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# Order Requires Chinese Acquirer to Divest From U.S. Technology Company

On January 2, 2026, the President issued an Executive Order (the “Order”) that requires HieFo Corporation (“HieFo”), a Delaware corporation controlled by citizens of the People’s Republic of China (“PRC”), to divest all interests it acquired from EMCORE Corporation (“EMCORE”), a U.S. technology company that designs and manufactures inertial navigation and photonics-based sensing systems for aerospace, defense, and industrial applications.<sup>1</sup> The acquired assets comprise EMCORE’s digital chips and related wafer design, fabrication, and processing businesses.

The Order states that there is “credible evidence” that the transaction “threatens to impair the national security of the United States.” The U.S. Department of the Treasury’s press release emphasized that the Committee on Foreign Investment in the United States (“CFIUS” or the “Committee”) “will continue to take action, including seeking divestment, when national security risks cannot be addressed through mitigation.”<sup>2</sup> Below, we summarize the Order and the potential implications for foreign direct investment in the United States.

## The Order

- **Prohibition of the Transaction.** The Order prohibits HieFo’s continued ownership of the EMCORE assets and requires divestment of all right, title, and interest in the assets acquired.
- **Mandatory Divestment.** HieFo must divest all interests in the acquired EMCORE assets in a manner approved by CFIUS; the Order places the burden on HieFo to complete divestment within 180 calendar days (subject to any extensions granted by CFIUS) and comply with any conditions.
- **Restrictions on Access to Sensitive Information.** Pending divestment, the Order restricts HieFo and its affiliates from accessing non-public technical information, IT systems, facilities, or other sensitive data relating to the assets.
- **Limitations on Asset Transfers and Corporate Changes.** The Order prohibits actions that would circumvent or frustrate divestment, including transfers or reorganizations that move assets offshore or out of U.S. jurisdiction.
- **Certification and Verification Requirements.** The Order authorizes CFIUS to require notices, ongoing certifications, audits, and other measures to verify compliance.

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<sup>1</sup> See Executive Office of the President, *Order of January 2, 2026 Regarding the Acquisition of Certain Assets of EMCORE Corporation by HieFo Corporation*; 91 C.F.R. 895 (Jan. 8, 2026), available [here](#).

<sup>2</sup> U.S. Dep’t of Treasury, *Statement on the President’s Decision Ordering the Divestment of Interests in Certain Assets of EMCORE Corporation by HieFo Corporation* (Jan. 2, 2026), available [here](#).

- **Approval of Third-Party Sales.** Any sale or transfer to a third party may be subject to review and objection by CFIUS based on national security considerations.
- **Ongoing Compliance and Enforcement.** The Order authorizes U.S. government access to relevant premises, records, and personnel and prohibits any attempt to evade or circumvent its requirements.

### Implications

The Order shows that CFIUS prioritizes capability and access risks over deal value and will seek divestment even in small, non-notified deals involving sensitive U.S. technology:

- **No De Minimis Threshold.** CFIUS can act even on very small deals, as shown by this \$2.9 million transaction.
- **Risk Focus on Capability and Access.** The Committee prioritizes exposure to sensitive technology, technical know-how, key customers, supply-chain footholds, and facilities over purchase price.
- **Non-Notified Enforcement in Action.** CFIUS's proactive non-notified monitoring means unfiled transactions can still be surfaced and unwound, as illustrated by the divestment following the identification and investigation of this unfiled deal.
- **Continued Scrutiny of PRC Nexus.** Transactions with a PRC nexus—through ownership, control, or other ties—remain actively scrutinized by CFIUS.
- **Rising Use of Divestment.** The increasing frequency of presidential divestments suggests a possible shift toward forcing unwinds—this is the second such order in the last year, following the July 2025 divestment order involving Suirui International Co., Limited.<sup>3</sup> For comparison, the entire term of the Biden administration saw only two presidential prohibitions.

Parties considering acquisitions of U.S. technology, manufacturing, and engineering assets—especially where the buyer is linked to jurisdictions of concern—should assess CFIUS risk early, including even for modest or distressed transactions. Small asset purchases, carve-outs, and sales arising out of restructuring or bankruptcy can attract CFIUS interest if they present pathways to sensitive capabilities or data.

We expect continued CFIUS attention to transactions involving advanced sensing, navigation, aerospace, photonics, and related technologies, as well as supply chain nodes that could enable technology transfer or operational insight. CFIUS's non-notified enforcement, including in asset deals and smaller transactions, is likely to remain robust. If mitigation is insufficient, divestment may be required regardless of deal size.

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<sup>3</sup> See Executive Office of the President, *Order of July 8, 2025 Regarding the Acquisition of Jupiter Systems, LLC by Suirui International Co., Limited*; 90 C.F.R. 31125 (Jul. 11, 2025), available [here](#); see also Paul, Weiss, *Executive Order Requires Chinese Owners to Divest From U.S. Technology Company* (Jul. 21, 2025), available [here](#).

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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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