

# Pay up: CFIUS imposes filing fees effective 1 May

1 May 2020

On 29 April 2020 the U.S. Department of the Treasury (Treasury) published in the Federal Register an [interim rule](#)<sup>1</sup> establishing filing fees for joint voluntary notices (JVNs) submitted to the Committee on Foreign Investment in the United States (CFIUS or the Committee). The interim rule goes into effect today, 1 May 2020, and follows the publication of the proposed rule on 9 March 2020. For the first time in CFIUS' history, the Committee will charge filing fees, which will help to offset the costs associated with conducting its national security reviews of foreign investments in U.S. businesses.

The interim rule establishes filing fees for parties filing JVNs with CFIUS on or after 1 May 2020, although the rule, which modifies 31 C.F.R. Parts 800 and 802, only applies to transactions to which the CFIUS regulations that went into effect on 13 February 2020 apply.<sup>2</sup> Such fees apply both to filings of "covered transactions" under 31 C.F.R. Part 800 and "covered real estate transactions" under 31 C.F.R. Part 802. The required fee is based on the value of the transaction and is due at the time of submission of a formal JVN. The value of the transaction is the total value of all consideration that has been or will be provided in the context of the transaction, and the interim rule provides instructions for valuing transactions that involve payment in securities, debt forgiveness, services, or other noncash assets. Treasury has created the following tiered system of fee amounts:

Value of the Transaction (range)	Fee (US\$)
<\$500,000	\$0
\$500,000 – <\$5,000,000	\$750
\$5,000,000 <sup>3</sup> – <\$50,000,000	\$7,500
\$50,000,000 – <\$250,000,000	\$75,000
\$250,000,000 – <\$750,000,000	\$150,000
≥\$750,000,000	\$300,000

<sup>1</sup> Treasury accepted comments on the proposed rule in March and April 2020, but Treasury recognizes that some interested parties may have been unable to comment because of the coronavirus pandemic and published this rule as an interim rule to enable further comments.

<sup>2</sup> Specifically, transactions that closed prior to 13 February 2020 or for which certain events occurred (e.g., the parties executed a binding document establishing the material terms of the transaction) prior to 13 February 2020 are not subject to the CFIUS regulations that went into effect on 13 February 2020 or to the filing fee interim rule, which modifies those regulations.

<sup>3</sup> Where the value of the transaction is equal to or greater than US\$5 million, but the value of the interests or rights acquired in the U.S. business is less than US\$5 million, the filing fee will be US\$750.

Consistent with the Foreign Investment Risk Review Modernization Act of 2018 (FIRRMA), the interim rule does not establish a fee for any short-form declaration submitted to CFIUS, which may encourage parties to make use of voluntary declarations, or for a unilateral review of a transaction based on an agency notice filed by any member of CFIUS. However, the filing fee does apply if, after CFIUS' assessment of a declaration, the parties submit a JVN (i) at CFIUS's request or (ii) after CFIUS informs the parties that it is not able to conclude action and that the parties *may* file a JVN. Parties that are subject to a mandatory obligation to make a CFIUS filing and that choose to file a JVN instead of a declaration are subject to the fees outlined above. Accordingly, the fee structure will likely be a consideration in assessing the pros and cons of filing a declaration versus filing a JVN and has likely been structured to encourage the use of declarations in situations in which a deal involves benign national security considerations, a goal of FIRRMA. Parties whom CFIUS permits to withdraw and refile a JVN will not be required to pay an additional fee upon refiling, absent certain circumstances (e.g., material change to the transaction has occurred), and the fee may also be waived in extraordinary circumstances.

Treasury seeks additional comments on the interim rule, in particular with respect to how joint venture transactions should be valued. Written comments must be received electronically or by mail by 1 June 2020. For further information or assistance with submitting comments, please contact any of the Hogan Lovells lawyers identified below.

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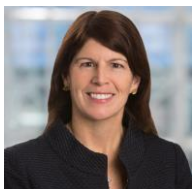
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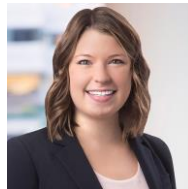
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