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Think Your Real Estate Doesn't Involve National Security? If You Lease to the Federal Government, Think Again.

by Gunjan Talati

There's been a lot going on in the news cycle so you may have missed a recent Government Accountability Office ("GAO") Report recommending that the General Services Administration inform tenant agencies when GSA leases "high-security space" from foreign owners. (*See* GAO-17-195, FEDERAL REAL PROPERTY: GSA Should Inform Tenant Agencies When Leasing High-Security Space from Foreign Owners). "High-security space" can include space used for classified operations, law enforcement operations, or handling sensitive data. The Report explains that officials responsible for assessing foreign investments as well as tenant agencies informed GAO about potential security risks associated with leasing space in foreign-owned buildings. Some of the security risks identified in the Report include espionage, unauthorized physical access, unauthorized cyber access, and transactions with "hidden beneficial owners" including owners that are barred from doing business in the United States or those engaging in money laundering. GAO found that GSA is currently leasing "high-security space" in 20 buildings that have foreign owners including companies based in various countries including China. GAO also found that in some instances, the tenant agencies did not know that the space they occupied was in a foreign-owned building.

So, what does this all mean if you're a real estate entity that is foreign-owned and lease to the Government? A few things:

- Examine your tenants to see if there are any sensitive or law enforcement agencies leasing "high-security space";
- If there are, take a look at the lease to see if the Government imposed mitigation requirements and whether or not you're complying with those mitigation requirements (if you're not, now might be a good time to consult your counsel); and
- Recognize that future leases may involve stricter mitigation plans or requirements. It may make good business sense to come up with your own and tout them as a benefit of leasing with your property.

Even if you're not currently foreign-owned, you should still keep this issue in mind. If in the future a foreign investor buys the business, you may find that review by the Committee on Foreign Investments in the

United States (“CFIUS”) is required. (For a refresher on what CFIUS is and does, check our alert from last year.) A CFIUS review can lengthen the timeframe for a transaction and there is always the possibility that CFIUS recommends a transaction be block because of national security concerns. Accordingly, it is important to evaluate such issues early in the transaction planning process.