

CFIUS Confidentiality

Confidentiality is essential to the effective operation of the Committee on Foreign Investment in the United States (CFIUS) and, therefore, CFIUS's ability to fulfill its national security mandate. Confidentiality is important to U.S. companies and their foreign investors, as public disclosure of information associated with CFIUS's review of a particular transaction could have a significant commercial impact on the companies involved. The promise of strict confidentiality helps to encourage parties to make timely CFIUS filings, which is important because CFIUS relies heavily upon parties making voluntary filings to the Committee prior to closing transactions.

CFIUS operates pursuant to section 721 of the Defense Production Act of 1950, as amended (50 U.S.C. 4565) (Section 721). Section 721(c) prohibits the disclosure to the public of information filed with CFIUS and explicitly provides that such information is exempt from disclosure under the Freedom of Information Act (FOIA). Accordingly, CFIUS agencies may not release documents or information to the public that would reveal information filed with CFIUS, including with respect to concluded cases, withdrawn cases, rejected cases, and cases where CFIUS has determined that the transaction is not covered. CFIUS does not disclose the following types of information:

- **The fact of a filing** – This information would not otherwise be known by CFIUS but for the notice or declaration “filed with” CFIUS by the parties under Section 721. Therefore, confirmation should not be provided as to whether a notice or declaration has **or** has not been filed with CFIUS by a particular party or with respect to a particular transaction.
- **Any information provided by the parties as part of a declaration or notice, including responses to follow-up questions from the Committee.**
- **Any information provided by the parties in connection with a pre-notice consultation or a draft notice.**
- **Mitigation agreements and memoranda and other internal CFIUS documents discussing the declaration or notice** – Mitigation agreements and U.S. government memoranda are derivative of the filing and often contain sensitive business information provided by the parties. Internal documents may also contain classified and other sensitive or deliberative government information.
- **Information about the status of review or results of a filing, including the fact that the review has concluded and the fact of mitigation** – This type of information reveals the fact of a filing.
- **CFIUS's reports to the President** – These reports may not be disclosed publicly and are also subject to executive privilege.

For more information, please contact:

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