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Congress Considering CFIUS Reforms to Combat China's Increased Investment in the U.S.

CONGRESS CONSIDERING CFIUS REFORMS TO COMBAT CHINA'S INCREASED INVESTMENT IN THE U.S. 3.6.17 *by John Bergin and Gunjan Talati – Kilpatrick, Townsend & Stockton, LLP*

Recent articles in the *Wall Street Journal* and the *Washington Examiner* indicate that Senate leaders from both parties are working to craft legislation that would reform the Committee on Foreign Investment in the United States (CFIUS). The potential legislation follows a sharp increase in Chinese investments in the U.S. Last year, Chinese investments in the U.S. skyrocketed from less than $20 billion to more than $50 billion. While Congressional concerns regarding national-security risks are nothing new, the possible changes to CFIUS appear more likely now than at any time since the underlying statute was overhauled nearly a decade ago.

Indeed, according to those articles, members of Congress are now drafting legislation to address those concerns. Senate Majority Whip John Cornyn (R-Tx.) is drafting legislation that would require CFIUS to use a classified list of "countries of concern" considered to be potential military threats to U.S. national-security interests and review sales of U.S. property to those countries with increased scrutiny. That proposed bill would also expand reviewable transactions to include those involving joint ventures and property near military bases.

Similarly, those reports also state that Senate Minority Leader Chuck Schumer (D-NY) is preparing a broader proposal that would require CFIUS to consider economic factors when reviewing foreign investments, a fundamental expansion of CFIUS's national-security mandate. More specifically, Senator Schumer's bill would require CFIUS to be stricter on deals causing potential economic harm. Senator Schumer is also reportedly looking at legislation aimed at pushing China to lift the current restrictions on U.S. access to the Chinese market.

None of the proposals have been offered as legislation yet but clearly signal that CFIUS will undoubtedly soon undergo significant changes impacting companies both in the U.S. and China.

So what does this mean if you have a cross-border transaction with Chinese investments into the U.S.?

- Strongly consider making a CFIUS filing;
- Make sure your CFIUS filing addresses any potential concerns specific to the transaction. Your counsel should have an idea of those areas from pre-filing meetings and communications with CFIUS; and
- Plan for CFIUS to need the full time allowed by CFIUS regulations and for possibly the President to ultimately decide on the transaction. Build this time into your acquisition planning.