

FOREIGN INVESTMENTS ADVISORY

FIRRMA Pilot Program Services

Recent regulations promulgated by the US Treasury Department pursuant to the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA) require mandatory declarations with the Committee on Foreign Investment in the United States (CFIUS) for certain transactions where a foreign person acquires control of, or invests in, a US business that produces, designs, tests, manufactures, fabricates, or develops “critical technologies” for use in “pilot program industries.” Failure to file a required declaration (or notice) can result in a large fine and potential unwinding of the transaction. Accordingly, it is vital for transaction parties and their counsel to quickly and accurately ascertain whether: (1) a contemplated acquisition or investment transaction involves foreign buyers/investors (including foreign-controlled US entities) acquiring a FIRRMA-regulated interest¹; (2) the target company produces, designs, tests, manufactures, fabricates, or develops “critical technology;” and (3) whether the target company utilizes or designs such critical technologies for use in “pilot program industries.”

SOLUTIONS

Ankura’s experts are uniquely positioned to assist transaction parties and counsel to quickly conduct diligence on transaction parties and the target’s business activities to facilitate analysis and decisions regarding the FIRRMA Pilot Program requirements.

TARGET COMPANY PRODUCTS, SERVICES, AND BUSINESS ACTIVITIES REVIEW

Fully identifying, understanding, and accurately determining whether a target company produces, designs, tests, manufactures, fabricates, or develops “critical technologies” is a foundational element for compliance with the FIRRMA Pilot Program mandatory declaration requirement. Ankura professionals include team members who are recognized experts and industry leaders in identifying and classifying the products, services, technologies, and other forms of the Pilot Program’s critical technologies, particularly those regulated under the export control regimes identified in the Pilot Program regulations. Ankura can help clients quickly inventory and classify their products, technologies, and services portfolio to enable timely decision-making regarding whether a target US company is involved with critical technologies subject to coverage under the Pilot Program.

Concurrently, through a targeted, data-focused business activity assessment, Ankura also assists clients and counsel in determining whether a target company employs or provides critical technologies for use in pilot program industries.

1. In addition to outright acquisition/control transactions, the FIRRMA pilot program regulations also cover foreign investments in covered US businesses that afford the foreign buyer certain access to the target’s technology, representation on the target’s board, or decision-making rights with respect to the target’s critical technology.

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DATA ACCESS REVIEWS AND SECURITY ASSESSMENTS

Ankura's cybersecurity, data governance, and business operations experts can assist transaction parties and their legal counsel in determining whether a particular investment meets the definition of a "pilot program covered investment." In particular, the Ankura team can assess, design, and test physical and logical controls, processes, and protocols as they relate to restrictions on foreign person access to material nonpublic technical information concerning critical technologies in the possession of the target US business target.

TRANSACTION PARTIES DILIGENCE

Using a combination of diverse in-house, open source, and partner collection sources and CFIUS-experienced, disciplined analytic tradecraft, Ankura provides clients with unparalleled insight into the foreign parties that may be involved in a CFIUS transaction. From an analysis of the political, economic, sociological, technological, legal, and environmental (PESTLE) circumstances of a foreign investor's host country, to specific information on the foreign buyer's structure, business and governmental relationships, criminal history, and places of operation (among other data elements), the Ankura team delivers essential information and analysis to its clients to help them make informed investment and transactional decisions.

PROACTIVE MITIGATION CONTROLS PLANNING AND ASSESSMENT

Given the US government's sensitivity regarding foreign person access to and control of critical technology as embodied in the FIRRMA Pilot Program regulations, when entering into a potentially covered transaction, it is beneficial for transaction parties and counsel to proactively consider, design, and propose controls that may alleviate CFIUS' national security concerns. Ankura has deep expertise designing, implementing, and assessing such controls and can help companies and their counsel identify, plan, and validate such controls as part of the parties' engagement with CFIUS.

THE ANKURA DIFFERENCE

Ankura professionals are recognized experts in transaction party diligence, organizational activity review/assessment and US export and technology controls (specifically including product/services export classification). In addition, Ankura professionals have deep experience in many of the pilot program industries, having previously served in legal, compliance, and executive roles in companies operating in pilot program industries, including aerospace, communications, energy, healthcare, manufacturing, and technology, among others. This valuable combination of expertise, experience, and perspective enables Ankura to assist transaction parties and counsel in quickly identifying, understanding, and acting on the critical variables necessary to succeed in the FIRRMA Pilot Program environment.

GET IN TOUCH

Randall H. Cook
randy.cook@ankura.com
+1.646.291.8545 Direct

Waqas Shahid
waqas.shahid@ankura.com
+1.646.291.8546 Direct

Michael Garson
michael.garson@ankura.com
+1.202.449.7957 Direct

Steve Klemencic
steven.klemencic@ankura.com
+1.202.449.7185 Direct

ABOUT US

Ankura is a business advisory and expert services firm defined by *HOW* we solve challenges. Whether a client is facing an immediate business challenge, trying to increase the value of their company or protect against future risks, Ankura designs, develops, and executes tailored solutions by assembling the right combination of expertise. We build on this experience with every case, client, and situation, collaborating to create innovative, customized solutions, and strategies designed for today's ever-changing business environment. This gives our clients unparalleled insight and experience across a wide range of economic, governance, and regulatory challenges. At Ankura, we know that **collaboration drives results.**