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Executive Order Requires Chinese-Controlled Firm's Divestment of EMCORE Corporation's Digital Chips Business

By John P. Barker, John B. Bellinger, III, Ronald D. Lee, Charles A. Blanchard, Nancy L. Perkins, Trevor G. Schmitt, Bell Johnson and Kristina Lorch*

In this article, the authors discuss an executive order directing a California-based company to divest its ownership of EMCORE Corporation's digital chips business, citing concerns over Chinese control of the California company, after an investigation by the Committee on Foreign Investment in the United States.

President Donald Trump has issued an executive order directing HieFo Corporation (HieFo), a California-based photonics company, to divest its ownership of EMCORE Corporation's (Emcore) digital chips business, citing concerns over Chinese control of HieFo. The presidential decision followed an investigation by the Committee on Foreign Investment in the United States (CFIUS or the Committee) that found there was "credible evidence" that HieFo "might take action that threatens to impair the national security of the United States."

The order comes almost two years after HieFo's April 2024 acquisition of Emcore's digital chips and related wafer design, fabrication, and processing businesses, including a semiconductor manufacturing facility. According to the U.S. Department of the Treasury, HieFo did not submit the transaction to CFIUS for review until after CFIUS' "non-notified" team (a group within CFIUS that identifies transactions that likely are subject to CFIUS jurisdiction but have not been notified to the Committee by the parties) investigated the transaction following closing.

BACKGROUND

Emcore currently develops advanced navigation products for aerospace and defense, commercial, and industrial clients, specializing in fiber optic, ring laser gyro, and micro-electromechanical products. HieFo was founded by Emcore's former vice president of engineering, Dr. Genzao Zhang, through the management buyout of Emcore's digital chips business in May 2024. HieFo completed its acquisition of Emcore's chips business and indium phosphide wafer fabrication operations in September 2024, which included obtaining Emcore's equipment, contracts, intellectual property, and inventory, as well as a lease takeover of Emcore's California facility.

CFIUS' non-notified team cited concerns about access to Emcore's intellectual property, proprietary know-how, and expertise and possible diversion of indium phosphide chips "away from the United States."

CFIUS

CFIUS is an inter-agency body tasked with reviewing foreign investment in and acquisitions of covered U.S. businesses and real estate for national security risks under Section 721 of the Defense Production Act of 1950, as amended (Section 721).[1] Where CFIUS has serious concerns about the national security implications of a transaction it has reviewed, it may recommend the U.S. president block or otherwise interfere with the transaction, which is within the president's authority under Section 721. CFIUS is chaired by the Department of the Treasury and consists of agency heads from the U.S. Departments of State, Defense, Commerce, Energy, Homeland Security, and Justice, as well as the White House Office of Science and Technology Policy and the U.S. Trade Representative.

Under Section 721, it is mandatory for the parties to certain types of transactions to inform CFIUS about the deal by filing either a "declaration" or a "notice." For other transactions, such a filing is voluntary, but wherever CFIUS has jurisdiction under Section 721, there is the risk of presidential action to interfere with the deal. And where a transaction has not been notified by the parties but has come to CFIUS' attention through open source reporting, classified reporting, executive agency referrals, or tips, the Department of the Treasury's Office of Investment Security may direct the Committee to conduct a review and require the parties to provide all relevant information.

Importantly, CFIUS retains authority to review transactions even after closing. If an unresolvable national security risk is identified through a CFIUS review of a completed transaction, as was the case for the HieFo-Emcore transaction, CFIUS may recommend the president order divesture.

THE EXECUTIVE ORDER

Under the executive order, effective immediately, HieFo and its personnel are prohibited from granting any non-HieFo personnel access to Emcore assets and any "non-public technical information, information technology systems, products, parts and components, books and records, or facilities" in the United States. HieFo has seven days to implement measures to prevent prohibited access to this information.

The order also bars HieFo from acquiring Emcore assets through HieFo's partners, subsidiaries, affiliates, and foreign person shareholders (collectively, Affiliates). U.S. nationals serving on HieFo's Board of Directors as of November 26, 2025 are exempt from this prohibition.

The order further requires HieFo and its Affiliates (hereafter referred to solely as HieFo) to divest all interests and rights in the Emcore assets, wherever located, within 180 days. This includes contracts, inventory, tangible property, parts, fixed assets, accounts receivable, permits, real property leased or owned, and intellectual property.

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[1] 50 U.S.C. § 4565.

HieFo may not transfer any interest in Emcore assets, nor may it restructure, relocate, transfer, or sell assets in a way that would "materially impede or prevent" complying with the order. CFIUS is authorized to audit HieFo to ensure compliance.

HieFo must provide weekly certifications to CFIUS confirming compliance with the order and detailing its efforts toward divestment, including the projected timeline for completing all remaining tasks. HieFo must also make a final certification after divestment, affirming it has taken "all steps necessary to fully and permanently effectuate" the order and destroyed or transferred all intellectual property it possesses and controls, including copies, related to the Emcore assets.

The order grants CFIUS broad authority to ensure divestment. HieFo must allow CFIUS-designated U.S. government personnel access to its premises and facilities in the United States to:

(i) inspect and copy any records and documents related to the order;

(ii) inspect or audit any "information systems, networks, hardware, software, data, records, communications, or property" in their possession; and

(iii) interview officers, employees, and agents regarding compliance with the order.

CFIUS retains the right to impose additional conditions or measures "as it deems necessary and appropriate to mitigate risk" to U.S. national security, including measures under Section 721 and its implementing regulations.

Once HieFo certifies divestment, CFIUS has 90 days to complete verification and must notify HieFo in writing when divestment is deemed completed.

KEY TAKEAWAYS

This order is a clear demonstration of the executive branch's heightened scrutiny of foreign acquisitions and investments in U.S. businesses and underscores CFIUS' commitment to examining ownership structures and leadership arrangements to identify foreign control. Individuals and entities considering new investments in a U.S. business, including a collection of assets, particularly in sensitive technology sectors, should conduct appropriate due diligence to identify any and all foreign interests.

This action also underscores the additional resources allocated to CFIUS' non-notified team in recent years. In 2024, the Department of the Treasury published a final rule enhancing and sharpening CFIUS' monitoring authorities and enforcement powers, including those related to non-notified transactions. Parties contemplating transactions subject to CFIUS' jurisdiction, even when filing is not mandatory, should assess the risks of declining to file.