

ALERT

CFIUS Issues Interim Order Blocking Wise Road's Acquisition of Magnachip

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On June 15, 2021, the Committee on Foreign Investment in the United States (CFIUS) issued an interim order preventing the Chinese private equity firm Wise Road Capital LTD (Wise Road) from acquiring Magnachip Semiconductor Corporation (Magnachip), a South Korean semiconductor company, and preventing Magnachip from delisting from the New York Stock Exchange. The move is as notable as it is rare, in that it ensures the parties do not consummate a transaction pending CFIUS review. The purported \$1.4 billion-dollar acquisition of a Korean chip producer by a Chinese private equity firm is significant for the Biden Administration given the White House's general focus on competition with China and specific interest in the semiconductor industry.

The all-cash ten-figure deal whereby Wise Road would acquire Magnachip through investment vehicles in the Cayman Islands and Delaware was announced on March 26, 2021 and was expected to close by the latter half of the year. The parties did not initially notify the transaction to CFIUS, but subsequently received a communication from CFIUS explicitly requesting that the parties file a joint voluntary notice with CFIUS regarding the transaction. CFIUS actively monitors investment activity for transactions that are not voluntarily filed with CFIUS and proactively reaches out to parties and may request additional information when it identifies a non-notified transaction that could potentially impact U.S. national security. CFIUS scrutiny of non-notified transactions has increased significantly in recent years.

A 40-year player in the industry with 1,200 registered and pending patents, Magnachip is a designer and manufacturer of semiconductors but has little presence in the U.S. market. Magnachip was one of the first companies to mass produce OLED Display Drive

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Practice Areas

CHIPS and Science Act
Committee on Foreign Investment in the United States (CFIUS)
International Trade
National Security

Integrated Circuits (DDIC) – a component of smart phone displays. Established in 2016, Wise Road is a Chinese private equity firm that invests in technology companies in the semiconductor space and has past experience with the CFIUS process. Wise Road already owns Huaqin, one of the largest smart-phone original design manufacturers (ODM) in the world, and JIQ Technology, a Chinese smart-device chip manufacturer backed by Qualcomm.

The Biden Administration is focused on U.S. semiconductor technology and production, as demonstrated by the June 8, 2021 White House report on “Building Resilient Supply Chains, Revitalizing American Manufacturing, and Fostering Broad-Based Growth,” in which the Administration outlined a plan to ensure strong supply chains, including for semiconductors, by expanding funding for domestic production and innovation; developing emerging industries; increasing government procurement and research; implementing stronger trade enforcement; and fostering greater cooperation with foreign allies. Further, the CHIPS for America Act, included in a larger package passed by the U.S. Senate on June 8 and currently under consideration by the House of Representatives, would fund U.S. build-up and R&D for semiconductors to the tune of \$52 billion. Meanwhile, China has been ramping up production of semiconductors and making substantial gains in related technology via increased funding for plants and a flurry of global acquisitions. China’s Made in China 2025 plan aims to build an entirely state-owned semiconductor supply chain.

This deal will be closely followed around the world as South Korea’s Ministry of Trade, Industry and Energy has reportedly intervened and designated Magnachip’s core competency, the OLED chip related technology, a “national core technology.” China is also reviewing the deal under its own review process.

Wiley has unparalleled CFIUS and National Security practices that draws on senior government-level experience with CFIUS member agencies and numerous representations of domestic and international companies in complex transactions involving nearly every industry sector subject to CFIUS review. Should you have any questions regarding our capabilities, please contact one of the authors listed on this alert.