

CLIENT ALERT

CFIUS Update: President Biden Prohibits Chinese Acquisition of Cryptocurrency Mining Facility Near U.S. Air Force Base

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For the first time during his administration, President Biden issued an order under section 721 of the Defense Production Act, as amended (the “**Order**”)¹ prohibiting an investment in the United States by a foreign party for national security reasons. The Order requires the divestment of certain real estate located within one mile of F.E. Warren Air Force Base, a major strategic missile base. MineOne Partners Limited (“**MineOne**”), which is ultimately owned by Chinese nationals, purchased the land in June 2022 for the purpose of establishing a cryptocurrency mining operation. The order marks only the eighth instance of a formal Presidential prohibition in U.S. history and the first-ever prohibition based on the authority of the Committee on Foreign Investment in the United States (“**CFIUS**” or the “**Committee**”) to review certain transactions involving real estate.²

This action is instructive in several respects about the U.S. government’s current approach to exercising its authority under the CFIUS regulations.

First, this transaction underscores CFIUS’s ever-increasing focus on non-notified transactions (i.e., transactions that were not voluntarily notified to the Committee, usually prior to closing). In this case, the transaction had not been filed with CFIUS until after CFIUS’s non-notified team investigated the transaction as a result of a public tip, at which point CFIUS conducted a review and ultimately determined that there were national security risks arising from the transaction that

¹ See “Order Regarding the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I L.P.,” White House (May 13, 2024); *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2024/05/13/order-regarding-the-acquisition-of-certain-real-property-of-cheyenne-leads-by-mineone-cloud-computing-investment-i-l-p/>.

² See 31 CFR Part 802.

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could not be mitigated by entering into a negotiated agreement with MineOne.³ The president's decision follows a recent proposed expansion to the scope of permissible requests by CFIUS to non-notified transaction parties, as discussed in our [prior Client Alert](#).

Second, CFIUS continues to take a tough stance on foreign investments involving crypto. One of the most salient features of this transaction appears to have been that the real estate in question was enhanced to be used as a cryptocurrency mining facility, and as part of that operation, the owners imported a significant amount of specialized, highly capable foreign-sourced computer equipment that CFIUS assessed as potentially capable of facilitating surveillance and espionage activities. These national security concerns may also reflect a broader unease within the U.S. government about a reported recent surge in Chinese bitcoin mines across the United States.⁴

Finally, countering China continues to be a priority for U.S. national security policy. The announcement of President Biden's decision to block this transaction preceded by a day the administration's announcement of new Section 301 tariffs on a variety of imports from China.⁵ The coupling of the two actions highlights the priority the Biden administration and U.S. lawmakers generally have put on countering the perceived economic and national security threats posed by China. Moreover, both Congress and a variety of state lawmakers have advanced proposals that would address Chinese land purchases in the United States (including those near military bases) specifically.⁶

³ According to a statement from the Treasury Department, the proximity of the foreign-owned cryptocurrency mining facility to a strategic missile base and key element of America's nuclear triad, and the presence of specialized and foreign-sourced equipment potentially capable of facilitating surveillance and espionage activities, presented a significant national security risk that led to CFIUS's referral to the president. See "FACT SHEET: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices," White House (May 14, 2024); *available at* <https://home.treasury.gov/news/press-releases/y2335>.

⁴ See <https://www.nytimes.com/2023/10/13/us/bitcoin-mines-china-united-states.html>.

⁵ "FACT SHEET: President Biden Takes Action to Protect American Workers and Businesses from China's Unfair Trade Practices," White House (May 14, 2024); *available at* [https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/14/fact-sheet-president-biden-takes-action-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices/#:~:text=of%20these%20investments%20Electric%20Vehicles%20\(EVs\),2023%E2%80%94jeopardizing%20productive%20investments%20elsewhere](https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/14/fact-sheet-president-biden-takes-action-to-protect-american-workers-and-businesses-from-chinas-unfair-trade-practices/#:~:text=of%20these%20investments%20Electric%20Vehicles%20(EVs),2023%E2%80%94jeopardizing%20productive%20investments%20elsewhere).

⁶ See, e.g., Thanawala, Sudhin, "Land purchases by Chinese 'agents' would be limited under Georgia bill; Democrats say it's racist," Associated Press (Mar. 21, 2024); *available at* <https://apnews.com/article/georgia-china-farmland-military-b37888922230227499ab575376e249d> and Kine, Phelim, "US states are cutting off Chinese citizens and companies from land ownership," Politico (Apr. 3, 2024); *available at* <https://www.politico.com/news/2024/04/03/state-laws-china-land-buying-00150030>.

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