



Congress takes major step toward imposing new restrictions on foreign acquisitions in the United States

On June 14, 2006, the Financial Services Committee in the House of Representatives unanimously approved a bill (H.R. 5337) reforming the review process for foreign investments by the interagency Committee on Foreign Investment in the United States (CFIUS).

The House bill was introduced on May 10, 2006 by Representative Roy Blunt (R-MO) as one of numerous bills introduced in reaction to the Dubai Ports World controversy. On March 30, 2006, the Senate Banking Committee unanimously passed CFIUS reform legislation titled the "Foreign Investment and National Security Act of 2006" (S. 3549). H.R. 5337 is the first House bill to be approved at the committee stage. Representative Blunt wants to bring the House bill to the floor in July.

The House legislation aims to increase transparency, accountability, and notification. The bill imposes a mandatory 45-day investigation for transactions involving foreign governments, mandates notification to Congress within five days after completion of each 45-day investigation, requires semi-annual reporting to Congress on CFIUS activities, names the Secretary of Homeland Security as vice chair and the Secretary of Treasury as chair of CFIUS, and requires the signatures of both the chair and the vice-chair on all decisions.

H.R. 5337 generally is less stringent than the Senate measure. The Senate legislation requires notification to Congress at both the commencement and completion of investigations and creates a country list ranked according to potential national security risk. In one respect, however, the House bill is more strict: it requires a 45-day investigation for any transaction involving foreign governments, regardless of whether the possibility exists that national security is threatened. In contrast, the Senate bill mandates an investigation for transactions involving foreign governments or critical infrastructure only where an initial 30-day review indicates the possibility that national security is impaired.

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The CFIUS review process plays an important role in foreign investment in the United States. The pending congressional measures contain a variety of new provisions that would affect foreign investors in future transactions. Investors should understand these proposed changes in order to assess how the future CFIUS process might affect contemplated acquisitions.

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