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National security expert on global trends, CFIUS scrutiny, and more



White & Case partner Farhad Jalinous.

A *As part of our ongoing coverage at the intersection of national security and foreign investment, we regularly speak to experts for their insights and perspective on a variety of topics. This week, we sit down (virtually, of course) with Farhad Jalinous, Partner and Chair of the Foreign Direct Investment (FDI) Reviews and US National*

Security/CFIUS Practice at White & Case. Farhad has built a well-known expertise representing clients in national security reviews before CFIUS, as well as before several agencies of the U.S. government, including the Department of Defense, the Department of Energy, and others. He was featured in the Foreign Investment Watch “Top Advisors 2020” list this year.

Farhad, before we start, we always like to ask interviewees how you and your family have been faring during the pandemic. Everyone okay?

Everyone is fine. Thank you so much for asking.

And how has the firm been affected? Everyone still working remotely?

The firm is very busy, and we are sticking to local guidance as it pertains to COVID-19.

Let’s continue on the COVID-19 topic for a moment. It’s clear the pandemic is changing the way that lots of countries, not just the U.S., address issues of national security and foreign investment. Germany, Japan, Israel and others have recently proposed or approved new regulatory regimes. What’s happening here? Is this really about national security, or more about protecting national assets while prices are depressed?

Over the past few years, many countries around the globe, and in Europe in particular, have started to either implement or ratchet up their existing foreign direct investment or FDI controls. Today, we view FDI considerations as among the top five major issues in cross border transactions.

So why is there a global trend now towards enhanced FDI controls? Well, several events have conflated to bring us to where we are today.

First, we are seeing an increased convergence in views across the U.S., Europe and elsewhere that so-called sensitive sectors need to be protected in a more or less coherent way from what is being described in the U.S. as “adversarial capital.” Second, there is COVID-19. The pandemic brought FDI restrictions into sharper focus, and accelerated movement on a national level in many countries to expand what is considered to be sensitive, and to put in place measures deemed necessary to counter the risks associated with adversarial capital and its ability to leverage current economic conditions to gain a footing in companies that are considered national assets.

As a followup, do you expect the regulatory climate to change once the pandemic eases? What about changes if Biden wins the upcoming election?

I don’t believe that we will see a meaningful easing of the current regulatory climate once the pandemic eases or as a result of the upcoming U.S. elections, at least not across the board. The big picture

will continue to follow a trend that was set in motion well before the pandemic or the current Administration. It got accelerated, but it was already there.

So, in other words, investors need to expect and plan for more of their transactions to be scrutinized. What do investors need to think about?

Yes, I believe that FDI controls are here to stay. The key issue for an investor is to understand where the traps lie: Any foreign investor active in cross-border transactions needs to understand FDI restrictions as they are today, and where they may be in the future, in order to ensure the expected path to liquidity is not disrupted.

Do you get the sense that investors are generally aware of CFIUS and new regulatory climate, or is there still a little ignorance, especially with everyone focusing on the pandemic?

I think that we have come a long way in that regard. In my view, the cross-border investment community, from investors to the lawyers to the bankers, are all well aware of the CFIUS review process and the current regulatory climate.

Tell us about the Web-based FIRRMA tool that White & Case created.

We created the White & Case CFIUS FIRRMA Tool to help users navigate the complex and significantly expanded regulatory framework by providing an online, step-by-step analysis of a contemplated transaction. The tool assists users in determining whether the transaction could be subject to CFIUS’s jurisdiction under FIRRMA and if mandatory filing requirements would apply. It also calculates the filing fee for written notices. We regularly update the tool to reflect regulatory changes, and it is used multiple times every day by clients, industry, and practitioners.

Thanks Farhad.

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