

CLIENT ALERT

CFIUS Expands Types of Transactions Subject to Pre-Closing Mandatory Declarations

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On May 21, 2020, Treasury proposed to change its approach for identifying which foreign investment in a U.S. business will trigger the requirement for mandatory notification to the Committee on Foreign Investment in the U.S. (CFIUS). With respect to covered transactions involving U.S. businesses which produce, design, test, manufacture fabricate or develop those “critical technologies” that are essentially export-controlled items, CFIUS will no longer focus on the nexus of such critical technologies to 27 specific industries (as defined by NAICS codes). Rather, the proposed rule would mandate disclosure of such a covered transaction to CFIUS where U.S. regulatory authorization – without regard to most available regulatory exemptions and exceptions – would be required to export, re-export, transfer (in-country) or retransfer the critical technology to a foreign person that is a party to the transaction (including certain individuals holding a 25% voting interest in the foreign person). Exempted from the new mandatory disclosure rule, however, would be certain covered transactions where export of the critical technology involved could be exported to the foreign person(s) involved under a few specific exceptions available under the Export Administration Regulations.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

Adelicia R. Cliffe

Partner – Washington, D.C.

Phone: +1 202.624.2816

Email: acliffe@crowell.com

Alan W. H. Gourley

Partner – Washington, D.C.

Phone: +1 202.624.2561

Email: agourley@crowell.com