

Morgan Lewis

2022

CFIUS AND FDI SYMPOSIUM

October 6, 2022

Morgan Lewis

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2022 CFIUS & FDI SYMPOSIUM

October 6, 2022

9:00 am	Welcome <i>Kenneth Nunnenkamp</i>
9:05 – 10:05 am	CFIUS Executive Order <i>Kenneth Nunnenkamp, Michael Masling, Ning Zhang</i>
10:05 – 10:15 am	Transition Break
10:15 – 10:55 am	Non-US Foreign Direct Investment Reviews <i>Masahiro Tachibana, Joanna Christoforou, Christina Renner</i>
10:55 – 11:00 am	Transition Break
11:00 – 11:20 am	National Security Agreements <i>Ulises Pin</i>
11:20 – 11:25 am	Transition Break
11:25 am – 11:45 am	CFIUS Life Sciences and Biotech <i>Todd Liao, Carl Valenstein</i>
11:45 am – 12:00 pm	Transition Break
12:00 – 12:20 pm	FBI National Security Risk Assessments in CFIUS Reviews <i>Bill Priestap, Holden Triplett</i>
12:20 – 12:25 pm	Transition Break
12:25 – 1:25 pm	Outbound Investment Proposals: Current Outbound Investment Legislation <i>David Plotinsky</i> Insight on Outbound Investment Reviews <i>Giovanna Cinelli, Brian Rohde</i>
1:25 – 1:30 pm	Wrap Up <i>Kenneth Nunnenkamp</i>

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Speakers

GIOVANNA CINELLI

Partner | Morgan, Lewis & Bockius LLP

Giovanna M. Cinelli is the leader of the international trade and national security practice. As a practitioner for more than 25 years, she counsels clients in the defense and high-technology sectors on a broad range of issues affecting national security and export controls, including complex export compliance matters, audits, cross-border due diligence, and export enforcement, both classified and unclassified. She advises clients on matters before the Committee on Foreign Investment in the United States (CFIUS) and addresses mitigation requirements that may apply as part of CFIUS clearances for cross-border transactions. Giovanna is a member of the Morgan Lewis CFIUS working group. She has participated in panel discussions related to CFIUS and technology transfer hosted by the Center for Strategic and International Studies and the Council on Foreign Relations. Giovanna is based out of the Washington, DC office.

JOANNA CHRISTOFOROU

Partner | Morgan, Lewis & Bockius LLP

Joanna Christoforou focuses on EU and UK competition law and antitrust, including competition law litigation in the European and English Courts. Joanna defends clients in complex, high-value cartel or abuse of dominance investigations and court proceedings, damages actions, competition disputes, dawn raids, director disqualification orders, merger control (including restructurings, joint ventures, and other strategic alliances), foreign direct investment filings (FDI), and advises clients on a range of compliance and competition law matters. She represents clients before the European Commission, European Courts, Competition and Markets Authority (CMA), Financial Conduct Authority, Competition Appeal Tribunal (CAT), Court of Appeal, Supreme Court, and antitrust authorities in other jurisdictions. Joanna is based out of the London office.

TODD LIAO

Partner | Morgan, Lewis & Bockius LLP

Todd Liao works with clients on a wide range of financial transactions and legal issues involving China. He frequently works with multinational corporations on cross-border mergers and acquisitions, FDI and investment financing, disposal of Sino-foreign joint ventures and assets, and the structuring of complex commercial transactions. Todd also handles intellectual property (IP) work, specifically assisting clients with managing their trademark portfolios. In addition, Todd counsels on matters related to the US Foreign Corrupt Practices Act (FCPA) practice in China and throughout the Asia-Pacific region. He is admitted in New York only. Todd is based out of the Shanghai office.

DR. MICHAEL MASLING

Partner | Morgan, Lewis & Bockius LLP

Michael Masling advises clients on all aspects of EU and German competition law. Michael obtains merger clearances from national and international competition authorities in complex transactions, defends clients in government and private investigations and cross-border litigation, provides antitrust counseling including on distribution systems and compliance systems. In addition, he counsels on European and German FDI rules. Michael is based out of the Frankfurt office.

KENNETH J. NUNNENKAMP

Partner | Morgan, Lewis & Bockius LLP

Ken Nunnenkamp represents clients in international trade and national security matters before United States federal courts and government agencies, including the US departments of State, Commerce, Homeland Security, Defense, and Treasury. He advises on compliance counseling and training, transactional due diligence—including both domestic and cross-border transactions—and statutory submissions to US government agencies. As the leader of the Morgan Lewis CFIUS working group, Ken works with counsel in handling trade due diligence and preparing transactions for review by CFIUS, and performing due diligence, assessment, and examination of often latent issues. He also works with both buyers and sellers on public and private transactions in the million- and billion-dollar range. Ken's experience with CFIUS includes almost every industry and transactions from more than 15 countries, including China, Germany, Japan, the United Kingdom, Canada, and Indonesia. Ken is based out of the Washington, DC office.

ULISES R. PIN

Partner | Morgan, Lewis & Bockius LLP

Ulises R. Pin represents US and foreign communications and technology companies on corporate, financial, and regulatory matters. He also advises private equity firms, venture capital funds, and financial institutions on investments in the telecommunications, media, and technology (TMT) sectors. Ulises represents clients before the Federal Communications Commission and government agencies in Mexico, Latin America, Europe, and Asia. He has experience in cross-border transactions with particular emphasis on foreign investment and national security issues, including securing approvals by CFIUS. Ulises is based out of the Washington, DC office.

DAVID PLOTINSKY

Partner | Morgan, Lewis & Bockius LLP

David Plotinsky, the former acting chief of the US Department of Justice's Foreign Investment Review Section, represents clients such as venture capital, private equity, and infrastructure firms. In particular, he steers clients through government national security review processes for foreign investment, including by CFIUS and Team Telecom. In addition, David focuses on trade, information communications technology and services, and critical and emerging technology. He maintains a security clearance and advises clients on their most sensitive matters. David is admitted to practice in Maryland only, and his practice is supervised by DC Bar members. David is based out of the Washington, DC office.

BILL PRIESTAP

Founder | Trenchcoat Advisors LLC

Bill Priestap is a Founder of Trenchcoat Advisors, a boutique security and risk management firm. He retired from the FBI as head of the Counterintelligence Division, after 21 years of service. In leading FBI efforts to counter foreign nations' intelligence activities targeting the United States, his responsibilities included matters relating to IP theft, insider threat, CFIUS, malign foreign influence, supply chain risk management, and espionage

CHRISTINA RENNER

Partner | Morgan, Lewis & Bockius LLP

Christina Renner concentrates her practice on European Union and German merger control, competition, and antitrust law, with experience in cartels and general behavioral matters, abuse of dominance, and EU state aid laws. Christina regularly advises clients concerning mergers reviewed by the European Commission and the German Federal Cartel Office, as well as the French, Austrian, and Belgian competition authorities. She has experience handling multi-jurisdictional filings for a variety of clients and regularly advises on complex competition compliance matters. Christina is based out of the Brussels office.

BRIAN ROHDE

Deputy Director for Mitigation | Department of Department of Defense's (DoD) Office of Foreign Investment Review and DoD's CFIUS Program

Brian Rohde is the Deputy Director for Mitigation in the DoD's Office of Foreign Investment Review and DoD's CFIUS Program. Mr. Rohde has been working in DoD CFIUS Mitigation since 2019. Prior to joining DoD's CFIUS Program, Mr. Rohde worked for 16 years at the U.S. Department of Homeland Security on Countering Foreign Influence, Counterterrorism, and Aviation Security matters. He also served as the Director for Aviation Security on the National Security Council from 2010-2011. Mr. Rohde previously worked as a lawyer in private practice and for a global telecommunications company. He is a graduate of the University of North Dakota and the Marquette University Law School.

MASAHIRO TACHIBANA

Director of International Investment Control Office, Trade Control Department, | Ministry of Economy, Trade and Industry (METI)

Mr. Masahiro Tachibana has been Director of International Investment Control Office, Trade Control Department, under METI since July 2022. Mr. Tachibana has served as a government official for over 20 years with a wide range of tasks and responsibilities at the METI, as well as the policy implementation organization and the international organization. Recently, Mr. Tachibana assumed a team leader in charge of different mandates, including trade negotiators for market access of goods, bilateral trade relationship with Canada and Mexico, and international cooperation in power sector before taking over the current position. He also worked for the International Atomic Energy Agency (IAEA) for 3 years as Public Communication Specialist.

HOLDEN TRIPLETT

Founder | Trenchcoat Advisors LLC

Holden Triplett is also a Founder of Trenchcoat Advisors. He served for nearly 15 years in the FBI and has extensive national security and international experience. Notably, he served for several years in overseas assignments, leading the FBI's offices in China and Russia. He brings unparalleled insight into how adversaries think and operate. Holden also served as the Director for Counterintelligence at the National Security Council.

CARL A. VALENSTEIN

Partner | Morgan, Lewis & Bockius LLP

Carl Valenstein focuses his practice on domestic and international corporate and securities matters, mergers and acquisitions, project development, and transactional finance. He counsels extensively in the life science, telecom/electronics, and maritime industries, and has worked broadly in Latin America, the Caribbean, Europe, Africa, Asia, and the Middle East. In addition to his transactional practice, Carl advises clients on international risk management, including compliance with the foreign investment review process (Exon-Florio/CFIUS), export control and sanctions, anti-money laundering, anti-boycott, and anticorruption (FCPA) laws and regulations. He also advises on internal investigations, enforcement cases, and dispute resolution proceedings relating to his transactional and regulatory practice. Carl is a member of the Morgan Lewis CFIUS working group. Carl is based out of the Boston office.

NING ZHANG

Partner | Morgan, Lewis & Bockius LLP

Ning Zhang advises clients on transactions involving mergers and acquisitions, private equity, venture capital, and capital markets, including in the United States and Hong Kong. Ning has experience handling a wide range of complex cross-border transactions involving both private and public companies. In addition, he represents international financial institutions, private equity funds, and multinational corporations in investments, acquisitions, and divestments throughout the Greater China region. Ning is a Registered Foreign Lawyer in Hong Kong and is admitted to practice in New York. Ning is based out of the Hong Kong and Beijing offices.

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Morgan Lewis's CFIUS Practice

Morgan Lewis's international trade and national security practice regularly advises US and non-US clients on the intricacies of the FDI review process in the United States before CFIUS. From due diligence to engagement with CFIUS government agency members to preparation of submissions, the Morgan Lewis team has a depth drawn from decades of experience. Lawyers at the firm have been involved in the CFIUS process since 1988 and provide comprehensive, practical advice regarding the sensitive issues related to the strategic considerations regarding whether and when to engage with the Committee or submit a notice. Our team also includes the former acting chief of the US Department of Justice's Foreign Investment Review Section. Morgan Lewis's team includes lawyers with experience in all phases of the CFIUS process across many industries (from high tech to emerging technology to aerospace to finance and real estate), including mitigation of national security concerns and the development of creative solutions to address CFIUS's interests while ensuring that transactions can clear the CFIUS process.

We bring a holistic approach to CFIUS transactions, coordinating legal, regulatory, policy, and business considerations to ensure that stakeholder equities are addressed throughout the process. With experience handling matters before CFIUS and the individual member agencies, including the Departments of State, Commerce, Treasury, Homeland Security, Energy, and Defense, we bring a nuanced perspective to identifying national security concerns and managing government expectations. Working in tandem with our corporate and business transactions group, Morgan Lewis is able to address CFIUS at every stage of a transaction, including transaction structure, planning, tax, finance, and organizational issues. The team's experience and comprehensive approach provides buyers and sellers with the finessed guidance needed to enhance and maximize transactional certainty.

Where national security issues arise, Morgan Lewis lawyers have experience developing and negotiating mitigation agreements, identifying deal areas where mitigation may be needed, and working with relevant agencies, in particular the Departments of Defense and Justice, as well as Team Telecom, to move a deal to closure. We actively assist clients with mitigation agreement management and compliance, helping clients navigate mitigation requirements once a deal clears the Committee or Team Telecom. This includes working with remediation or technical consultants retained to assist the client's implementation of specific technical mitigation strategies required as a condition of CFIUS clearance.

Our seasoned national security lawyers work closely with the firm's transactional and telecommunications lawyers, bringing a depth of regulatory experience, to provide efficiencies and the strategic capabilities needed to implement effective approaches for each transaction. By teaming with transactional counsel at the early stages of transaction planning, our national security team can identify potential national security concerns early on and provide clients the opportunity to understand the concerns and work to structure a transaction to enhance the potential for clearance by the Committee. This includes addressing all aspects of potential regulatory concerns from export controls to import controls, classified considerations before the Defense Counterintelligence and Security Agency (DCSA), managing the telecommunications clearance process through Team Telecom, and addressing nuclear export-related considerations, as well as government contract concerns. We combine our regulatory experience with our CFIUS experience to address all related regulatory topics in a transaction.

The international trade and national security practice regularly represents clients before the CFIUS member agencies whose regulations raise some of the same national security concerns. Our lawyers are internationally recognized leaders not only with respect to CFIUS—including Chambers ranked—but also in the important, related fields of export controls, trade compliance, and sanctions, as well as the regulations governing the handling of classified information and related clearances.

We also advise on cross-border issues that arise under other countries' FDI review regimes. Canada, Australia, Japan, Germany, China, and the European Union maintain FDI review frameworks that can affect how deals are structured and where filings may need to be made. As with cross-border antitrust filings, Morgan Lewis's CFIUS team considers the implications of all jurisdictions where issues may arise and works closely with colleagues across the Morgan Lewis offices. As cross-border investments increase in complexity and as the US allies, non-US allies, and partners enhance their FDI national security review regimes, we provide the holistic advice needed to identify, address, and remediate issues in a number of jurisdictions.

Our lawyers are recognized subject matter experts, with members of the practice who sit on various federal government advisory committees in the national security field and who have testified before the US Congress on the most recent legislative changes embedded in the Foreign Investment Risk Review Modernization Act. Firm lawyers have also participated in CFIUS-related studies conducted by the Government Accountability Office, the Council on Foreign Relations, and the Center for Strategic and International Studies.

We have a dedicated CFIUS Working Group that consists of lawyers who, over the course of the last 10 years, have handled more than 100 CFIUS submissions, consulted on hundreds of transactions, and advised clients on how to assess the risks and benefits associated with CFIUS filings and engagement. Under the new CFIUS regime, with the need to address both mandatory and voluntary filings, the risks of a misstep when conducting due diligence or assessing the need to file with CFIUS increase. Our comprehensive approach, which starts when an investment is first considered, results in the minimization of unexpected challenges and contributes to deal certainty in an environment where the government's decisions are not always known. By working proactively to identify and address issues, our lawyers provide clients with the strategic advice needed to make these important business decisions.