  - Certain real estate or concession acquisitions by foreign persons involving sensitive assets from a national security point of view, subject to certain exceptions, such as those assets located outside urbanized areas;
  - Non-controlling investments in companies that deal in critical technology, critical infrastructure or personal data of U.S. citizens, which investments give the foreign investor access to material non-public technical information, membership or observer rights on a governing board, or involvement in substantive decision-making regarding such technology, infrastructure or data (subject to the statutory clarification below with regard to investment funds);
  - Changes in rights of a foreign person with respect to its investment in a U.S. business; and
  - Transactions structured to evade CFIUS review.
- Clarification has been provided with regard to treatment of foreign investments in U.S.-controlled investment funds, such that those investments will not be deemed to be included in the second of the new categories of covered transactions (non-controlling investments in the three areas identified above), provided certain requirements signifying non-control are met.
- Filing of a new short-form declaration will now become mandatory for the acquisition, by a foreign person in which a foreign government has a substantial interest, of a substantial interest in certain categories of business that relate to critical infrastructure, critical technology or personal data of U.S. citizens that may be exploited in a manner that threatens national security.
- With certain timing changes, the CFIUS process may take as much as 105 days, up from 75 days under current law.

A number of other changes, as highlighted in Parts 6 (Filing Fee) and 7 (Additional Changes) of our memo, may have some effect on transactions in the infrastructure space. More generally, as noted in the memo, the new statute is likely to have a significant impact on deal structuring considerations and analyses of deal risk where foreign parties are involved in a transaction, since the general effect is to broaden CFIUS’s reach, including in the critical infrastructure area.

Eric Kadel and I would be happy to talk with you about any questions that you have as you consider transactions under this new regime.

Best regards,

Chris Mann