

CLIENT ALERTS

Court Rules CFIUS National Security Review Process To Be Unconstitutional

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Foreign companies seeking to invest in the United States received welcome news last week when a federal appeals court in Washington, D.C. ruled that the federal government's process for reviewing foreign investments in the United States is unconstitutional. *Ralls Corp. v. Committee on Foreign Investment in the United States, et al.*, No. 13-5315 (D.C. Cir. July 15, 2014). The court held that when the federal government decides to impose national security-related requirements on a foreign investor, the government must share unclassified evidence supporting its decision so that the investor has an opportunity to review and rebut the evidence. While the implications of this decision are still to be sorted out, its effect is certain to be far-reaching.

Since the late 1970's, an informal committee of Cabinet-level officers has reviewed foreign investments to determine whether they threatened national security interests. The informal committee, known as the Committee on Foreign Investment in the United States ("CFIUS"), has the authority to block transactions that have not yet occurred and to order foreign companies to divest themselves of investments in the United States if the committee concludes that the investment potentially threatens the national security interests of the United States. After the Dubai Ports controversy erupted in 2006, Congress passed legislation strengthening the review process. CFIUS responded by stepping up its enforcement efforts. Although CFIUS still imposes conditions on fewer than 100 foreign investments per year, its increasing activity has been a cause for concern for more and more foreign investors.

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