

CFIUS Confirms Excepted Foreign State Status for the United Kingdom and New Zealand

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On February 10, 2023, the Committee on Foreign Investment in the United States (CFIUS or the Committee) announced determinations that the United Kingdom (UK) and New Zealand have met the requisite criteria for remaining excepted foreign states and excepted real estate foreign states under the CFIUS regulations. As such, these countries will continue to maintain their status as excepted foreign states and excepted real estate foreign states pursuant to the CFIUS regulations and the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) absent further Committee action. The Committee published similar determinations with respect to Canada and Australia in January 2022.

CFIUS previously identified the UK and New Zealand as eligible foreign states under the “excepted foreign state” and “excepted real estate foreign state” regulations (at 31 C.F.R. §§ 800.218 and 802.214, respectively). The Committee’s new determinations confirm that each country has “established and is effectively utilizing a robust process to analyze foreign investments for national security risks and to facilitate coordination with the United States on matters relating to investment security” (or, with respect to the status of these countries as excepted real estate foreign states, that they have “made significant progress” towards doing so).

As we previously summarized ([here](#), [here](#), and [here](#)), the regulations implementing FIRRMA limit CFIUS’s jurisdiction over non-controlling “covered investments” and certain “covered real estate transactions” involving certain foreign persons – defined as “excepted investors” and “excepted real estate investors,” respectively – with close ties to an “excepted foreign state” or an “excepted real estate foreign state.” Covered transactions involving investors with close ties to

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excepted foreign states are also exempt from the mandatory CFIUS filing requirements under FIRRMA as long as applicable criteria are met.

In light of the new CFIUS determinations and previous determinations related to Australia and Canada, the U.S. Department of the Treasury, which chairs CFIUS, noted that “qualifying investors from all Five Eyes countries will now continue to benefit from exception from CFIUS jurisdiction over certain noncontrolling transactions, real estate transactions, and mandatory filing requirements as established under law.” Because these determinations do not affect the Committee’s ability to review controlling investments, however, transactions involving investors from these countries that could result in foreign control of a U.S. business will remain subject to CFIUS review.

Please reach out to any of the authors listed on this alert should you have any questions about the CFIUS determinations or regulations governing excepted foreign states and excepted real estate foreign states.