

May 22, 2024

President Biden Orders Chinese Crypto Company to Divest Real Estate in Close Proximity to U.S. Missile Base

On May 13, 2024, President Biden ordered MineOne Partners Limited, a British Virgin Islands company ultimately controlled by Chinese nationals (together with its affiliates, “MineOne”)¹ to divest real estate within one mile of a U.S. strategic missile base in Cheyenne, Wyoming.² This action by the President followed a “non-notified” review by the Committee on Foreign Investment in the United States (“CFIUS”) who received a tip about the transaction from a member of the public. Treasury Secretary Janet Yellen said the divestment “highlights the critical gatekeeper role that CFIUS serves to ensure that foreign investment does not undermine our national security.”³ The order also demonstrates that CFIUS remains intently focused on addressing U.S. national security risks posed by Chinese investment activity in the United States.

MineOne Transaction and Prohibition

In June 2022, MineOne acquired from Cheyenne Leads a 12.06 acre plot approximately one mile from Francis E. Warren Air Force Base (“Warren AFB”), a strategic missile base that hosts nuclear-armed Minuteman III Intercontinental ballistic missiles, a critical component of the United States’ nuclear triad. Shortly after MineOne purchased the property, it developed the land into a cryptocurrency mining facility. According to CFIUS, this development included foreign-sourced equipment “potentially capable of facilitating surveillance and espionage activities.” Due to the real estate’s close proximity to Warren AFB and MineOne’s use of such equipment, CFIUS recommended, and the President ordered, the transaction prohibited.⁴

Within 120 calendar days of the order, MineOne is required to sell or transfer all legal and beneficial ownership interests and certify to CFIUS in writing that the divestment is complete. In addition, not later than 90 calendar days of the order, MineOne is also required to remove from the real estate all “items, structures, or other physical objects or installations” that it “stockpiled, stored, deposited, installed or affixed” to the property.

Foreign Investment Rules Regarding Real Estate

As noted above, this divestment involves the sale of real estate. In 2018, Congress passed the Foreign Investment Risk Review Modernization Act of 2018 (“FIRRMA”), which significantly revamped the statutory authorities of CFIUS by, among other things,

¹ MineOne’s affiliates include MineOne Cloud Computing Investment I L.P., MineOne Data Center LLC, and MineOne Wyoming Data Center LLC.

² The White House, *Order Regarding the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I L.P.* (May 13, 2024), available [here](#).

³ See U.S. Dep’t of Treasury, *Statement on the President’s Decision Prohibiting the Acquisition by MineOne Cloud Computing Investment I L.P. of Real Estate, and the Operation of a Cryptocurrency Mining Facility, in Close Proximity to Francis E. Warren Air Force Base* (May 13, 2024), available [here](#).

⁴ There are no time bars or other statute of limitations that restrict CFIUS’s ability to unwind closed transactions.

extending CFIUS jurisdiction to cover certain purchases and leases of real estate located within “close proximity” to U.S. military installations or other facilities or properties of the U.S. government that are sensitive to national security.⁵

Since FIRRMA was finalized, CFIUS has rarely exercised its real estate authorities. Indeed, MineOne is the first time CFIUS has recommended the President prohibit a real estate transaction. However, concerns about Chinese ownership of land in close proximity are not new. For example, in 2012, President Obama ordered prohibited the acquisition of four U.S. wind farm project companies that were in close proximity to a DoD facility by the Chinese-owned Ralls Corporation.⁶

Takeaways

This presidential prohibition is noteworthy in several respects. First, according to CFIUS, its review was the result of a public tip.⁷ This is yet another indication of the robust “non-notified” review process operated by CFIUS and demonstrates its ability to leverage various sources of information (including, *e.g.*, from the U.S. intelligence community and the general public) to identify and act on non-notified transactions.⁸ In a corresponding press statement, the Department of Defense (“DoD”) emphasized the importance of communities in the vicinity of military installations reporting concerns.⁹ Second, in its press release, the Department of the Treasury (“Treasury”) quoted Assistant Secretary for Investment Security Paul Rosen: “If CFIUS parties are unwilling or unable to fully address national security risks, CFIUS won’t hesitate to exercise the full scope of its authorities ... CFIUS expects complete, accurate, and timely information”.¹⁰ Secretary Rosen’s statement suggests that MineOne may not have presented complete, accurate, or timely information. We expect CFIUS to continue assertively and unilaterally acting in the non-notified space to address national security risks that it believes parties are unwilling or unable to abate.

⁵ See Paul, Weiss, *Final CFIUS Regulations Implementing the Foreign Investment Risk Review Modernization Act of 2018 Are Now in Effect* (Feb. 27, 2020), available [here](#). The CFIUS regulations provide for different proximities depending on the sensitivities of the installation. Warren AFB is listed on “Part 1” of the list of military installations and other U.S. government sites, triggering CFIUS’s one mile jurisdiction. See Appendix A to Part 802, Title 31, available [here](#).

⁶ White House, *Order Signed by the President Regarding the Acquisition of Four U.S. Wind Farm Project Companies by Rallis Corporation* (Sept. 28, 2012), available [here](#).

⁷ CFIUS specifically cites MineOne’s non-filing in its press release, but it should be noted that filing real estate transactions with CFIUS is voluntary.

⁸ CFIUS recently issued a notice of proposed rulemaking that would, among other things, expand the types of information CFIUS can require parties to submit related to non-notified transactions and apply penalties to material misstatements and omissions in responses to non-notified transactions. See Paul, Weiss, *Treasury Proposes a “Sharper Scalpel” for CFIUS Enforcement* (Apr. 12, 2024), available [here](#).

⁹ See Dep’t of Defense, *DOD Statement on the President’s Decision Prohibiting the Acquisition of Certain Real Property of Cheyenne Leads by MineOne Cloud Computing Investment I L.P. in Close Proximity to Francis E. Warren Air Force Base* (May 13, 2024), available [here](#).

¹⁰ See Treasury Press Release, at note 3.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

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