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Industrial Security

When a US defense contractor with access to classified information receives funding, investment capital, or substantial revenue from a foreign source, the US Industrial Security Program can be triggered. Under this program, the US government monitors and regulates the amount of "foreign ownership, control or influence" (FOCI) present in a defense contractor.

A US defense facility that has an unacceptable level of FOCI can face revocation, suspension, or termination of its facility security clearance, thereby disqualifying the contractor from further business involving classified information or programs. The US government can also restrict the involvement of foreign nationals in the ownership and management of the defense facility.

Step toe advises clients on the intricacies of the Industrial Security Program, the acquisition and maintenance of facility and personal security clearances, and methods available to eliminate or reduce the level of FOCI in a manner acceptable to US government regulators. We handle the notification and reporting obligations under the program. We have handled negotiations with the Defense Investigative Service (DIS) to structure investment and financing transactions to the satisfaction of commercial parties and government officials.

Step toe attorneys are very familiar with the requirements and details of DIS-approved voting trust, proxy arrangement, special security agreement, security control agreement, technology control plan, visitation agreement, and defense security committee arrangements. We have successfully incorporated these vehicles into existing corporate and joint-venture structures.

Our attorneys have also achieved successful results in DIS-initiated investigations.

Industry-Specific Regulatory Regimes

Step toe attorneys within certain industry practice groups also are available to assist with foreign investment restrictions specific to particular industrial sectors. For example, Step toe's aviation and transportation attorneys have worked closely with our Exon-Florio professionals in handling foreign acquisitions involving US air carriers. Similarly, Step toe's telecommunications attorneys have worked with our Exon-Florio and corporate attorneys to handle regulatory restrictions and procedures triggered by foreign investments in the satellite transmission and cable industries.

Collateral Reporting Requirements

Step toe also handles all aspects of related reporting and clearance procedures that can be triggered with foreign investment transactions. The firm's antitrust attorneys regularly manage Hart-Scott-Rodino pre-merger notification requirements for domestic and foreign clients. Our international and corporate

Industrial Security

group attorneys have handled Commerce Department, Bureau of Economic Analysis, foreign direct investment surveys. We have counseled defense contractors on ITAR registration statement amendments triggered by foreign investment activities.

Areas of Experience

Steptoe's attorneys assist clients in these matters:

- Exon-Florio opinion letters and notifications
- Industrial Security Program/FOCI assessments, and development and implementation of protective mechanisms
- Hart-Scott-Rodino pre-merger notifications and antitrust compliance
- Special industry experience in defense industries, electronics, telecommunications, aviation and transportation, space, and satellite
- Management of Executive Branch and congressional inquiries into foreign investment transactions
- Detailed familiarity with all relevant regulatory programs, statutory and regulatory language, and policy considerations

Representative Engagements

Our firm has represented entities in a number of industries, including the following:

- Aerospace and aviation
- Air transportation
- Satellite technology
- Recording equipment
- Semiconductors
- Defense electronics and surveillance
- Specialty metals