

The National Law Journal Quotes Ed Lebow on CFIUS Reform Bill

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The National Law Review recently interviewed [Edward Lebow](#), international trade counsel at Haynes Boone about the Committee on Foreign Investment in the United States (CFIUS) reform legislation.

Here is an excerpt:

The Committee on Foreign Investment in the United States reform bill awaits President Donald Trump's signature after passing through both houses of Congress this summer. U.S. companies dealing with foreign investors will soon have a whole new reality to contend with when Trump signs it into law Monday.

The bill, the Foreign Investment Risk Review Modernization Act of 2018, was included in the John S. McCain National Defense Authorization Act for fiscal year 2019. It expands the jurisdiction and the powers of the national security review process for transactions, making more reviews by the interagency panel mandatory instead of voluntary. The act also starts a long rulemaking process during which new regulations will be codified under the U.S. Treasury Department — which oversees the committee. They are expected to have a major impact. . . .

The new legislation brings expanded oversight over previously uncovered transactions, including minority stakes and other non-controlling investments. It expands CFIUS jurisdiction over real estate transactions including leases near sensitive locations; authorizes collection of a filing fee of 1 percent or up to \$300,000; imposes some administrative changes including the addition of short-form declarations; and establishes a new timetable for reviews. The legislation also opens CFIUS actions and decisions to judicial review on constitutional grounds within the D.C. Circuit Courts and provides some transparency to a process that's typically been strictly confidential. . . .

Parallel legislation governing export controls of developing technology will also be important. Edward Lebow, international trade counsel at Haynes Boone in Washington, D.C., said, "if their investment is aimed at developing technology in the U.S. and then exporting it, the parallel export control legislation passing at the same time as FIRRMA could subject it to additional scrutiny."

As a result, Lebow said companies "will have to think of whether they just want to make money or they want to develop technology in the U.S. for ultimate export and use abroad. The counsel has to know what is their goal to get through the CFIUS approval process."

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