



COMMENTARY
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How FIRRMA Impacts U.S. Private Equity Funds

IN SHORT

The Situation: The Foreign Investment Risk Review Modernization Act ("FIRRMA") clarifies when U.S. private equity funds with foreign limited partners are not considered foreign for purposes of the Committee on Foreign Investment in the United States ("CFIUS") and expands the reach of CFIUS to include noncontrolling investments.

The Result: U.S. private equity funds need to consider whether their fund structures could cause them to be foreign persons for CFIUS purposes generally and also understand how FIRRMA expands the jurisdiction of CFIUS to include certain types of noncontrolling investments.

Looking Ahead: U.S. private equity firms should: (i) carefully consider CFIUS issues when establishing new funds to understand whether rights of foreign limited partners trigger CFIUS jurisdiction; (ii) confirm whether investments by their funds in U.S. critical technology companies trigger a mandatory CFIUS notification requirement; and (iii) monitor additional efforts to implement the various other provisions of FIRRMA.

Last year, the president signed FIRRMA into law, clarifying how CFIUS will treat investments made by private equity funds subject to future regulations, and simultaneously expanding CFIUS' jurisdiction to encompass noncontrolling investments in "critical infrastructure" and "critical technology" companies, as well as companies that maintain or collect sensitive data of U.S. citizens (collectively "Sensitive U.S. Businesses"). This expanded jurisdiction will have a significant impact on foreign investors generally, as well as U.S. private equity funds with foreign general or limited partners.

U.S. private equity funds that have foreign general or limited partners should evaluate the impact that such a structure could have on U.S. investments by the fund, including, in particular, investments in Sensitive U.S. Businesses. In addition, U.S. private equity firms that are establishing new investment funds that will involve foreign capital should carefully consider how the fund is organized and the rights, if any, that foreign limited partners will obtain.

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THREE KEY TAKEAWAYS

1. U.S. private equity funds need to understand CFIUS' expanded jurisdiction and consider whether their fund structures could cause the funds to be foreign persons for CFIUS purposes
2. Investment funds must evaluate if they are a foreign person for purposes of CFIUS when investing in the United States because certain investments require a mandatory notification to CFIUS before closing.



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3. Parties should consider involving counsel early in the drafting of investment documents to understand the CFIUS implications of how funds are structured.



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