



CFIUS PREPAREDNESS SURVEY

The results of a reader survey by Foreign Investment Watch show corporate executives feel neither knowledgeable of, nor prepared for, CFIUS rules or filing process.

a quick-read primer published by
FOREIGN INVESTMENT WATCH

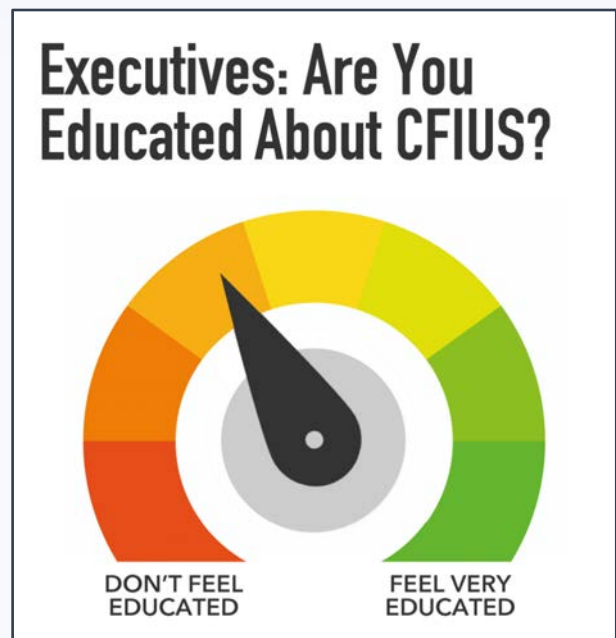
Survey data show executives not educated on, prepared for, CFIUS

A survey conducted by Foreign Investment Watch showed that corporate executives feel neither educated nor adequately prepared to comply with new FIRRMA rules.

The first-ever survey, conducted between June 18 and August 18 by Foreign Investment Watch, was created to help executives understand how they compare to their peers when it comes to compliance with FIRRMA and preparedness for CFIUS. The survey was confidential and anonymous, and included specific questions for corporate executives as well as outside counsel.

EXECUTIVE RESPONSES

The first part of our survey was aimed at executives inside corporations, venture capital



firms, private-equity firms, and others whose companies (or portfolio companies) may be impacted by FIRRMA.

When we asked how “educated” these executives felt about CFIUS rules or filing processes — on a scale of one to ten, with ten being “very prepared” —the average response was only four (see image above).

Damara Chambers, a partner and co-leader

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of the National Security and International Trade practices at Vinson & Elkins, was not shocked by the low numbers. “The new rules on jurisdiction, mandatory filings, new filing methods and TID U.S. businesses are complex,” she says, “so it does not surprise me that industry executives do not feel fully educated on the CFIUS process.”

Tom Shoesmith, a partner at King & Wood Mallesons, agrees the low numbers are not surprising. “Until very recently, knowledge about CFIUS was uneven here in Silicon Valley, where a high percentage of companies have foreign investors or are considering an exit involving a foreign buyer.” Shoesmith notes that in other regions, awareness of CFIUS is likely lower. “Nationwide, I don’t know how many executives are in that situation, and if they are not, there would be no reason to know anything about CFIUS.”

Another expert who asked to remain anonymous echoed Shoesmith’s interpretation of the data, emphasizing the impact of the pandemic. “If you’re not in the midst of a foreign investment or foreign acquisition, there’s not much you need to know about CFIUS,” she stated. “And with the pandemic-driven economic slowdown, there simply isn’t much foreign investment or M&A happening.” To wit: On the scale of one to ten, not a single respondent selected an option above five. Experts believe that executives will become more aware of CFIUS over time, especially as the economy improves, and both investment

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DAMARA CHAMBERS

Partner and Co-Leader of the National Security and International Trade Practices at Vinson & Elkins

and M&A increase. “My sense is that executives generally are more aware of CFIUS post-FIRRMA than they were previously,” says Chambers at Vinson & Elkins.

In addition to asking how educated executives felt, our survey asked, “how prepared is your organization for CFIUS rules, filings, reviews, or other processes or requirements?” Again, on a scale of one to ten, the average response was only four.

Shoesmith at King & Wood Mallesons warns this lack of preparedness could “easily be a mistake,” given the breadth of CFIUS’ jurisdiction. “Every one of these executives should take an hour at some point and review their existing exposure as well as what CFIUS means for future financings and exits.”

Luckily, executives felt much more confident in their outside counsel’s grasp of FIRRMA and CFIUS. To wit, we asked these

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executives, “on a scale of 1-10, how prepared is your outside counsel to assist you with CFIUS rules, filings, reviews, or other processes or requirements?” With ten on the scale again being high (i.e., “very prepared”), the average response was 6.7 (see image at right).

“What you’re seeing here is trust in outside counsel staying on top of the requirements, which is what you’d expect to see,” said one expert. “After all, that’s the job of outside counsel.”

COUNSEL RESPONSES

The survey also asked similar education and preparedness questions of outside counsel. Not surprisingly, they also felt their corporate, VC and PE clients weren’t well informed. When asked, on a scale of 1-10, how educated their clients were about CFIUS rules, filings, reviews or other processes, the average response was only five.

And when we asked how prepared those clients were for CFIUS rules, filings, reviews, and other processes or requirements, the number dropped to 4.4 on the scale of one to ten.

“Looks like both companies and their outside counsel both feel that clients, by and large, aren’t ready,” noted one expert.

Legal respondents were much more confident about their own readiness though. We asked



outside counsel, on a scale of 1-10, “how prepared is your organization to assist clients with CFIUS rules, filings, reviews, or other processes or requirements?” The average response: nine.

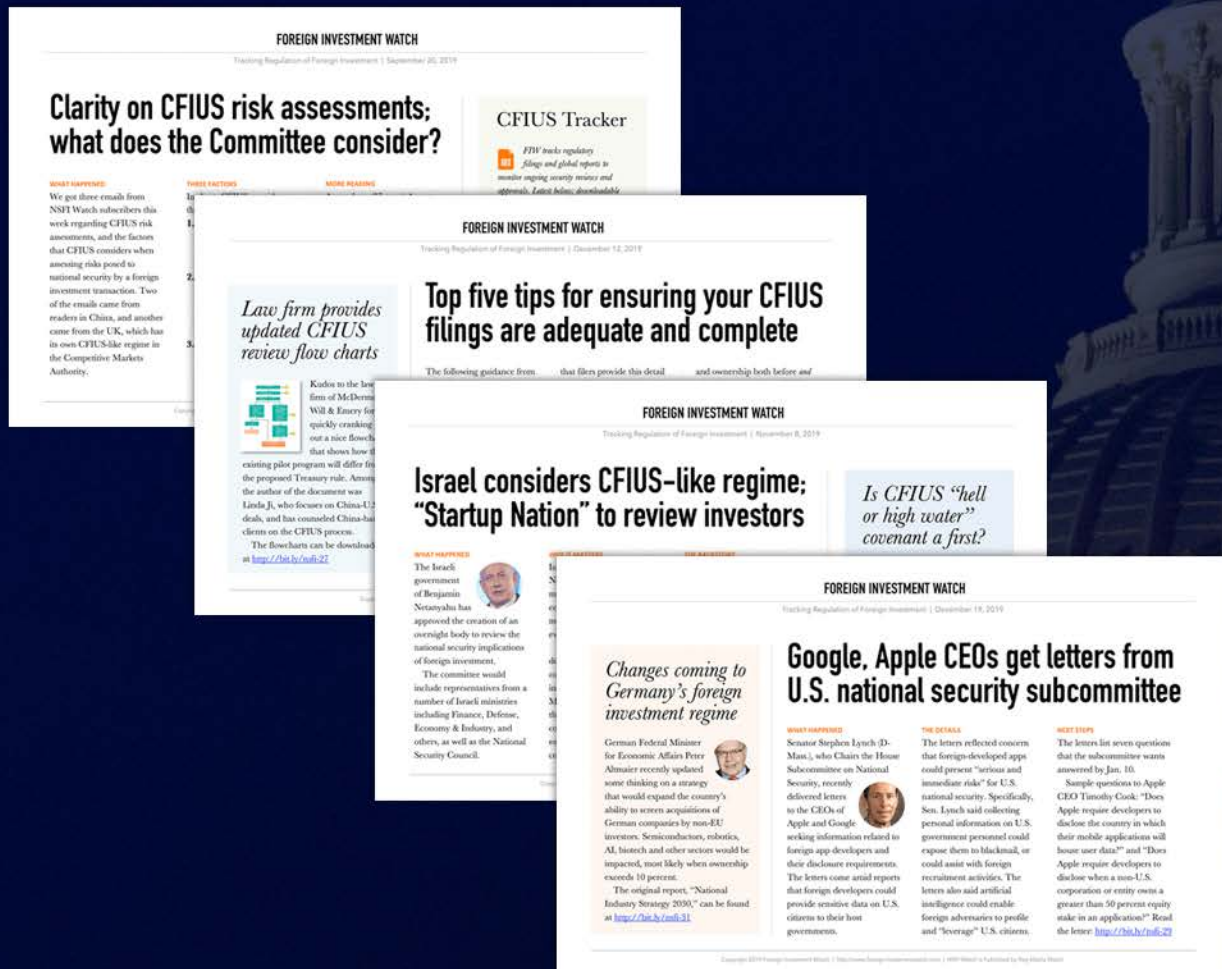
MORE INFORMATION

We’ll continue to survey our readers on CFIUS matters in the coming months. If you have ideas for coverage or questions, as always please contact editor@foreigninvestmentwatch.com.

Damara Chambers, quoted in the article above, is dchambers@velaw.com. Tom Shoesmith, also quoted above, can be reached at tom.shoesmith@us.kwm.com

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