

President Trump Issues CFIUS Divestment Order of Chinese-owned Jupiter Systems Due to National Security Risk

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President Trump signed a Presidential decision last week ordering Suirui Group Co., Ltd., a Chinese company, and its Hong Kong-based subsidiary Suirui International Co., Limited (together, Suirui) to divest within 120 days all interests and rights in Jupiter Systems, Inc. (Jupiter), a California-based producer of video technologies used by U.S. government agencies. The July 8 Order prohibits Suirui's acquisition of Jupiter, which was completed on February 28, 2020 (the Transaction), imposes various interim mitigation measures, and requires Suirui to destroy or transfer all Jupiter-related intellectual property and non-public source code in its possession.

The Presidential decision followed an investigation of the Transaction by the Committee on Foreign Investment in the United States (CFIUS or the Committee). A press release from the U.S. Department of the Treasury states that "CFIUS identified a national security risk arising from Suirui's ownership of Jupiter relating to the potential compromise of Jupiter's products used in military and critical infrastructure environments." According to Jupiter's website, the company provides "high-performance, secure, and reliable visualization solutions tailored for federal, state, and local government agencies" and lists the National Security Agency, the Central Intelligence Agency, NASA, and the Police Department of Los Angeles among its customers.

While the details regarding CFIUS's review of the Transaction are not public, CFIUS may have identified the acquisition as a "non-notified transaction," i.e., a transaction subject to CFIUS jurisdiction for which no notice or declaration was filed with the Committee. CFIUS has a rigorous process for identifying non-notified transactions and can

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review such transactions long after they have closed. CFIUS also has the authority to review transactions it previously cleared if it determines that a party to the transaction made a materially false statement or omission to the Committee or breached a mitigation agreement or condition. Regardless of the circumstances at issue here, the Jupiter divestment order aligns with President Trump's National Security Presidential Memorandum (NSPM) announcing his "America First Investment Policy," which focuses on addressing threats posed by the People's Republic of China, including by strengthening CFIUS.

As part of the divestment order, the President put in place interim mitigation measures that include, among other things, requirements that Suirui "ensure that [its] personnel, Affiliates, and Affiliates' personnel, refrain from accessing Jupiter's non-public source code, non-public technical information, information technology systems, products, parts and components, books and records, or facilities in the United States, unless otherwise approved by CFIUS." The divestment order requires Suirui to notify the Committee of the intended buyer of Jupiter and gives CFIUS the authority to object. Among the factors that CFIUS may consider in exercising this authority are whether the buyer is a U.S. citizen or owned by U.S. citizens and whether it has or has had any "direct or indirect contractual, financial, familial, employment, or other close and continuous relationship with" Suirui. It should also be noted that CFIUS has the power to impose monetary penalties if the parties do not divest within the 120-day deadline, and the Committee has imposed such penalties for failure to comply with divestment terms, mitigation agreements, and other conditions in the past.

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.

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