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## Presidential Order Requires HieFo to Divest EMCORE Assets

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The President issued an Executive Order (the “Order”) on Jan. 2, 2026, requiring Chinese-controlled HieFo Corporation (“HieFo”) to divest its interests in certain U.S. semiconductor assets acquired from EMCORE Corporation (“EMCORE”), underscoring the U.S. government’s continued willingness to forcibly unwind transactions that present unresolved national security concerns that are subject to the jurisdiction of the Committee on Foreign Investment in the United States (“CFIUS”), even years after a transaction has closed.<sup>1</sup>

### Background on the Transaction

The transaction involved the acquisition by HieFo, a Delaware-registered entity controlled by a Chinese national, of EMCORE’s U.S.-based digital chips business, including operations related to wafer design, fabrication, and processing.<sup>2</sup> While HieFo is a Delaware company, its founder and CEO is a Chinese national who formerly served as a vice president of engineering at EMCORE.

HieFo acquired the assets from EMCORE on April 30, 2024 for approximately \$2.9 million<sup>3</sup> without notifying CFIUS or obtaining approval prior to closing.<sup>4</sup> CFIUS initiated a review on its own pursuant to Section 721 of the Defense Production Act, which authorizes CFIUS to review any transaction that could result in foreign control over U.S. businesses or certain minority investments in critical technologies, critical infrastructure or sensitive personal data. After completing its review, CFIUS determined that the transaction posed national security concerns stemming from HieFo’s access to EMCORE’s intellectual property, proprietary know-how, expertise, and the possible diversion of indium phosphide chips manufactured by EMCORE away from the United States.<sup>5</sup> Based on that review, CFIUS referred the matter to the President for decision, presumably with a full Committee consensus for a prohibition and divestment.

<sup>1</sup> See <https://www.whitehouse.gov/presidential-actions/2026/01/regarding-the-acquisition-of-certain-assets-of-emcore-corporation-by-hiefo-corporation/>.

<sup>2</sup> See *Id.*

<sup>3</sup> See <https://www.globenewswire.com/news-release/2024/05/02/2874647/337/en/EMCORE-Announces-Sale-of-Chips-Business-and-Wafer-Fabrication-Operations-for-2-92M-and-Certain-Assumed-Liabilities.html>.

<sup>4</sup> See <https://www.whitehouse.gov/presidential-actions/2026/01/regarding-the-acquisition-of-certain-assets-of-emcore-corporation-by-hiefo-corporation/>.

<sup>5</sup> See <https://home.treasury.gov/news/press-releases/sb0349>.

## Actions Resulting from the Divestiture

In the Order, the President determined that the foreign acquirer might take action that could impair U.S. national security and directed full divestment of the covered U.S. assets within 180 calendar days.<sup>6</sup> After divestment certifications are submitted, CFIUS has up to 90 days to verify completion and will notify HieFo in writing once the divestment is deemed complete.<sup>7</sup>

The Order also imposes a comprehensive set of restrictions, conditions, and obligations on HieFo and its affiliates, including the following:<sup>8</sup>

- HieFo is prohibited from granting any persons non-approved by CFIUS access to the EMCORE assets or any related non-public technical information and must implement and maintain CFIUS-mandated controls to prevent prohibited access.
- Pending completion of the divestment, HieFo and its affiliates may not dissolve, reorganize, transfer interests in the EMCORE assets, alter legal structures, or relocate, transfer, or sell physical, intangible, or financial assets in any manner that could materially impede the Order.
- CFIUS is authorized, at any time prior to or following divestment, to require audits of HieFo and its affiliates—at HieFo’s expense—on terms determined by CFIUS, to verify compliance with the Order and any imposed conditions.
- Immediately upon divestment, HieFo must certify to CFIUS that (i) all required divestment steps and conditions have been fully and permanently completed, and (ii) all intellectual property required to be divested has been transferred or destroyed. CFIUS may require audits to confirm completion of these actions.
- Any proposed sale or transfer of the divested assets requires advance written notice to CFIUS and is subject to a 30-day non-objection period.
- Until divestment is certified as complete, HieFo must provide weekly written certifications to CFIUS confirming compliance with the Order and detailing progress toward divestment, including a projected timeline for remaining steps.
- To verify and enforce compliance, CFIUS may require U.S. government personnel to access HieFo’s U.S. premises and facilities, inspect and copy records, audit information systems, and interview officers and employees concerning matters related to the Order.

## Conclusion

The Order highlights the significant consequences that may arise from non-notified transactions involving perceived sensitive technologies, even if such investments or acquisitions are not otherwise prohibited by applicable U.S. export controls; and even in cases where the underlying technology did not rise to the level of critical technology that would have triggered a mandatory filing with CFIUS. In addition to the ultimate divestment outcome, the Order highlights the significant operational, compliance, and reporting burdens, as well as a significant impact on the value of the investment that can accompany a CFIUS-mandated unwinding almost 2 years after the transaction closed. Given the disruption and uncertainty

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<sup>7</sup> See *Id.*

<sup>8</sup> See *Id.*

associated with post-closing divestment procedures, parties are generally better served by identifying and addressing CFIUS risk earlier in the transaction lifecycle.

### Key Takeaways:

- Even where the export classification of the EMOCRE finished products is unclear or may not independently indicate controlled technology, transactions involving sensitive sectors, such as semiconductors and microelectronics, can raise CFIUS concerns and ultimately lead to forced divestment.
- Chinese investments in critical or sensitive technology sectors continue to garner heightened scrutiny by CFIUS and the U.S. government.
- There is no minimal transaction value that can be excluded from a CFIUS risk assessment. Here, CFIUS tracked down and the President forced a divestment of a nearly 2-year old transaction valued at less than \$3 million.
- Although it is unclear whether a voluntary CFIUS filing would have altered the ultimate outcome, the absence of a filing resulted in a post-closing review and a divestment order that imposed significant operational and compliance burdens and impact on the investment. Addressing CFIUS risk early on in the transaction lifecycle can help avoid costly and disruptive post-closing outcomes.

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If you have questions concerning the contents of this alert, or would like more information, please speak to your regular contact at Weil or to the authors:

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