

Waldorf Astoria Deal Is Likely Headed for CFIUS Review

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The Committee on Foreign Investment in the United States (CFIUS) is likely to scrutinize the recently announced \$1.95 billion acquisition of Hilton Worldwide Holdings' Waldorf Astoria Hotel in New York by the Anbang Insurance Group (China) to determine the national security implications, if any, of the transaction. Although such implications are not readily apparent, reports suggest that there are issues that CFIUS may seek to review prior to the deal's closing.

As part of the terms of sale, Anbang and Hilton Worldwide plan to enter into a management agreement pursuant to which Hilton Worldwide will operate the property for the next 100 years. Anbang also plans to undertake a "major renovation" of the property to restore the hotel "to its historic grandeur." According to reports, the deal is scheduled to close on Dec. 31 of this year, but delays could push that closing date to no later than March 31, 2015.

CFIUS, chaired by the U.S. Department of the Treasury with membership that includes the U.S. Departments of Justice, Homeland Security, Commerce, Defense and State, reviews transactions involving foreign acquisitions or mergers that could have implications for U.S. national security. While the United States has an open investment policy, CFIUS has the power to impose measures on a transaction to mitigate any potential national security risks or to recommend that the U.S. president block a transaction if it may threaten the national security of the United States.

Although not an obvious national security risk, the Waldorf Astoria purchase does raise national security implications that would merit

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CFIUS' review of the transaction.

While Hilton Worldwide will continue to operate the hotel for the next 100 years, the major renovations that Anbang plans for the hotel raises the potential for cyberespionage and eavesdropping, which are both of significant concern to the U.S. government, particularly with respect to China. This is a particular concern given that the hotel has, for decades, served as the residence of the United States ambassador to the United Nations, as well as headquarters for U.S. diplomats, including the U.S. president, as they attend the United Nations General Assembly each year. Numerous foreign heads of state and government officials also frequent the hotel.

Cyberespionage is a particularly contentious issue between the United States and China. This year, the U.S. government charged five members of the Chinese military with hacking into computers and stealing valuable trade secrets and information from numerous U.S. corporations. Although the United States is not hostile to Chinese investment, it is generally well known that Chinese investment in the United States is subject to more intense CFIUS scrutiny than investments from other countries.

These national security concerns have been heightened by the increased focus on the United States by Chinese investors.

In 2012, the most recent year for which data is available, CFIUS reviewed a total of 114 proposed acquisitions of U.S. businesses by foreign entities. Thirty-nine, or approximately 34 percent of these transactions involved Chinese investors, more than any other country. There is also increasing interest from Chinese investors in real estate purchases in the United States, particularly in New York. Over the last 18 months, Fosun International Ltd. purchased One Chase Manhattan Plaza from JPMorgan for \$725 million, Greenland Holdings Group purchased a 70 percent stake in Atlantic Yards, and SOHO China, along with a Brazilian billionaire, purchased a 40 percent stake in the General Motors Building. If allowed to proceed to closing, Anbang's acquisition of the Waldorf Astoria will be the largest real estate acquisition by a Chinese company in the United States.

While CFIUS will not comment on its review of transactions, the U.S. Mission to the United Nations has stated publicly that it is reviewing the details of the potential sale. Any decision on whether to continue using the Waldorf Astoria would be made based on the government's security needs, cost, and Anbang's long-term plans for the hotel, including specifics of the renovation plan.

In addition, though not apparent to the general public, proximity of the hotel to sensitive U.S. installations, technology or infrastructure could also be a factor for consideration.

In 2012, the president ordered the Chinese-owned Ralls Corporation to divest from its acquisition of four wind farm companies in Oregon located near a U.S. military installation after a CFIUS investigation determined that the acquisition threatened to impair U.S. national security. Ralls challenged the order as a violation of its due

process rights due to the U.S. government's refusal to allow Ralls to view and attempt to rebut even the unclassified information on which CFIUS' and the president's decision was based. The U.S. Court of Appeals for the Federal Circuit agreed with Ralls. Although unlikely to result in a reversal of the decision to block the acquisition, it is yet to be determined how much due process Ralls, and other similarly situated companies, will be entitled to going forward.

While very unlikely to be contentious like the Ralls case, there do appear to exist security considerations surrounding the acquisition of the Waldorf Astoria that CFIUS will likely find worthy of examination. CFIUS' likely review is a reminder that seemingly innocuous property transactions in the United States can have national security implications. Parties to transactions involving foreign entities must carefully consider any national security issues that may arise as a result of the transaction. Foreign and U.S. business are also well-advised to notify and engage with CFIUS well in advance of closing transactions with national security implications.