

President Biden Forces Divestment of Chinese-Owned MineOne Cryptocurrency Mining Facility Near F.E. Warren AFB

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On May 13, 2024, President Biden took the rare step of issuing a Presidential decision ordering the divestment of Chinese-owned real estate located near the Francis E. Warren Air Force Base (Warren AFB) in Wyoming and the removal of all equipment and improvements at the property. The divestment order pertains to property and assets owned by MineOne Partners Limited, a British Virgin Islands company ultimately majority-owned by Chinese nationals, and certain of its affiliates (collectively, "MineOne"). The decision, which followed an investigation and referral by the Committee on Foreign Investment in the United States (CFIUS or the Committee), is just the sixth time that a Presidential decision prohibiting a transaction under the CFIUS-authorizing statute has been issued since 2013.

According to the Presidential order, MineOne acquired the real estate in June 2022 and built assets on the property to support its cryptocurrency mining operations. CFIUS subsequently became aware of the transaction through a public tip, as mechanisms exist for the public to notify CFIUS of transactions involving foreign persons that may be subject to CFIUS's jurisdiction. CFIUS then investigated the acquisition as a "non-notified transaction," i.e., a transaction subject to CFIUS jurisdiction for which no notice or declaration had been submitted to the Committee. As a result of the investigation, "CFIUS identified national security risks" associated with MineOne's ownership of the land and its cryptocurrency operations. The President, in particular, found that "[t]he proximity of the foreign-owned Real Estate to a strategic missile base and key element of

Authors

Hon. Nazak Nikakhtar
Partner
202.719.3380
nnikakhtar@wiley.law

Nova J. Daly
Senior Public Policy Advisor
202.719.3282
ndaly@wiley.law

Daniel P. Brooks
Partner
202.719.4183
dbrooks@wiley.law

Paul J. Coyle
Associate
202.719.3446
pcogle@wiley.law

Practice Areas

Committee on Foreign Investment in the United States (CFIUS)
International Trade
National Security

America's nuclear triad, and the presence of specialized and foreign-sourced equipment potentially capable of facilitating surveillance and espionage activities, presents a national security risk to the United States."

CFIUS is an interagency committee within the federal government comprised of numerous federal agencies and chaired by the U.S. Department of the Treasury. Section 721 of the Defense Production Act of 1950, as amended (Section 721), authorizes CFIUS to review "covered transactions" involving certain foreign investments in U.S. businesses and certain real estate transactions for potential national security risks. The 2018 Foreign Investment Risk Review Modernization Act expanded CFIUS's jurisdiction to certain real estate transactions involving land located near certain sensitive military installations, including Warren AFB, and real estate that is located within or that will function as part of certain airports and maritime ports.

Section 721 authorizes CFIUS to negotiate and enter into mitigation agreements or take other legal actions to address national security risks arising from covered transactions and covered real estate transactions. In this case, however, according to the Treasury Department's press release, "the Committee determined that it would not be possible to enter into a negotiated agreement with MineOne that would sufficiently address the national security risks in an effective, verifiable, and monitorable manner, resulting in CFIUS's referral to the President."

Under Section 721, when national security risks cannot be adequately addressed through mitigation agreements or the use of any other laws, the President has authority to block proposed transactions or unwind transactions that have already been completed. Divestment orders are unusual and are typically issued when parties refuse to voluntarily abandon or unwind their transactions or agree to proposed mitigation terms. In this case, the Treasury Department's press release suggests that MineOne was either unwilling or unable to take actions that would fully address the national security risks that CFIUS identified.

Among other obligations, President Biden's order specifically requires MineOne to sell or divest all ownership interests in the real estate within 120 days, generally prohibits MineOne personnel access to the site, requires the removal of MineOne equipment and improvements from the site within 90 days, and requires MineOne to submit weekly certifications to the U.S. government describing its efforts to effectuate the divestment and equipment/improvements removal and a timeline for projected completion of the required actions.

This is President Biden's first issuance of a divestment order under the CFIUS-authorizing statute and the first Presidential decision prohibiting a real estate transaction reviewed by CFIUS. This case follows, and may well have influenced, the Treasury Department's recent Notice of Proposed Rulemaking proposing certain amendments to the CFIUS regulations. The new rules will, among other things, broadly enhance CFIUS's ability to obtain information concerning foreign investments in U.S. businesses and real estate transactions to better enable the Committee to determine whether jurisdiction over a transaction exists and will strengthen CFIUS's existing penalty and enforcement authorities.

Wiley's CFIUS and National Security practices have unparalleled capabilities in helping clients navigate the increasingly complex regulatory landscape associated with foreign investment in the United States, international trade, and national security laws. Our practice groups, renowned for their expertise, leverage the

insights of former senior U.S. government officials and professional compliance experts to support clients' growth strategies and compliance procedures. Please reach out to any of the authors listed on this alert should you have any questions about the CFIUS regulations governing foreign investment review.