CAPITAL MARKETS & CROSS-BORDER · PRIVATE OFFERINGS PRACTICE NOTE

Letting the World Into Your Deal

Regulation D and Regulation S Compared for Sponsors Admitting Non-U.S. Investors — and the CFIUS, Land-Ownership, and Tax Overlays That Decide Whether the Subscription Closes

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READ THIS FIRST — WHAT THIS ALERT DOES, AND WHAT IT CANNOT DO. This alert is a general orientation for sponsors, written to help you ask better questions earlier. It is **not legal advice**, it is not an opinion on any offering, investor, asset, or structure, and it does not create an attorney-client relationship. Every conclusion below is **acutely fact-dependent** — the answer changes with the issuer's business, the asset and its precise location, the investor's residence and domicile, the ownership chain above the investor, the rights the investor is granted, and the entity through which the investment is made.

Six limitations you should read as conditions on everything that follows. *First,* this alert covers **U.S. commercial real estate and U.S. technology companies that are not directly defense-related**. **Residential real estate is excluded entirely**, and agricultural land is addressed only because ownership-restriction regimes reach it. *Second,* it is **not exhaustive**: ERISA and plan-asset rules, Investment Company Act and Advisers Act registration, export controls and ITAR, the outbound investment security program, the FCPA, immigration-linked capital programs, and state blue sky beyond notice filings are outside its scope. *Third,* **U.S. tax is summarized in overview only** — the structure is almost always tax-driven, and no structure should be adopted without tax counsel modeling it. *Fourth,* the law of the **investor's home jurisdiction** governs whether the offer may be made there and whether the money may leave; nothing here substitutes for local counsel in Canada, Argentina, Singapore, the PRC, or anywhere else. *Fifth,* **state law varies materially and is changing rapidly**; the state-law discussion is illustrative, not a survey, and must be confirmed against the current code of the situs state. *Sixth,* several authorities discussed below are **unsettled or in motion** — including the directed-selling-efforts question in concurrent offerings, a pending Eighth Circuit appeal on whether federal law preempts state foreign-ownership statutes, a proposed AFIDA overhaul, proposed regulations that would reverse the domestically controlled REIT look-through rule, the CFIUS "Known Investor" pilot, and PRC implementing measures that do not yet exist.

The law is stated as of **September 1, 2026** and should be re-verified before any offering document is circulated or any subscription is accepted. **Nothing in this alert is an offer to sell or a solicitation of an offer to buy any security.**

At a Glance

- **Regulation D has no nationality condition.** Nothing in the accredited investor definition requires U.S. citizenship, residency, or organization[i]. A Singapore-resident individual with $1 million in net worth is accredited on exactly the same terms as a Texan — the constraints are verification mechanics, home-country law, and the overlays below.
- **Regulation S is not a nationality rule either.** It turns on **where the investor is when you reach them** and, for the category that applies to a private U.S. issuer, on **where the investor resides**[ii,iii]. A PRC citizen living in Miami is a U.S. person; a U.S. citizen living in Singapore generally is not.
- **For a private U.S. issuer, Regulation S is the harder door, not the easier one.** Equity of a domestic private issuer falls into Category 3[iv] — a **one-year** lockout from U.S. persons, purchaser certifications, anti-hedging covenants, legends, and a charter or operating-agreement provision requiring the issuer to refuse non-conforming transfers[v,vi] — and the securities are Rule 144 restricted securities anyway[vii].
- **Running both legs is settled as to integration and unsettled as to solicitation.** Rule 500(g) and Rule 152(b)(2) make non-integration a non-issue[viii,ix]. Whether general solicitation in a 506(c) leg is "directed selling efforts" has **never** been answered by rule, C&DI, or no-action letter — only by a qualified statement in a 2021 release preamble[x].
- **The securities analysis is often not the binding constraint.** CFIUS, state land-ownership statutes, U.S. tax, and the investor's own capital controls decide more of these deals than Regulation D does. Texas now restricts **commercial and industrial** real property outright[xi]; Florida bars PRC-associated persons from **any** real property in the State[xii].
- **Of the four investor jurisdictions, only Canada is an excepted foreign state for CFIUS**[xiii] — and only if the specific investor clears a demanding control and look-through test. For a PRC investor, the gating item is usually not U.S. law at all, but the fact that the money cannot lawfully leave China through the individual foreign exchange quota[xiv].

Part One · The Two Doors

A sponsor with a live U.S. offering and an interested investor in Toronto, Buenos Aires, Singapore, or Shanghai has two doors available: admit the investor under **Regulation D**, alongside the U.S. investors, or admit the investor under **Regulation S**, in a separate offshore offering. The two are not alternatives in the ordinary sense — they impose different conditions, produce different documents, and carry different failure modes. Most sponsors assume Regulation S is the "foreign investor rule." For a private U.S. issuer, that assumption is usually wrong.

The Threshold Misconception: Neither Rule Turns on the Passport

Regulation S applies two independent tests. The first is **geographic and temporal**: the offer must not be made to a person in the United States, and at the time the buy order is originated, the buyer must be outside the United States or the seller must reasonably believe so[xv]. Nationality is irrelevant to that test — sending offering materials to a Canadian citizen sitting in Miami destroys the offshore transaction element. The second, which applies to the category relevant here, is a **status** test keyed to the definition of "U.S. person," and that definition turns on **residence**, not citizenship: "[a]ny natural person resident in the United States"[xvi].

The practical consequences run both ways. A Canadian, Argentine, Singaporean, or PRC citizen **living in the United States is a U.S. person** and cannot be sold Regulation S securities during the distribution compliance period. A U.S. citizen resident abroad generally is not a U.S. person — though offers specifically targeted at identifiable groups of U.S. citizens abroad are not offshore transactions[xvii]. And a discretionary account held for a non-U.S. client by a U.S. professional fiduciary is affirmatively **not** a U.S. person, is deemed to be an offshore transaction, and contact with the account holder is not directed selling efforts[xviii,xix] — a genuinely useful route for a Singaporean or Canadian client of a U.S. registered adviser.

Because residence is a fact, not a document, the staff requires the issuer to specify its criteria in advance. A permanent resident is presumed to be a U.S. resident; others may be as well; and — the sentence to underline — "an issuer must decide what criteria it will use to determine residency and **apply them consistently without changing them to achieve a desired result**"[xx]. Adopt a written residency policy before the first offer, apply it identically to every subscriber, and keep the file.

Regulation D: The Simpler Door, With a Verification Problem

Each category in the accredited investor definition is defined by financial status, professional credentials, or entity type. There is no condition of citizenship, residency, domicile, or organization — and the rule expressly contemplates that subscription proceeds may be received in a foreign currency[xxi]. A sponsor may therefore admit an unlimited number of non-U.S. accredited investors under Rule 506(b) or Rule 506(c) without any U.S. nexus requirement whatsoever[xxii].

The complication is Rule 506(c) verification. The four enumerated safe harbors were drafted for U.S. taxpayers: they contemplate IRS forms, a report from a **nationwide** consumer reporting agency, and confirmation from a U.S.-registered broker-dealer or adviser[xxiii]. For a Buenos Aires or Shanghai investor, three of the four are unavailable by their terms. Three routes remain, and all three work.

- **Set a high minimum investment.** In March 2025 the staff agreed that an issuer may reasonably conclude it has taken reasonable steps to verify where the minimum investment is **at least $200,000 for natural persons and $1,000,000 for entities**, paid in cash, supported by a written representation of accredited status and a written representation that the investment is not financed by a third party for the specific purpose of making it, with no actual knowledge to the contrary[xxiv,xxv]. This is the cleanest structural answer for an offshore investor base — but it is a facts-and-circumstances conclusion, not a safe harbor.
- **Use a foreign attorney or accountant.** Third-party confirmation "is not limited to written confirmations from attorneys and certified public accountants who are licensed or registered in a jurisdiction within the United States"[xxvi]. For an investor below the minimum, this is the most reliable route.
- **Apply the principles-based method to foreign documents.** The staff has blessed reliance on foreign tax filings where the foreign jurisdiction imposes comparable penalties for false reporting, on the most recently available tax assessment, and on a non-U.S. consumer report coupled with additional steps[xxvii]. Document why the steps taken were reasonable **for that purchaser**.

Rule 506(b) avoids the verification problem entirely but forbids general solicitation — which means the sponsor must have a substantive pre-existing relationship with each offshore investor, a materially harder thing to build across borders. Three further points travel with the Regulation D route. Form D is due on EDGAR within fifteen calendar days of the first sale in the offering[xxviii]; state notice filings are preserved by NSMIA and are due wherever a **purchaser is located**, so offshore purchasers generate no state filing — a real administrative saving[xxix]. Bad-actor diligence is nationality-blind, so an offshore managing member, an offshore paid finder, and any investor whose subscription crosses **twenty percent of voting power** are all covered persons — although a foreign conviction or foreign regulatory order does **not** itself disqualify[xxx]. And if the issuer is an investment company relying on section 3(c)(1) or 3(c)(7), offshore beneficial owners count exactly like U.S. ones[xxxi].

Regulation S: The Offshore Door, and Its Price

Regulation S is not one rule, but three categories of decreasing generosity, and a private U.S. issuer lands in the least generous. Category 1 is closed to a domestic issuer of equity; Category 2 reaches equity only of a *reporting foreign* issuer. Equity of a private U.S. company or a U.S. real estate LLC or LP is therefore **Category 3 in every case**[xxxii]. The one-year period and most of the conditions below were added in 1998 precisely because domestic-issuer equity sold offshore was flowing back into the U.S. market[xxxiii]. Category 3 requires all of the following, in addition to the universal conditions of an offshore transaction and no directed selling efforts[xxxiv]:

- **A one-year distribution compliance period** during which no offer or sale may be made to a U.S. person or for the account or benefit of a U.S. person — six months only if the issuer is a reporting issuer, which a private sponsor is not[xxxv].
- **Offering restrictions**: written distributor agreements, an anti-hedging covenant, and legends on the cover or inside cover page, in the underwriting section, and in any advertisement[xxxvi].
- **A purchaser certification** of non-U.S.-person status, **a resale and anti-hedging agreement**, and a **transfer legend**[xxxvii].
- **A charter-level transfer-refusal provision.** The issuer must be required, "either by contract or a provision in its bylaws, articles, charter, or comparable document," to refuse to register any non-conforming transfer[xxxviii]. For an LLC or LP, this is an **operating agreement amendment that has to be drafted before closing** — the single most commonly missed Category 3 condition.

And the payoff is smaller than sponsors expect. Equity of a domestic issuer sold under Regulation S is deemed to be **restricted securities** under Rule 144 in the offshore purchaser's hands, exactly as if it had been sold under Rule 506[xxxix]. The offshore leg buys no liquidity advantage. What it buys is that the offshore purchasers are invisible to the Regulation D purchaser count and offering size[xl] — which matters if the sponsor is managing a Rule 506(b) non-accredited purchaser count, and matters very little otherwise. Note the corollary: if the sponsor **elects to sell to an offshore investor under Regulation D instead**, that investor counts like any other[xli]. And a Regulation S leg assembled to paper over a Regulation D problem is exposed to Preliminary Note 2, which withdraws the safe harbor from any transaction that, "although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions"[xlii].

REGULATION D AND REGULATION S COMPARED — PRIVATE U.S. ISSUER, EQUITY

	REGULATION D (RULE 506)	REGULATION S (CATEGORY 3)
Test applied	Purchaser status — accredited investor, no nationality or residency condition	Location at offer and buy order, plus non-U.S.-person status by **residence**

	REGULATION D (RULE 506)	REGULATION S (CATEGORY 3)
Who may buy	Unlimited accredited investors; up to 35 sophisticated non-accredited under 506(b)	Non-U.S. persons only, for one year after the offering closes
Solicitation	Prohibited under 506(b); permitted with verification under 506(c)	No directed selling efforts in the United States, in either leg
Verification burden	Real for offshore investors — the enumerated safe harbors assume U.S. documents	None as such, but a purchaser certification and resale agreement are mandatory
Document changes	Subscription representations; W-8 collection; bad-actor questionnaire	Legends, anti-hedging covenants, distributor agreements, and an **operating agreement transfer-refusal provision**
Holding period	Rule 144 restricted securities	Rule 144 restricted securities — no advantage
Federal filings	Form D within 15 days of first sale	None
State filings	Notice filings where purchasers are located — none for offshore buyers	None
Counts against 506 limits	Yes — offshore Reg D purchasers count like any other	No — Reg S purchasers are excluded from the count and the offering size
Principal failure mode	A verification file that will not survive examination	A missed Category 3 condition, or U.S. persons reached during the one-year period

Running Both Legs: Integration Is Settled; Solicitation Is Not

The integration question is closed. Rule 500(g) states that Regulation S may be relied upon "even if coincident offers and sales are made in accordance with Regulation D inside the United States," and that Regulation S purchasers are excluded from the Regulation D purchaser count and offering size[xliii]; Rule 152(b)(2) makes the same point as a general integration safe harbor with no timing condition[xliv]. A sponsor may run both legs at once.

The **directed selling efforts** question is a different matter, and sponsors are routinely told it is settled, even though it is not. The Commission was asked in 2012 to confirm that general solicitation in a Rule 506(c) offering would not constitute directed selling efforts; it answered only the integration question, and did so again in the 2013 adopting release. The staff confirmed in 2013 that the Rule 144A general-solicitation amendments "did not change how directed selling efforts are analyzed"[xlv]. In 2020 the Commission **proposed** to amend the directed-selling-efforts definition to solve the problem, and then **expressly declined to adopt** the amendment — offering instead a preamble clarification that general solicitation "would [not] preclude reliance on Regulation S," immediately qualified by the warning that "the use of the same website to solicit U.S. investors under Rule 506(c) and offshore investors under Regulation S **could raise concerns** about the issuer's compliance with the prohibition on directed selling efforts"[xlvi]. The operative rule text — the objective "could reasonably be expected to have the effect of conditioning the market in the United States" prong[xlvii] — is the same text the Commission proposed to narrow and then left in place.

The compliance answer is separation, and for a **domestic** issuer the Commission has set a demanding standard. Under its 1998 internet statement, a U.S. issuer will not be considered to have implemented reasonable measures to prevent sales to U.S. persons unless it "implements **password-type procedures** that are reasonably designed to ensure that only non-U.S. persons can obtain access to the offer," and the issuer "cannot accept at face value representations by investors regarding their residence"; the posted offshore materials "should relate only to the offshore offering" and may not hyperlink to the private placement materials[xlviii]. In practice: **two separate, unlinked data rooms**, different contact addresses, Regulation S legends on every page of the offshore set, a documented residency-screening gate ahead of the password, and 506(c) marketing scrubbed of anything describing the offshore tranche.

> **Our working recommendation.** Unless there is an affirmative reason to build a separate offshore tranche — a placement agent selling only offshore, a foreign-law requirement, or a Rule 506(b) purchaser-count problem — **admit non-U.S. investors under Rule 506 itself**. There is no nationality bar[xlix]; the securities are restricted either way[l]; the Category 3 conditions and the password-wall separation protocol are avoided entirely; and the sponsor runs one offering with one set of documents. Where a Regulation S leg is genuinely needed, build it as a structurally separate offering from the first day, not as a late accommodation to one investor.

Part Two · The Overlays That Decide the Deal

For most sponsors, the securities analysis is the easy part. What actually determines whether a subscription closes — and whether the sponsor and the investor are exposed after it closes — is the set of national-security, land-ownership, and tax regimes that operate independently of the Securities Act and that are keyed to nationality, domicile, and control in ways Regulation D is not.

CFIUS and the Operating Company: "We Are Not a Defense Company" Is Not an Answer

CFIUS jurisdiction rests on section 721 of the Defense Production Act as amended by FIRRMA[li], and runs on two tracks where the target is a U.S. operating business. A **covered control transaction** is any transaction that could result in foreign control of a U.S. business[lii]. A **covered investment** is a non-controlling investment by a foreign person other than an excepted investor in an unaffiliated **TID U.S. business** that affords access to material nonpublic technical information, board or observer rights, or involvement in substantive decision-making about sensitive personal data, critical technologies, or covered investment critical infrastructure[liii]. There is no de minimis floor — a two percent interest with an observer seat is within jurisdiction — and a later **change in rights** granted to an existing investor is itself a covered transaction.

Everything therefore depends on whether the portfolio company is a TID business, and this is where sponsors of ordinary commercial technology companies get surprised. A TID business is one that develops critical technologies, performs listed functions with respect to covered investment critical infrastructure, or **maintains or collects sensitive personal data of U.S. citizens**[liv]. The critical-technology prong extends far beyond defense articles: any Commerce Control List item controlled for **regional stability**, encryption, or surreptitious listening, and any emerging or foundational technology, qualifies — so a commercial AI, semiconductor, biotechnology, or cybersecurity company with a single export control classification is a TID business[lv]. The sensitive-personal-data prong is the trap: it is triggered by maintaining or collecting, **directly or indirectly through a vendor**, data in any of ten identifiable categories on more than **one million individuals** in the trailing twelve months — and it also reaches a company below that threshold with a demonstrated business objective to exceed it. The regulation's own example is a startup whose **fundraising materials** projected more than a million subscribers[lvi]. Your own pitch deck can create TID status.

For fund sponsors, there is a purpose-built exception, and it is narrow. An indirect investment by a foreign person through an investment fund is not a covered investment where **all six** conditions are met: the fund is managed exclusively by a general partner or managing member; that person is **not a foreign person**; any advisory board or committee lacks the ability to approve, disapprove, or control investment decisions or general-partner decisions on portfolio entities; the foreign person cannot otherwise control the fund, including by unilaterally dismissing, preventing the dismissal of, selecting, or determining the compensation of the general partner; the foreign person has no access to material nonpublic technical information; and the investment affords none of the covered-investment rights[lvii]. The exception is drafted around advisory-board membership. **A side letter granting information rights, co-investment access to technical information, or a general-partner removal right breaks the exception for that investor** — and the regulation's own example has a fund escaping mandatory declaration while a limited partner who received portfolio-company technical information did not.

Where a declaration is mandatory — broadly, a substantial foreign-government interest in a TID business, or a critical-technology business for which a U.S. export authorization would be required — it is due **thirty days before the completion date**, which means the subscription agreement needs a CFIUS condition precedent and a thirty-day gap built into the closing mechanics[lviii]. The penalty for failing to file was raised in December 2024 to **the greater of $5,000,000 or the value of the transaction**, with parallel increases for misstatements and mitigation breaches, and new subpoena authority to reach non-parties[lix]. Of our four jurisdictions, **only Canada is an excepted foreign state** — and "excepted investor" is a jurisdiction-of-organization and control test, not a nationality test, so a Toronto-domiciled fund with a twelve percent Chinese limited partner is not excepted, and dual Canadian-Chinese nationality destroys individual excepted status[lx]. The February 2025 America First Investment Policy directs CFIUS to restrict PRC-affiliated investment in technology, critical infrastructure, healthcare, agriculture, energy, and raw materials, and promises an allied "fast-track"[lxi] — but as of September 2026 the fast-track exists only as an invitation-only pilot and a closed request for information, with no rule[lxii]. Plan on ordinary timelines.

CFIUS and Real Estate: A Map Problem, Not a Filing Problem

The real estate regime is structurally different in one respect that sponsors should understand immediately: **there is no mandatory declaration under Part 802**. All real estate filings are voluntary[lxiii] — though CFIUS retains authority to call in a non-notified transaction, and the $5,000,000 penalties for misstatements and mitigation breaches apply. The exposure is therefore not a missed filing deadline; it is a forced divestiture years later on an asset nobody screened.

A covered real estate transaction is a purchase, lease, or concession to a foreign person of covered real estate that affords at least **three of four property rights**: to physically access, to exclude others, to improve or develop, or to attach fixed structures[lxiv]. A standard commercial ground lease or a triple-net lease with build-out rights will ordinarily confer all four. Note that a transaction arising from a bankruptcy proceeding or a debt default is a covered real estate transaction[lxv] — lenders and preferred-equity holders taking title on a default are within the regime.

Covered real estate is defined by geography, and the mileage is frequently misstated. **"Close proximity" is one mile** from the installation boundary. **"Extended range" is ninety-nine miles measured outward from the outer boundary of close proximity** — so the outer reach for the sites subject to it is one hundred miles, but the regulation never uses that figure[lxvi]. Appendix A has four parts: part 1 sites carry the one-mile band only; part 2 sites carry the full hundred miles; part 3 covers active Air Force ballistic missile fields **by named county and by Public Land Survey System township and range**, with no radius at all, across Colorado, Nebraska, Wyoming, Montana, and North Dakota; and part 4 covers offshore Navy range complexes. Airports and maritime ports are covered independently of any military installation[lxvii],[lxviii]. The list was last expanded effective **December 9, 2024**, adding 59 installations, moving 8 sites from the one-mile list to the hundred-mile list, and removing 3 — so site diligence performed before that date should be rerun.

Two exceptions do most of the work in commercial practice. The **urbanized area** exception removes covered real estate located within an urbanized area or urban cluster — **but it is unavailable for covered ports and unavailable within the one-mile close-proximity band**, which is the exception to the exception that catches people[lxix]. And the **commercial multi-tenant** exception removes the purchase or lease of commercial space in a multi-unit building where the foreign person and its affiliates, in the aggregate, hold not more than **ten percent of the building's commercial square footage** and represent not more than **ten percent of the total number of tenants**[lxx]. Finally, the two parts are mutually exclusive: buying a real estate **operating company** is a Part 800 matter, not a Part 802[lxxi] matter. The excepted-real estate-investor route exists, but only for a genuinely Australian-, Canadian-, New Zealand-, or United Kingdom-controlled vehicle that meets the same board, look-through, and minimum-ownership tests[lxxii].

Foreign Ownership of U.S. Land: The Federal Layer Is Thin

There is no general federal prohibition on foreign ownership of U.S. real estate. The principal federal statute in the area, the Agricultural Foreign Investment Disclosure Act, is a **reporting statute and not a prohibition** — its penalty provision reaches only the failure to file, and the knowing filing of a false or incomplete report, and nothing in the statute or its regulations imposes an acreage cap, a divestiture requirement, or an approval condition[lxxiii]. A foreign person acquiring an interest in agricultural land files Form FSA-153 within **ninety days**; late filings accrue 0.1% of fair market value per week, and a false or missing report draws the full statutory **twenty-five percent of fair market value**[lxxiv]. The definition of "foreign person" reaches **U.S.-organized entities** where a single foreign holder holds ten percent or more, where multiple foreign holders acting in concert hold ten percent or more, or where foreign persons hold fifty percent or more in the aggregate[lxxv] — so a Delaware fund with offshore limited partners can be the reporting person.

A substantial overhaul is pending. A June 2026 proposed rule would mandate electronic filing, add a "foreign adversary" definition, narrow the leasehold exemption from ten years to **one year**, expand "agricultural land" by NAICS code to reach **solar and wind generation facilities and pipelines**, lower the aggregate significant-interest threshold from fifty percent to **ten percent**, and accelerate penalty accrual[lxxvi]. The comment period closed in August 2026 and no final rule has issued — so the ninety-day paper filing, the ten-year leasehold exemption, and the fifty percent threshold remain the operative rules today, and 2027 acquisitions should be structured on the assumption that they will not be.

Foreign Ownership of U.S. Land: The State Layer Is Not Thin at All

Roughly two-thirds of the states now restrict some form of foreign land ownership, and the 2023–2026 wave has moved decisively beyond agricultural land. Two statutes should change how a national commercial sponsor screens investors.

Texas. Senate Bill 17, effective September 1, 2025, provides that "[n]otwithstanding any other law" certain persons may not purchase or otherwise acquire an interest in real property in the State — and "real property" is defined to include **commercial property, industrial property**, agricultural land, mines and quarries, minerals in place, standing timber, groundwater, and water rights[lxxvii]. This is not a farmland statute. The individual test is **domicile**, not citizenship; the entity test reaches a company headquartered in a designated country, controlled by its government, or majority-owned by covered individuals — **which captures a Delaware or Cayman fund vehicle with majority PRC ownership**. Designated countries are keyed to the Director of National Intelligence's Annual Threat Assessment, currently China, Iran, North Korea, and Russia, and the Governor may add others without legislation. Leaseholds of less than one year are excepted. Enforcement includes mandatory divestiture and receivership, a state jail felony for covered individuals, and a civil penalty against an entity equal to the greater of $250,000 or 50% **of the market value** of the interest[lxxviii]. The Fifth Circuit affirmed dismissal of the first challenge on standing in December 2025; no provision is enjoined[lxxix].

Florida. Sections 692.202 and 692.203 restrict foreign principals from owning agricultural land and from owning any interest in real property on or within **ten miles** of a military installation — defined as a base, camp, post, station, yard, or center of at least ten contiguous acres — or of a listed critical infrastructure facility. But the provision that matters most in a Florida commercial deal is the separate and stricter **section 692.204**, which bars persons and entities associated with the People's Republic of China from owning any interest in **real property in the State**, with no agricultural or geographic limitation. The *de minimis* carve-out is narrow — registered equities of a public company below 5% of any class and 5% in the aggregate. Violation is a **third-degree felony,** and the property is subject to forfeiture[lxxx]. The Eleventh Circuit resolved the leading standing challenge in November 2025, applying rational-basis review to alienage-based land restrictions and rejecting the Fair Housing Act theory; the statute is enforceable, and the constitutionality of the purchase prohibitions themselves remains undecided on the merits[lxxxi].

A SAMPLING OF STATE RESTRICTIONS REACHING NON-RESIDENTIAL PROPERTY

STATE	REACH	NOTE
Texas	All real property, including commercial and industrial	Domicile test for individuals; captures majority-owned U.S. and offshore fund vehicles; divestiture, receivership, felony, and a penalty of the greater of $250,000 or 50% of value[lxxxii]
Florida	All real property as to PRC-associated persons; 10-mile military and critical-infrastructure band for others	Third-degree felony and forfeiture under § 692.204; registration duties with per-day penalties[lxxxiii]
Louisiana	All immovable property	"Foreign adversary" keyed to 15 C.F.R. § 7.4(a); attorney general may compel disposition[lxxxiv]
West Virginia	All real estate interests, mineral rights included	Retroactive, with a six-month divestiture window that ran in January 2026[lxxxv]

STATE	REACH	NOTE
Utah	Any "interest in land," including leaseholds and security interests	A conveyance to a restricted foreign entity is invalid; escheat after five years[lxxxvi]
Tennessee	Real property broadly defined, including water and mineral rights	2026 amendments lowered the control threshold to 33% and the significant-interest threshold to 10%, and added registration of non-agricultural interests[lxxxvii]
Alabama · Georgia · Indiana · Montana	Military-proximity and critical-infrastructure triggers	Alabama and Georgia use a 10-mile radius; Montana reaches property with a direct line of sight to a military installation[lxxxviii]
Arkansas	Agricultural land, plus all real property as to certain controlled businesses	⚠️ **Currently enjoined.** The only decision in the country holding a state foreign-ownership statute likely preempted by FIRRMA; the Eighth Circuit appeal was argued in January 2026 and remains undecided[lxxxix]

The doctrinal picture is worth stating plainly, because clients ask. Both circuits to reach these statutes in 2025 decided on **standing**, not the merits — and states that drafted a **domicile** test rather than a citizenship test have largely insulated themselves from challenge by the most sympathetic plaintiffs[xc],[xci]. Where a merits question arose, the state prevailed. The genuinely open question is **federal preemption**, and the pending Eighth Circuit appeal is the only realistic near-term source of relief[xcii]. Advise clients that these statutes are presumptively enforceable.

Part Three · Tax, in Overview Only

> **This section is an orientation, not advice.** U.S. tax outcomes for non-U.S. investors turn on the asset, the entity, the investor's own tax position, and treaty access, and the structure is almost always tax-driven rather than securities-driven. **No structure described here should be adopted without tax counsel modeling it for the specific deal and the specific investor.** State and local tax, FATCA and Chapter 4 withholding, and the investor's home-country taxation of the U.S. investment are outside the scope of this alert.

The single point sponsors most often miss is not withholding — it is **enrollment**. A nonresident alien or foreign corporation "shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged"[xciii]. There is no passivity exception and no minimum percentage. A one percent limited partner in a U.S. LLC that operates a commercial property or a technology business becomes a **U.S. taxpayer**, must obtain a U.S. taxpayer identification number, and must file a U.S. return annually — and deductions and credits are allowed only by filing a true and accurate return, so a non-filer is taxed on gross[xciv]. Most non-U.S. investors decline the deal once they understand this. That reaction, and not any securities rule, is why the structure exists.

Layered on top: the partnership must withhold on effectively connected taxable income allocable to foreign partners at **thirty-seven percent** for individuals and **twenty-one percent** for corporations, quarterly, whether or not cash is distributed — an entity-level obligation of the sponsor — and a transfer of a partnership interest triggers **ten percent of the amount realized** in withholding[xcv]. Under U.S. real estate, FIRPTA treats a foreign investor's gain on the disposition of a United States real property interest as effectively connected income, subject to withholding[xcvi]. Passive income that is not effectively connected is subject to **thirty percent** withholding, and the portfolio interest exemption — the cleanest route to zero U.S. tax with no filing obligation — is unavailable to anyone holding **ten percent or more of the capital or profits interest** of a partnership obligor, which is precisely the sponsor-led preferred-equity-plus-debt fact pattern[xcvii].

Treaty access is uneven across our four jurisdictions and should be confirmed early. The United States has a comprehensive income tax treaty in force with **Canada** and the **People's Republic of China** (which, by its terms, does not apply to Hong Kong or Macau). It has **none** with Argentina and **none** with Singapore[xcviii]. An Argentine or Singaporean investor is on statutory rates with no relief. In every case, the subscription package must include a signed Form W-8BEN or W-8BEN-E — with the limitation-on-benefits box checked for entity investors — **before the first payment**, or the sponsor withholds at 30% and absorbs the shortfall.

Two structures dominate the response. A **domestic C corporation blocker** converts a recurring investor-level filing obligation into a one-time entity-level tax of twenty-one percent plus dividend withholding on repatriation — expensive, but what most passive foreign investors will demand; a *foreign* corporation blocker is generally uncommercial for U.S. real estate because the thirty percent branch profits tax stacks on top of the corporate tax[xcix]. A **domestically controlled REIT** is the workhorse for commercial real estate, because an interest in a domestically controlled qualified investment entity is not a United States real property interest — which gives the foreign investor a FIRPTA-free, filing-free exit[c]. Note the moving part: regulations finalized in April 2024 adopted a look-through rule treating a foreign-controlled domestic corporation as a look-through person, with a ten-year transition; **proposed regulations issued in October 2025 would remove that rule entirely**, and taxpayers may rely on the proposal pending finalization — which had not occurred as of September 2026[ci]. Paper the structure to survive both outcomes. Finally, for the avoidance of doubt: the proposed retaliatory tax on investors from countries with "unfair foreign taxes" that passed the House in 2025 was **dropped and never enacted**[cii].

Part Four · The Investor's Own Jurisdiction

A U.S. sponsor cannot make a compliant offer into a foreign jurisdiction on the strength of U.S. law alone, and in at least one of these four markets the binding constraint has nothing to do with securities regulation. The table below identifies the exemption ordinarily relied on and — more usefully — the item that actually delays or kills the subscription. **Each row requires confirmation by counsel admitted in that jurisdiction; these regimes change frequently, and two of the four changed materially in 2026.**

HOME-COUNTRY GATING ITEMS — FOR ISSUE-SPOTTING ONLY

	EXEMPTION ORDINARILY RELIED ON	WHAT ACTUALLY DELAYS OR KILLS THE SUBSCRIPTION
Canada	NI 45-106 s. 2.3 accredited investor; in Ontario, s. 73.3 of the Securities Act	The closing checklist, not eligibility. A Form 45-106F1 must be filed **in every province where a purchaser resides within ten days**, with a separate fee per province — and for individual accredited investors under paragraphs (j), (k), and (l) a signed **Form 45-106F9 risk acknowledgement must be obtained at or before** signature, failing which the exemption is unavailable[ciii]

	EXEMPTION ORDINARILY RELIED ON	WHAT ACTUALLY DELAYS OR KILLS THE SUBSCRIPTION
Argentina	No express safe harbour; the analysis is negative, from the definition of *oferta pública*	**Exchange control.** The definition expressly reaches email and social media, so a 506(c) posture is acutely dangerous. Controls on individuals were largely lifted in April 2025, but every foreign-exchange access and every transfer abroad now requires online registration with the central bank and a sworn undertaking **not to buy foreign-currency-settled securities for ninety calendar days**. Budget a funding timetable in months and use a long-stop date[civ],[cv]
Singapore	Securities and Futures Act ss. 274 and 275; or the S$200,000-per-transaction route under s. 275(1A)	The **opt-in**. Since 2019 an investor is an accredited investor for s. 275(1) purposes only where the offeror has assessed the person, delivered the prescribed statements and the statutory general warning, and obtained a **signed written consent**. A sponsor that collects a self-certification has no exemption at all; default to the S$200,000 route if the opt-in cannot be completed cleanly[cvi]
China (PRC)	Securities law is not the constraint	**Capital outflow.** The USD 50,000 annual individual quota is a current-account facility and **may not be used for overseas securities investment** — the SAFE application form says so on its face, and breach draws watchlist designation and loss of the quota for three years. Individual outbound direct investment requires local SAFE approval, for which there is no established retail process; the offshore-SPV route runs through Circular 37 registration; and an enterprise route runs through NDRC and MOFCOM filings plus bank-administered registration, realistically two to four months. State Council Order No. 837, effective July 1, 2026, extends the unified regime to resident individuals — **but the implementing measures do not yet exist**[cvii],[cviii],[cix]

Part Five · What This Means for the Subscription File

Three obligations apply to every offshore subscription regardless of the door chosen, and none of them is discretionary.

- **Sanctions screening.** No rule requires a screening program for a sponsor that is not a financial institution — but the underlying prohibitions apply to every U.S. person, civil liability is **strict**, the sponsor itself must file blocked-property and rejected-transaction reports, and the fifty percent rule requires looking through the ownership of any offshore-entity subscriber[cx]. Screen at subscription, at each capital call, and before each distribution.
- **Anti-money-laundering, on a delayed clock.** FinCEN's investment adviser AML rule has been delayed to **January 1, 2028**, and no substantive re-proposal had been issued as of September 2026[cxi]. Do not treat the delay as a repeal — and build the offshore investor identity and source-of-funds file now, because reconstructing it on 2026-vintage investors in late 2027 is far harder than collecting it at subscription.
- **Beneficial ownership reporting, now much narrower.** As of August 2026, only **foreign-formed entities registered to do business in a State** are reporting companies, and reporting of U.S. person beneficial owners and company applicants is exempt[cxii]. A foreign entity that merely subscribes for interests, without qualifying to do business in a State, has no obligation. Corporate Transparency Act representations should be removed from U.S. issuer subscription documents and replaced with a narrow covenant applying to a foreign subscriber that later qualifies to do business.

- **Intermediaries.** Compensating an offshore person for introducing investors implicates broker-dealer registration and makes that person a covered person for bad-actor purposes[cxiii],[cxiv]. Paper the arrangement, or do not make it.

Sequenced practically, the order of operations is: **(1)** determine the investor's residence and domicile under a written policy adopted in advance; **(2)** screen the asset — for an operating company, against all three TID prongs; for real property, against the Appendix A site list, the situs state's ownership statute, and any agricultural-land reporting duty; **(3)** choose the door, and if it is Regulation S, draft the operating agreement transfer-refusal provision **before** closing; **(4)** engage tax counsel on the entity and the blocker before the offering document is drafted; **(5)** confirm the home-country exemption and funding route with local counsel, with a long-stop date matched to the realistic timetable; and **(6)** build the sanctions, verification, and bad-actor file as the subscription is accepted, not afterward.

The Bottom Line

Non-U.S. capital is admissible to a U.S. private placement, and the securities analysis is usually the least of it. Regulation D imposes no nationality condition at all, and for a private U.S. issuer it is ordinarily the better door — Regulation S buys a one-year lockout, a set of certifications and legends, and a charter amendment, in exchange for securities that are restricted either way. Running both legs is permitted, and non-integration is settled; the directed-selling-efforts question is not, and a domestic issuer that markets both tranches from one website is relying on a release preamble rather than a rule.

What deserves the sponsor's attention earliest is everything outside the Securities Act: whether the portfolio company is a TID business because of a dataset or an export classification nobody thought about; whether the asset sits within a mile of a listed installation or in a State that now restricts commercial property outright; what the investor's admission does to the tax structure and to every other investor in it; and whether the money can lawfully leave the investor's home country at all. Those questions are answerable — but only **before** the subscription agreement is signed, not after.

> *The question is rarely whether a non-U.S. investor may be admitted. It is what the admission does to the deal — and whether anyone asked before the money moved.*

If you are structuring an offering that will admit non-U.S. investors, screening an asset or portfolio company for CFIUS or state land ownership exposure, or reviewing subscription documents drafted for a domestic investor base, we would be pleased to help.

FOR FURTHER INFORMATION

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ENDNOTES

[i] 17 C.F.R. § 230.501(a) (2026), *as amended by* Accredited Investor Definition, Securities Act Release No. 33-10824, 85 Fed. Reg. 64234 (Oct. 9, 2020). No category imposes a condition of U.S. citizenship, residency, domicile, or organization. *See also id.* § 230.501(c) (proceeds received in a foreign currency).

[ii] 17 C.F.R. § 230.902(k)(1)(i) (2026) ("U.S. person" includes "[a]ny natural person *resident in* the United States"); *id.* § 230.902(k)(2)(i) (excluding a discretionary account held for a non-U.S. person by a U.S. professional fiduciary).

[iii] 17 C.F.R. § 230.902(h)(1) (2026) (the offer must not be made to a person in the United States, and at the time the buy order is originated the buyer must be outside the United States or the seller must reasonably believe so); *id.* § 230.902(h)(2) (offers targeted at identifiable groups of U.S. citizens abroad are not offshore transactions).

[iv] 17 C.F.R. § 230.903(b)(1)–(2) (2026). Category 1 is limited to foreign issuers, certain overseas directed offerings (for a domestic issuer, only non-convertible debt), and foreign-government-backed and foreign-plan securities; Category 2 reaches equity only of a *reporting foreign* issuer. Equity of a private domestic issuer falls to Category 3 in every case. *See id.* § 230.902(e).

[v] 17 C.F.R. § 230.903(b)(3)(iii)(A) (2026) (one-year distribution compliance period for equity; six months for a reporting issuer); *id.* § 230.902(f).

[vi] 17 C.F.R. § 230.903(b)(3)(iii)(B)(*1*)–(*4*) (2026) (purchaser certification; resale and anti-hedging agreement; transfer legend; and a requirement that the issuer "either by contract or a provision in its bylaws, articles, charter or comparable document[]" refuse to register non-conforming transfers).

[vii] 17 C.F.R. § 230.905 (2026) ("Equity securities of domestic issuers acquired from the issuer, a distributor, or any of their respective affiliates in a transaction subject to the conditions of § 230.901 or § 230.903 are deemed to be 'restricted securities' as defined in § 230.144."); *accord id.* § 230.144(a)(3)(v); Securities Act Rules C&DI Question 279.01 (Jan. 23, 2015).

[viii] 17 C.F.R. § 230.500(g) (2026) ("Regulation S may be relied on … even if coincident offers and sales are made in accordance with Regulation D inside the United States," and Regulation S purchasers are excluded from the Regulation D purchaser count and aggregate offering price).

[ix] 17 C.F.R. § 230.152(b)(2) (2026) ("Offers and sales made in compliance with … §§ 230.901 through 230.905 (Regulation S) will not be integrated with other offerings."), *adopted by* Securities Act Release No. 33-10884, 86 Fed. Reg. 3496 (Jan. 14, 2021) (effective Mar. 15, 2021).

[x] Facilitating Capital Formation …, Securities Act Release No. 33-10884, 86 Fed. Reg. 3496, 3510–11 (Jan. 14, 2021) (declining to adopt the proposed amendments to Regulation S; clarifying that general solicitation for an exempt domestic offering would not preclude reliance on Regulation S for a concurrent offshore offering; but cautioning that "the use of the same website to solicit U.S. investors under Rule 506(c) and offshore investors under Regulation S could raise concerns" about directed selling efforts).
[xi] Tex. Prop. Code Ann. §§ 5.251–.259 (West 2025), *enacted by* Act of May 30, 2025, 89th Leg., R.S., S.B. 17 (effective Sept. 1, 2025). Section 5.251(6) defines "real property" to include **commercial property, industrial property**, agricultural land and improvements on it, residential property, mines and quarries, minerals in place, standing timber, groundwater, and water rights. Section 5.251(3) keys "designated country" to the Director of National Intelligence's Annual Threat Assessment — currently China, Iran, North Korea, and Russia — and to gubernatorial designation. Section 5.252 excepts leaseholds of less than one year. Penalties include divestiture and receivership (§ 5.257), a state jail felony (§ 5.258), and a civil penalty of the greater of $250,000 or fifty percent of market value (§ 5.259).
[xii] Fla. Stat. §§ 692.201–.205 (2026), *enacted by* Act of May 8, 2023, ch. 2023-33, 2023 Fla. Laws (S.B. 264). Section 692.202 bars a "foreign principal" from owning agricultural land; § 692.203 extends the bar to any interest in real property on or within ten miles of a military installation — a base, camp, post, station, yard, or center of at least ten contiguous acres — or a listed critical infrastructure facility; and § 692.204 bars persons and entities associated with the People's Republic of China from owning **any interest in real property in the State**. The *de minimis* carve-out reaches only registered equities of a public company below five percent of any class and five percent in the aggregate. Violation of § 692.204 is a third-degree felony, § 692.204(8), and the property is subject to forfeiture.
[xiii] 31 C.F.R. §§ 800.218, 800.219 (2026) (excepted foreign state; excepted investor — a jurisdiction-of-organization and control test requiring, for entities, excepted-state or U.S. organization and principal place of business, seventy-five percent excepted or U.S. board membership and observers, a ten-percent look-through on every foreign holder, and minimum excepted ownership, tested at the entity and each parent, with a five-year disqualifier list and a three-year retroactivity tail); Comm. on Foreign Inv. in the U.S., *Excepted Foreign States* (Australia, Canada, New Zealand, United Kingdom) (last visited Sept. 1, 2026).
[xiv] 《个人外汇管理办法实施细则》[Detailed Rules for the Implementation of the Measures for the Administration of Individual Foreign Exchange], 汇发[2007]1号 arts. 2, 16, 17, 27 (China) (annual facilitation amount of USD 50,000 per person; individual outbound direct investment requires local SAFE approval; individual overseas financial investment must go through qualified domestic institutional investors; capital-account accounts require SAFE approval). The SAFE-prescribed 《个人购汇申请书》 states on its face that purchased foreign exchange may not be used for overseas home purchase, **securities investment**, or other capital-account items not yet opened, and provides for watchlist designation and loss of the quota for three years.
[xv] 17 C.F.R. § 230.902(h), *supra* note 3.
[xvi] 17 C.F.R. § 230.902(k), *supra* note 2.
[xvii] 17 C.F.R. § 230.902(h), *supra* note 3.
[xviii] 17 C.F.R. § 230.902(k), *supra* note 2.
[xix] 17 C.F.R. § 230.902(c)(1) (2026) (activity undertaken for the purpose of, or that could reasonably be expected to have the effect of, conditioning the market in the United States); *id.* § 230.902(c)(3)(ii).
[xx] Securities Act Rules Compliance & Disclosure Interpretation Question 276.01 (Dec. 8, 2016) ("an issuer must decide what criteria it will use to determine residency and apply them consistently without changing them to achieve a desired result").
[xxi] 17 C.F.R. § 230.501(a), *supra* note 1.
[xxii] 17 C.F.R. § 230.506(b) (2026) (no general solicitation; unlimited accredited investors plus up to thirty-five sophisticated non-accredited purchasers); *id.* § 230.506(c) (general solicitation permitted; all purchasers accredited and verified).
[xxiii] 17 C.F.R. § 230.506(c)(2)(ii)(A)–(E) (2026) (IRS-form income review; net-worth documentation including a nationwide consumer report; third-party confirmation; grandfathered holders; five-year re-verification). Instruction 1 provides that the methods are "non-exclusive and non-mandatory."
[xxiv] *Latham & Watkins LLP*, SEC No-Action Letter (Div. Corp. Fin. Mar. 12, 2025) (reasonable steps satisfied by a minimum cash investment of at least $200,000 for natural persons and $1,000,000 for entities, plus written representations of accredited status and of no third-party financing obtained for the specific purpose of the investment, absent actual knowledge to the contrary).

[xxv] Securities Act Rules C&DI Questions 256.35, 256.36 (Mar. 12, 2025) (a high minimum investment may support "no additional steps to verify … other than to confirm that the purchaser's cash investment is not being financed by a third party"); *see also id.* Question 260.39 (Jan. 23, 2026).
[xxvi] Securities Act Rules C&DI Question 260.09 (Nov. 13, 2013) (third-party verification "is not limited to written confirmations from attorneys and certified public accountants who are licensed or registered in a jurisdiction within the United States"); *id.* Questions 260.36–.38 (July 3, 2014) (the enumerated safe harbors are unavailable to a non-U.S. taxpayer, but the principles-based method permits reliance on foreign tax filings where that jurisdiction imposes comparable penalties for false reporting, on the most recent tax assessment, and on a non-U.S. consumer report with additional steps).
[xxvii] C&DI Question 260.09, *supra* note 26.
[xxviii] 17 C.F.R. § 230.503(a) (2026) (Form D on EDGAR within fifteen calendar days of the first sale, amended annually while the offering continues); *id.* § 230.507.
[xxix] 15 U.S.C. § 77r(b)(4)(F) (2024) (Rule 506 securities are covered securities); *id.* § 77r(c)(1)–(2) (preserving state fraud jurisdiction, notice filings, consents to service, and fees).
[xxx] 17 C.F.R. § 230.506(d)(1) (2026) (covered persons include any twenty-percent voting beneficial owner and any person paid remuneration for solicitation of purchasers); *id.* § 230.506(d)(2)(iv) & Instruction; Securities Act Rules C&DI Question 260.20 (Dec. 4, 2013) (disqualification is *not* triggered by foreign convictions, orders, injunctions, or foreign regulatory orders).
[xxxi] 15 U.S.C. § 80a-3(c)(1) (2024) (not more than one hundred beneficial owners); *id.* § 80a-3(c)(7); *id.* § 80a-2(a)(51). Neither exclusion contains a nationality carve-out; for a U.S.-organized issuer every offshore beneficial owner counts.
[xxxii] 17 C.F.R. § 230.903(b), *supra* note 4.
[xxxiii] Offshore Offers and Sales, Securities Act Release No. 33-7505, 63 Fed. Reg. 9632 (Feb. 25, 1998) (extending the domestic-issuer equity distribution compliance period to one year and adopting Rule 905 and the certification, legending, transfer-refusal, and anti-hedging requirements); *see* Securities Act Release No. 33-6863, 55 Fed. Reg. 18306 (May 2, 1990).
[xxxiv] 17 C.F.R. § 230.903(a) (2026) (universal conditions: an offshore transaction and no directed selling efforts in the United States, plus the applicable Category conditions).
[xxxv] 17 C.F.R. § 230.903(b)(3)(iii)(A), *supra* note 5.
[xxxvi] 17 C.F.R. § 230.902(g) (2026) (written distributor agreements, an anti-hedging covenant for domestic-issuer equity, and legends on the cover or inside cover page, in the underwriting section, and in any advertisement).
[xxxvii] 17 C.F.R. § 230.903(b)(3)(iii)(B), *supra* note 6.
[xxxviii] 17 C.F.R. § 230.903(b)(3)(iii)(B), *supra* note 6.
[xxxix] 17 C.F.R. § 230.905, *supra* note 7.
[xl] 17 C.F.R. § 230.500(g), *supra* note 8.
[xli] Securities Act Rules C&DI Question 255.33 (rev. Mar. 12, 2025) ("[I]f the issuer elects to rely on Regulation D for offers and sales to non-U.S. investors, the issuer must count the non-U.S. investors in calculating whether it meets the conditions of Regulation D limiting the number of investors.").
[xlii] Regulation S, Preliminary Note 2, 17 C.F.R. pt. 230 (2026) ("[R]egulation S is not available with respect to any transaction or series of transactions that, although in technical compliance with these rules, is part of a plan or scheme to evade the registration provisions of the Act.").
[xliii] 17 C.F.R. § 230.500(g), *supra* note 8.
[xliv] 17 C.F.R. § 230.152(b)(2), *supra* note 9.
[xlv] Securities Act Rules C&DI Question 138.04 (Nov. 13, 2013) (the Rule 144A general-solicitation amendments did **not** change how directed selling efforts are analyzed); *see also* Securities Act Release No. 33-9415, 78 Fed. Reg. 44771, 44786 (July 24, 2013) (addressing integration only).
[xlvi] Release No. 33-10884, *supra* note 10.
[xlvii] 17 C.F.R. § 230.902(c), *supra* note 19.
[xlviii] Statement of the Commission Regarding Use of Internet Web Sites to Offer Securities, Solicit Securities Transactions, or Advertise Investment Services Offshore, Securities Act Release No. 33-7516, 63 Fed. Reg. 14806, 14808–10 (Mar. 27, 1998) (a domestic issuer has not implemented reasonable measures "unless … the U.S. issuer implements password-type procedures that are reasonably designed to ensure that only non-U.S. persons can obtain access to the offer"; and posted offshore materials "should relate only to the offshore offering"); *id.* at 14810 n.35 (an issuer "cannot accept at face value representations by investors regarding their residence" (citing Securities Act Release No. 33-7392, 62 Fed. Reg. 9258)).
[xlix] 17 C.F.R. § 230.501(a), *supra* note 1.
[l] 17 C.F.R. § 230.905, *supra* note 7.

[li] Defense Production Act of 1950 § 721, 50 U.S.C. § 4565 (2024), *as amended by* Foreign Investment Risk Review Modernization Act of 2018, Pub. L. No. 115-232, div. A, tit. XVII, subtit. A, 132 Stat. 1636, 2173 (2018).
[lii] 31 C.F.R. § 800.211 (2026) (covered investment); *id.* § 800.303(a) (no minimum percentage); *id.* § 800.213(c) (a later change in rights is itself a covered transaction); *id.* § 800.210 (covered control transaction).
[liii] 31 C.F.R. § 800.211, *supra* note 52.
[liv] 31 C.F.R. § 800.248 (2026) (TID U.S. business — critical technologies, covered investment critical infrastructure, or sensitive personal data of U.S. citizens); *id.* § 800.215 (critical technologies include Commerce Control List items controlled for regional stability or surreptitious listening, and emerging and foundational technologies under 50 U.S.C. § 4817); *id.* § 800.212 & app. A.
[lv] 31 C.F.R. § 800.248, *supra* note 54.
[lvi] 31 C.F.R. § 800.241 (2026) (ten data categories plus genetic test results; the one-million-individual threshold; the "demonstrated business objective" to exceed it; employee-data and public-record exclusions); *see id.* § 800.241(c) ex. 5 (a start-up whose fundraising materials projected more than one million subscribers); *id.* § 800.248(d) ex. 12 (data maintained indirectly through a vendor).
[lvii] 31 C.F.R. § 800.307(a) (2026) (six cumulative conditions, including exclusive management by a general partner who is not a foreign person, an advisory board without control over investment or portfolio-entity decisions, no unilateral right to dismiss or set the compensation of the general partner, no access to material nonpublic technical information, and none of the rights specified in § 800.211(b)); *see also id.* §§ 800.302(b), 800.243.
[lviii] 31 C.F.R. § 800.401(b), (c) (2026) (the two mandatory triggers); *id.* § 800.244 (twenty-five and forty-nine percent thresholds, with the fund-specific rule testing the general partner rather than the fund); *id.* §§ 800.401(d)(1), (e)(3) (fund exemptions); *id.* § 800.401(g)(2) (thirty days before the completion date).
[lix] 31 C.F.R. § 800.901(b) (2026) (penalty for failure to file a mandatory declaration "not to exceed $5,000,000 or the value of the transaction, whichever is greater"), *as amended by* Penalty Provisions … Pertaining to Certain Investments in the United States by Foreign Persons, 89 Fed. Reg. 93179 (Nov. 26, 2024) (effective Dec. 26, 2024) (also raising misstatement and mitigation-breach penalties and adding subpoena authority at § 800.801(a)(6)).
[lx] 31 C.F.R. §§ 800.218–.219, *supra* note 13.
[lxi] Memorandum on America First Investment Policy, 2025 Daily Comp. Pres. Doc. DCPD-202500292 (Feb. 21, 2025) (directing the use of "all necessary legal instruments, including [CFIUS], to restrict PRC-affiliated persons from investing in United States technology, critical infrastructure, healthcare, agriculture, energy, raw materials, or other strategic sectors," and an expedited "fast-track" for allied and partner sources).
[lxii] Request for Information Pertaining to the CFIUS Known Investor Program and Streamlining the Foreign Investment Review Process, 91 Fed. Reg. 5694 (Feb. 9, 2026) (comments closed Mar. 18, 2026). Participation in the pilot is by CFIUS invitation; no rule establishing a generally available fast-track process had issued as of September 1, 2026.
[lxiii] 31 C.F.R. § 802.401(a) (2026) ("A party or parties *may* submit a voluntary declaration of a transaction …."). Part 802 contains no analogue to the mandatory declaration requirement of § 800.401.
[lxiv] 31 C.F.R. § 802.233 (2026) (the right or ability, whether or not exercised and whether or not shared concurrently, to physically access, to exclude others, to improve or develop, or to attach fixed or immovable structures).
[lxv] 31 C.F.R. § 802.212 (2026) (purchase, lease, or concession affording at least three of the four property rights; a subsequent change in rights producing the same result; or a transaction structured to evade section 721; note 1 confirms that a transaction arising from a bankruptcy proceeding or debt default is covered); *id.* § 802.211.
[lxvi] 31 C.F.R. § 802.203 (2026) ("close proximity" extends "outward one mile from the boundary"); *id.* § 802.217 ("extended range" extends "99 miles outward from the outer boundary of close proximity"); *id.* pt. 802, app. A (parts 1 and 2 site lists; part 3 identifying ballistic missile field counties by Public Land Survey System township and range; part 4 offshore range complexes).
[lxvii] 31 C.F.R. §§ 802.203, 802.217, *supra* note 66.
[lxviii] 31 C.F.R. § 802.212, *supra* note 65.
[lxix] 31 C.F.R. § 802.216(c) (2026) (urbanized area exception, unavailable for covered ports and for the one-mile close-proximity band); *id.* § 802.216(f) (commercial space in a multi-unit building, where the foreign person and its affiliates hold not more than ten percent of the commercial square footage and represent not more than ten percent of the tenants); *id.* § 802.216(b).
[lxx] 31 C.F.R. § 802.216, *supra* note 70.
[lxxi] 31 C.F.R. § 802.216, *supra* note 70.
[lxxii] 31 C.F.R. §§ 802.214, 802.215 (2026) (the same four excepted states as Part 800, with minimum excepted ownership of a majority for exchange-traded entities and eighty percent for all others under § 802.228).

[lxxiii] Agricultural Foreign Investment Disclosure Act of 1978, 7 U.S.C. §§ 3501–3508 (2024); 7 C.F.R. pt. 781 (2026). Section 3501 is captioned "Reporting requirements" and § 3502 "Civil penalty"; the only violations reached are failure to file and the knowing filing of a false or incomplete report. Nothing imposes a prohibition, acreage cap, divestiture requirement, or approval condition.
[lxxiv] 7 C.F.R. § 781.3(b)(2) (2026) (Form FSA-153 within ninety days); *id.* § 781.2(k) (a U.S.-organized entity is a "foreign person" where one foreign holder holds ten percent or more, foreign holders acting in concert hold ten percent or more, or foreign persons hold fifty percent or more in the aggregate); *id.* § 781.4(b) (0.1% of fair market value per week for late filings, capped at twenty-five percent; the full twenty-five percent for a false or missing report).
[lxxv] 7 C.F.R. pt. 781, *supra* note 75.
[lxxvi] Agricultural Foreign Investment Disclosure Act of 1978, 91 Fed. Reg. 38315 (proposed June 25, 2026) (comments closed Aug. 10, 2026) (proposing electronic filing, a "foreign adversary" definition, a one-year leasehold exemption, expansion by NAICS code to solar and wind facilities and pipelines, a ten percent aggregate significant-interest threshold, and accelerated penalty accrual). No final rule had issued as of September 1, 2026.
[lxxvii] Tex. Prop. Code §§ 5.251–.259, *supra* note 11.
[lxxviii] Tex. Prop. Code §§ 5.251–.259, *supra* note 11.
[lxxix] *Wang v. Paxton*, No. 25-20354 (5th Cir. Dec. 11, 2025) (affirming dismissal on two independent standing grounds; the merits were not reached and no portion of S.B. 17 was enjoined).
[lxxx] Fla. Stat. §§ 692.201–.205, *supra* note 12.
[lxxxi] *Shen v. Commissioner, Florida Department of Agriculture & Consumer Services*, 158 F.4th 1227 (11th Cir. 2025) (affirming denial of a preliminary injunction as to the registration and affidavit requirements, applying rational-basis review under *Terrace v. Thompson*, 263 U.S. 197 (1923), rejecting the Fair Housing Act theory, and reversing and remanding with instructions to deny the preliminary injunction as to the purchase restriction, without prejudice, for lack of standing). The constitutionality of the purchase prohibitions remains undecided on the merits.
[lxxxii] Tex. Prop. Code §§ 5.251–.259, *supra* note 11.
[lxxxiii] Fla. Stat. §§ 692.201–.205, *supra* note 12.
[lxxxiv] Ala. Code § 35-1-1.1 (2026) (agricultural and forest property, and real property within ten miles of a military installation or critical infrastructure facility); La. Stat. Ann. § 9:2717.1 (2026) (all immovable property; "foreign adversary" per 15 C.F.R. § 7.4(a)); W. Va. Code §§ 37-3A-1 to -5 (2026) (all real estate interests including mineral rights, with a six-month divestiture requirement); Utah Code Ann. §§ 63L-13-101, -201, -202 (LexisNexis 2026) (any "interest in land"; conveyances to a restricted foreign entity are invalid, with escheat after five years); Tenn. Code Ann. §§ 66-2-301 to -309 (2026) (2026 amendments lowered the controlling-interest threshold to thirty-three percent and the significant-interest threshold to ten percent). **These citations are current to the compilations available on September 1, 2026 and must be confirmed against the situs state's current code before reliance.**
[lxxxv] State foreign-ownership statutes, *supra* note 85.
[lxxxvi] State foreign-ownership statutes, *supra* note 85.
[lxxxvii] State foreign-ownership statutes, *supra* note 85.
[lxxxviii] State foreign-ownership statutes, *supra* note 85.
[lxxxix] *Jones Eagle LLC v. Ward*, No. 4:24-cv-00990-KGB (E.D. Ark. Dec. 9, 2024) (preliminary injunction against Arkansas Acts 636 and 174, the plaintiff being likely to succeed on the argument that FIRRMA preempts the State's foreign ownership restrictions), *appeal docketed*, No. 25-1047 (8th Cir.) (argued Jan. 14, 2026; undecided as of Sept. 1, 2026). This is the only such ruling in the country.
[xc] *Wang*, No. 25-20354, *supra* note 80.
[xci] *Shen*, 158 F.4th 1227, *supra* note 82.
[xcii] *Jones Eagle*, No. 4:24-cv-00990, *supra* note 90.
[xciii] I.R.C. § 875(1) (2026) (a nonresident alien or foreign corporation "shall be considered as being engaged in a trade or business within the United States if the partnership of which such individual or corporation is a member is so engaged"); *id.* §§ 871(b), 882(a); *id.* §§ 874(a), 882(c)(2) (deductions and credits allowed only by filing a true and accurate return).
[xciv] I.R.C. § 875(1), *supra* note 94.
[xcv] I.R.C. § 1446(a)–(b)(2) (2026) (partnership-level withholding on effectively connected taxable income allocable to foreign partners — the highest § 1 rate, thirty-seven percent, for noncorporate partners and the § 11(b) rate, twenty-one percent, for corporate partners); *id.* § 1446(f)(1) (ten percent of the amount realized on a transfer of a partnership interest).

[xcvi] I.R.C. § 897 (2026) (gain of a nonresident alien individual or foreign corporation on the disposition of a United States real property interest is treated as effectively connected income); *id.* § 1445 (withholding on dispositions).
[xcvii] I.R.C. §§ 871(a)(1), 881(a), 1441(a), 1442 (2026) (thirty percent withholding on U.S.-source fixed or determinable annual or periodical income not effectively connected with a U.S. trade or business); *id.* §§ 871(h), 881(c) (portfolio interest exemption, unavailable to a holder of ten percent or more of the capital or profits interest of a partnership obligor); *id.* § 884 (thirty percent branch profits tax, in addition to the § 882 tax); *id.* § 11(b) (twenty-one percent).
[xcviii] Internal Revenue Serv., *Table 3. List of Tax Treaties* (updated through Sept. 26, 2025). Canada (TIAS 11087, effective Jan. 1, 1985) and the People's Republic of China (TIAS 12065, effective Jan. 1, 1987) appear; Argentina and Singapore do not, and no comprehensive treaty with either had entered into force as of September 1, 2026. The China treaty does not reach Hong Kong or Macau.
[xcix] I.R.C. §§ 871, 881, 884, *supra* note 98.
[c] I.R.C. § 897(h)(2), (h)(4)(B) (2026) (an interest in a domestically controlled qualified investment entity is not a United States real property interest); Guidance on the Definition of Domestically Controlled Qualified Investment Entities, T.D. 9992, 89 Fed. Reg. 31618 (Apr. 25, 2024) (look-through rule at Treas. Reg. § 1.897-1(c)(3), with a ten-year transition to Apr. 24, 2034); Domestically Controlled Qualified Investment Entities, 90 Fed. Reg. 48422 (proposed Oct. 21, 2025) (proposing to remove the domestic corporation look-through rule; taxpayers "may rely on the proposed regulations for transactions occurring before the date the proposed regulations are finalized"). Not finalized as of September 1, 2026.
[ci] I.R.C. § 897(h)(2), *supra* note 101.
[cii] An Act to provide for reconciliation pursuant to title II of H. Con. Res. 14, Pub. L. No. 119-21, 139 Stat. 72 (2025). The enacted law contains no I.R.C. § 899 — the House-passed "enforcement of remedies against unfair foreign taxes" provision was dropped — and does not amend I.R.C. § 897, § 892, § 1446, or the § 11(b) corporate rate.
[ciii] National Instrument 45-106, *Prospectus Exemptions*, ss. 2.3, 6.1(2), 6.3, 6.5 (consolidated to Sept. 19, 2025) (the report of exempt distribution on Form 45-106F1 due "in the jurisdiction where the distribution takes place no later than 10 days after the distribution"; and the Form 45-106F9 risk acknowledgement required from individual accredited investors under paragraphs (j), (k), and (l) "at the same time or before" the purchase agreement is signed). Section 2.3(8) provides that subsection 2.3(1) does not apply in Ontario, where the exemption arises under the *Securities Act* (Ontario), R.S.O. 1990, c. S.5, s. 73.3.
[civ] Ley 26.831, Ley de Mercado de Capitales, arts. 2, 81–83 (Arg.) (*oferta pública* includes invitations made through "medios electrónicos incluyendo el uso de correo electrónico y redes sociales"; public offerings are reserved to CNV-authorized issuers and agents; and any negotiation with similar characteristics is treated as such). Argentina has no express private-placement safe harbour; the analysis proceeds negatively from the definition.
[cv] Banco Central de la República Argentina, Comunicación "A" 8226 (Apr. 11, 2025) (removing the monthly cap and prior-approval requirement for resident natural persons, subject to local-account debit, online registration, and documented income and asset consistency); Comunicación "A" 8361 (Dec. 9, 2025) (sworn undertaking in all cases not to purchase securities settled in foreign currency for ninety calendar days); Comunicación "A" 8417, pt. 7 (eff. Apr. 10, 2026) (extending registration and the ninety-day undertaking to transfers abroad). The Bank's consolidated *texto ordenado* is current only to Comunicación "A" 8307 (Aug. 25, 2025); confirm before reliance.
[cvi] Securities and Futures Act 2001, ss. 4A(1)(a), 4A(1A), 274, 275 (Sing.) (institutional investor and relevant person exemptions; the S$200,000-per-transaction alternative under s. 275(1A); and accredited investor thresholds of net personal assets over S$2 million, financial assets net of related liabilities over S$1 million, or income of not less than S$300,000 in the preceding twelve months, with the primary residence capped at S$1 million); Securities and Futures (Classes of Investors) Regulations 2018, G.N. No. S 665/2018, reg. 3 (Sing.) (accredited investor status for s. 275(1) requires assessment by the counterparty, delivery of the prescribed statements and the First Schedule general warning, and a signed written consent).
[cvii] 汇发[2007]1号, *supra* note 14.
[cviii] 《企业境外投资管理办法》[Measures for the Administration of Outbound Investment by Enterprises], 国家发展和改革委员会令第11号 arts. 13, 14, 33, 63 (China) (approval for sensitive projects and filing for others; without a valid approval document or filing notice, foreign exchange, customs, and financial institutions may not process the transaction; and, critically, art. 63 — the Measures do **not** apply to a domestic natural person investing directly abroad); 汇发[2014]37号 arts. 3, 5 (China) (registration before contributing assets to an offshore special purpose company, and amended registration as a precondition to dividend repatriation).

[cix] 《国务院关于对外投资的规定》[Provisions of the State Council on Outbound Investment], 国务院令第837号 arts. 2, 12, 15, 27, 33 (China) (promulgated May 5, 2026, effective July 1, 2026) (extending the unified outbound investment regime expressly to "居民个人" — resident individuals; requiring approval or filing, information reporting, and cross-border fund registration; establishing a national security review; and providing at art. 33 that the specific measures for resident individuals are to be made by the investment and commerce authorities). Those measures did not exist as of September 1, 2026; an NDRC consultation draft was posted Aug. 21, 2026.

[cx] International Emergency Economic Powers Act, 50 U.S.C. §§ 1701–1708 (2024); *id.* § 1705(a)–(b) (unlawful to violate or "cause a violation"; civil penalty of the greater of $250,000 or twice the transaction amount, with no scienter element); 31 C.F.R. §§ 501.603, 501.604 (2026) (blocked-property and rejected-transaction reports required of "[a]ny U.S. person … including a financial institution"); Off. of Foreign Assets Control, *Revised Guidance on Entities Owned by Persons Whose Property and Interests in Property Are Blocked* (Aug. 13, 2014) (the fifty percent rule).

[cxi] Delaying the Effective Date of the Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers, 91 Fed. Reg. 36 (Jan. 2, 2026) ("As of December 31, 2025, the effective date of the rule published September 4, 2024, at 89 FR 72156 is delayed until January 1, 2028."). No substantive re-proposal had issued as of September 1, 2026.

[cxii] Beneficial Ownership Information Reporting Requirement Revision, 91 Fed. Reg. 52508 (Aug. 14, 2026) (final rule, effective Aug. 14, 2026), *finalizing* 90 Fed. Reg. 13688 (Mar. 26, 2025). As codified at 31 C.F.R. § 1010.380(c)(1), a "reporting company" is now only a foreign-formed entity registered to do business in a State or tribal jurisdiction, and § 1010.380(b)(5) exempts reporting of U.S. person beneficial owners and company applicants. A foreign entity that merely subscribes for interests, without qualifying to do business in a State, is not a reporting company.

[cxiii] Securities Exchange Act of 1934 § 15(a), 15 U.S.C. § 78o(a) (2024); 17 C.F.R. § 240.15a-6 (2026) (conditional exemption for foreign broker-dealers). Compensating an offshore intermediary implicates the registration provisions and 17 C.F.R. § 230.506(d)(1) (paid solicitors are covered persons).

[cxiv] 17 C.F.R. § 230.506(d), *supra* note 30.