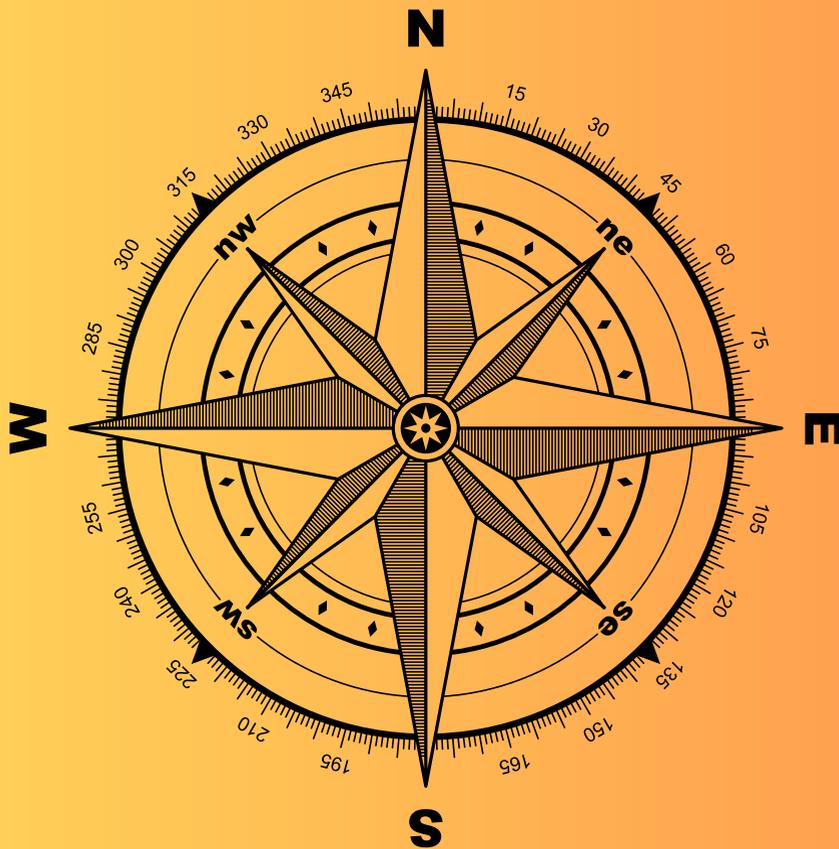




Centre for Trade and Investment Law

Investment Law **compass**



navigating through

GLOBAL INVESTMENT FRAMEWORK

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The Investment Law Compass is CTIL's monthly newsletter on the global investment framework and developments. Our vision is to inform professionals and policy makers on topics related to investment laws and treaty arbitration, thereby fostering informed decision-making.

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▣ PRESIDENTIAL ACTIONS

REGARDING THE ACQUISITION OF CERTAIN ASSETS OF EMCORE CORPORATION BY HIEFO CORPORATION

SOURCE: THE WHITEHOUSE

Executive Order to Protect U.S. National Security – Interaction with the International Investment Law in Semiconductor Technology

On January 2, 2026, the White House issued a decisive executive order invoking Section 721 of the Defense Production Act of 1950, directing that the acquisition of certain semiconductor business assets of Emcore Corporation by HieFo Corporation is prohibited and must be unwound. The order asserts presidential authority to act where national security concerns arise from foreign control of sensitive U.S. technologies. The assets in question comprise Emcore's digital chips and related wafer design, fabrication, and processing businesses, a set of technologies and capabilities central to advanced electronics and photonics. The White House determined that HieFo, a company organized under Delaware law but ultimately controlled by a citizen of the People's Republic of China, might take actions resulting in a threat to U.S. national security, and that existing laws aside from Section 721 did not provide sufficient authority to address this risk.

Domestic Powers to Impose Such Restrictions

Section 721 of the Defence Production Act of 1950, as amended (Section 721) (50 U.S.C. 4565) allows the CFIUS to review foreign investments in and acquisitions of covered US businesses and real estate for national security risks. Where CFIUS has serious concerns about the national security implications of a transaction it has reviewed, it may recommend the U.S. president block or otherwise interfere with the transaction, which is within the president's authority under Section 721.

Background

CFIUS' involvement was prompted after the transaction was not initially filed for review; a "non-notified" team within CFIUS identified concerns about access to EMCORE's intellectual property, proprietary know-how, and the possibility that indium phosphide chips produced by the business could the International Emergency Economic

Powers Act (IEEPA) was not sufficient to address the identified risk.

Findings of the Executive Order

In the order's findings, the President stated there was "credible evidence" that the acquisition completed on April 30, 2024 could impair U.S. national security, particularly by placing critical semiconductor know-how and infrastructure under potentially adverse foreign control. Accordingly, the administration determined the transaction must be prohibited and reversed. The executive order formally invalidates HieFo's ownership or rights in the covered Emcore assets, whether held directly, indirectly, or through affiliates. To effectuate this prohibition, HieFo is required to divest all interests and rights in the assets within 180 calendar days, unless that deadline is extended by the Committee on Foreign Investment in the United States (CFIUS). Until divestiture is completed and verified, HieFo and its affiliates are barred from providing access to sensitive technical information, facilities, or systems associated with the assets.

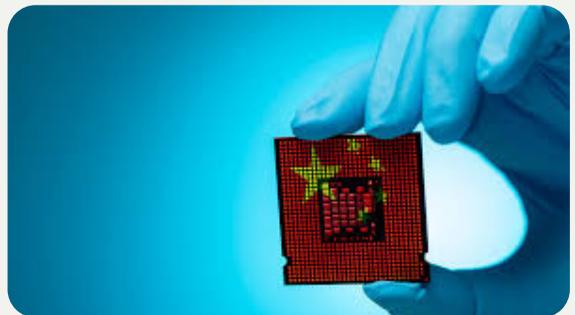
The divestment includes tangible property, contracts, inventory, intellectual property, parts, fixed assets, accounts receivable, permits, and any real property owned or leased in the United States. The order expressly prohibits HieFo from restructuring, relocating, transferring,

or selling the assets in any way that would materially impede compliance with the order.

The executive order aligns with wider efforts by U.S. authorities to tighten investment screening in strategic industries and ensure critical technology remains under reliable control. The decision also highlights concerns about non-notification of transactions that might otherwise have been examined voluntarily by CFIUS.

Role of CFIUS

CFIUS is an interagency committee responsible for reviewing foreign investments that may pose national security risks. The executive order authorises CFIUS and its designated agencies to monitor compliance, requiring certifications, audits, and other measures as necessary to verify that HieFo divests and ceases access to sensitive information. CFIUS retains discretion to assess prospective buyers and to approve transfers only if they do not threaten U.S. national security or undermine the order's objectives. HieFo is prohibited from engaging in transactions designed to evade or frustrate the order's requirements.



SOURCE: SOUTH CHINA MORNING POST

WHAT IS A NON-NOTIFIED TEAM IN CFIUS?

Under the Foreign Investment Risk Review Modernization Act of 2018, the Committee's non-notified function was formalized and centralized within Treasury. While many transactions are voluntarily submitted to CFIUS for review under Section 721 of the Defense Production Act, some deals that fall within its jurisdiction are never filed by the parties involved. These are known as non-notified transactions. These include cross-border investments or acquisitions that have not been proactively reported by the transaction parties. CFIUS has the authority to identify such transactions and determine whether they may raise significant national security concerns, and if so, to initiate its own review process.

Implications in the Context of International Investment Law

This action reflects growing U.S. government scrutiny of foreign acquisitions in advanced and frontier technology sectors, particularly semiconductor and photonics industries, where technological edge and supply chain control are linked to defence and economic security. The

The executive order aligns with wider efforts by U.S. authorities to tighten investment screening in strategic industries and ensure critical technology remains under reliable control.

From an international investment law perspective, this executive order underscores a fundamental tension between states' sovereign rights to regulate foreign investment for national security and host country obligations to protect investors. Sovereign measures to safeguard national security are generally recognised under Bilateral Investment Treaties (BITs) as legitimate, often through national security exceptions that permit states to adopt measures necessary to protect essential security interests. With respect to the above executive order, Chinese investors could seek recourse under investor-state dispute settlement (ISDS) mechanisms if treaty protections against uncompensated expropriation or unfair and inequitable treatment are implicated, notwithstanding national security exceptions. However, at present, there is no BIT between the US and China that guarantees protection to foreign investments and investors in the host states. Such executive actions by states could potentially prompt a closer scrutiny of how national security exceptions are interpreted in arbitral tribunals and how states balance security imperatives with commitments under

international investment agreements, including transparency, due process, and non-discrimination.

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- All submissions will undergo editorial review to ensure quality and relevance.

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Let's navigate the intricate world of investment law together. We look forward to your insightful contributions.

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