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PUBLISHED: OCTOBER 28, 2025

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STEVEN P. KATKOV  
DALLAS:  
214.999.6118  
MINNEAPOLIS:  
612.852.2700  
STEVE.KATKOV@  
HUSCHBLACKWELL.COM

REAGAN HOVEY  
DALLAS:  
214.981.7056  
REAGAN.HOVEY@  
HUSCHBLACKWELL.COM

JOVITA PARDO  
AUSTIN:  
512.480.3205  
JOVITA.PARDO@

# New Texas Law Raises Diligence Stakes on Real Property Transactions Involving Foreign Entities

On September 1, 2025, Texas Senate Bill 17 (SB 17) became effective, following its passage during the 88th Regular Legislative Session. The bill imposes civil and criminal penalties against foreign entities and individuals who purchase or control real estate interests in Texas and are listed in the Annual Threat Assessment Reports prepared by the Director of National Intelligence, with the list subject to expansion by the Texas Governor. SB 17 seeks to reduce national security concerns primarily related to energy and food production, adding Texas to the growing national trend prohibiting foreign entities and persons from owning certain real property in the United States if such entities or persons are from countries designated as adversarial.

SB 17 is notable for its broad scope, applying to all categories of real property regardless of the property's proximity to key infrastructure, military bases, or use as agricultural production. The law imposes both civil and criminal penalties against the offending parties and is among the most comprehensive in the nation. Upon an investigation by the Texas Attorney General, the state may commence an action against the offending property, and if the court finds a violation occurred, the court must issue an order divesting the property from the offending party, refer the case for criminal prosecution, and hold the offending party liable for a civil penalty.

## Background

SB 17 affects individuals and entities who are domiciled in a designated country that has been identified as a potential security threat by the U.S. Director of National Intelligence or the Texas Governor.

## ***Affected individuals***

The bill prohibits the following individuals from purchasing or acquiring a real interest in Texas: (1) foreigners who are domiciled[i] in a designated country; (2) foreigners who are citizens of a designated country and residing unlawfully in the United States; or (3) individuals acting as an agent on behalf of someone from a designated country or who is a member of a ruling political party from a designated country.

### ***Affected entities***

The term “entity” is broad and can affect all types of companies and organizations. The following entities are not permitted to acquire a real estate interest:

The governmental entity of a designated country; or

A company[ii] or organization[iii] that:

maintains its headquarters in a designated country,

directly or indirectly is controlled by the government of a designated country,

is owned by or which a majority of stock or other ownership interest is held by an individual from a designated country; or

is prohibited by the Governor.

Furthermore, the Governor retains the right to classify certain actors or entities as being from a designated country or a transnational criminal organization[iv] that would be prohibited from real property transactions.

Overall, the bill precludes companies and organizations that are primarily owned in whole or in part by foreigners domiciled in or governmental entities from designated countries or who maintains entity headquarters in a designated country. On the other hand, the bill does not apply to individuals who are U.S. citizens or lawful permanent residents. It also does not apply to leasehold interests in land that run for less than one year.

### ***Enforcement***

SB 17 tasks the Texas Attorney General’s Office with creating procedures to examine the acquisition of real property interests by potential offenders.

If the Attorney General determines an investigation of a real property acquisition is warranted, the Attorney General may (1) file an *in rem* action against the real property in the district court of the county where all or part of the real property is located and (2) refer the matter to the appropriate local, state, or federal law enforcement agency. It is worth noting that the bill does not void the real

property acquisition, and the purchase contract is not otherwise affected by the alleged violation. The legal action is directed at the property, not just the person or company that owns it.

If a district court finds that the real property was purchased in violation of Texas SB 17, the court must enter an order divesting the offender's real property interest and appointing a receiver to control the real property interest pending the disposition of the property. The offender's case can also be referred to a prosecutor for criminal prosecution, and the offender will be liable to the state for a civil penalty equal to or greater than (a) \$250,000 or (b) 50% of the market value of the interest in the real property.

### ***Rules and regulations***

As of this writing, the Texas Attorney General has not issued any rules and regulations relating to its investigatory processes under Texas SB 17. Subsequent Husch Blackwell client alerts will provide guidance and commentary on the rules and regulations once available.

### **Control**

Under SB 17, the term "control" is interpreted broadly to encompass both direct and indirect influence over an entity's operations, governance, or decision-making. This expansive definition is designed to capture a wide range of ownership structures and influence mechanisms that are believed to pose national security risks when linked to designated foreign actors.

### ***Definition and scope***

"Control" includes the power to determine or influence an entity's policies or management through:

Ownership of equity or voting interests

Contractual rights, including veto powers or management agreements

Governance arrangements, such as board representation or appointment rights

Affiliate relationships, including parent-subsidiary or joint venture structures

### ***Covered relationships***

An entity is considered "controlled" if:

It is directly or indirectly owned or influenced by the government of a designated country

A majority of its ownership interests are held by individuals domiciled in or citizens of a designated country

It operates under contractual or governance arrangements that confer decision-making authority to covered persons or entities

### ***Functional test***

SB 17 does not rely on a single numeric threshold to define control. Instead, it applies a functional test that considers the substance of the relationship over its form. This approach aligns with national security frameworks such as those used by the Committee on Foreign Investment in the United States (CFIUS)[v] and the Financial Crimes Enforcement Network (FinCEN)[vi], frameworks that similarly evaluate the concept of control based on the ability to influence “important matters” regardless of ownership percentage.

### ***Examples of control indicators***

Equity ownership exceeding 50%

Voting blocs or special shares enabling strategic influence

Side letters or proxies granting decision-making rights

Funding mandates or operational dependencies

### ***Comparison to federal standards***

While SB 17 focuses on country-of-origin risks, federal frameworks like CFIUS and the Corporate Transparency Act (CTA)[vii] under FinCEN emphasize broader national security and transparency concerns. Notably:

CFIUS defines control as the power to determine or influence key decisions, *even without majority ownership* (31 C.F.R. § 800.208); [viii]

CTA requires disclosure of beneficial owners who either own  $\geq 25\%$  or exercise “*substantial control*” over a company, including senior officers and key decision-makers.[ix]

### ***Key takeaway***

Entities subject to SB 17 scrutiny should assess not only ownership percentages but also governance structures, contractual arrangements, and affiliate relationships that may confer control. The absence of a bright-line test underscores the importance of a comprehensive diligence process when evaluating foreign involvement in Texas real estate transactions.

Entities subject to Texas SB 17 scrutiny should conduct a multi-dimensional review of foreign involvement in real estate transactions. This review must go beyond simple ownership percentages to include:

**Governance structures:** Evaluate board composition, voting rights, and decision-making authority that could indicate indirect control

**Contractual arrangements:** Identify management agreements, financing terms, or joint venture contracts that confer operational influence

**Affiliate and subsidiary relationships:** Trace upstream and downstream ownership, including parent companies, affiliates, and majority-owned subsidiaries, as Texas SB 17 applies to indirect interests

**Control indicators:** Consider veto rights, profit-sharing mechanisms, or strategic partnerships that effectively grant control even without majority equity

The law's absence of a bright-line test for "control"—combined with its broad definitions of "entity" and "ownership" (covering corporations, partnerships, LLCs, and affiliates)—underscores the need for a comprehensive diligence process. This process should align with both state-level restrictions under SB 17 and federal frameworks like CFIUS and CTA, ensuring that any foreign nexus tied to designated countries is identified and mitigated, as failure to comply can result in civil penalties up to the greater of \$250,000 or 50% of property value, criminal liability, and court-ordered divestiture.

## **Examples**

The following scenarios illustrate how Texas SB 17 may apply to various real estate transactions involving individuals or entities from designated countries. **Note:** Because the Texas Attorney General has not yet issued any guidance, the scenarios below are subject to change and are offered for illustrative purposes only.

### **1. Individual purchase from a designated country**

Scenario: An individual domiciled in North Korea purchases a tract of land in Texas.

Analysis: This transaction violates Texas SB 17. While the purchase itself is not automatically void, the property is subject to an *in rem* proceeding. The property will be divested and transferred to a receiver, and the individual may face civil and criminal penalties.

### **2. Majority-owned partnership**

Scenario: A partnership in which a Chinese corporation owns a 51% interest acquires real property in Texas.

Analysis: The 51% ownership interest held by the Chinese corporation constitutes control under Texas SB 17. This interest is subject to divestiture, and the partnership may face enforcement actions.

### **3. Joint venture with foreign majority ownership**

Scenario: A joint venture LLC with 65% ownership by a Chinese corporation and 35% by a domestic LLC acquires real property in Texas.

Analysis: The 65% foreign ownership triggers Texas SB 17's control provisions. That interest is subject to divestiture. The domestic LLC holding the remaining 35% may find itself partnered with a third party who acquires the divested interest through receivership, potentially altering the venture's governance and operations.

### **4. Manager-controlled LLC with foreign manager**

Scenario: A manager-managed LLC signs a 10-year lease for property in Texas. The LLC is wholly owned by a U.S. citizen, but the manager is domiciled in Iran.

Analysis: Despite the lack of foreign ownership, the Iranian manager exercises control over the LLC's operations. Under Texas SB 17, this lease constitutes a prohibited transaction. Because the lease exceeds one year and the entity is controlled by a person from a designated country, the lease is likely void.

### **5. Foreign-invested REIT acquires commercial property**

Scenario: A publicly traded REIT acquires a commercial property in Texas. While the REIT is incorporated in the United States, 60% of its shares are held by institutional investors based in Iran and China.

Analysis: Despite being a U.S.-based entity, the REIT may fall under Texas SB 17 scrutiny due to its ownership structure. In the absence of formal guidance from the Texas Attorney General, the bill leaves open the possibility that majority foreign ownership by entities from designated countries constitutes indirect control. This acquisition could trigger an investigation, and the foreign-held interest may be subject to divestiture. The REIT may also face civil penalties if found in violation. While this scenario tests the boundaries of the bill's enforcement framework, it underscores the uncertainty and the need for heightened diligence in transactions involving foreign investment.

### **Contact us**

If you have questions concerning SB 17 and its implications for real property transactions in Texas, please contact Steve Katkov or your Husch Blackwell attorney.

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[i] Tex. Prop. Code Ann. § 5.251(4) (Defining a domicile as a place that is an individual's true, fixed, and permanent home and principal resident and a permanent intent to return).

[ii] *Id.* at § 5.251(2) (Defining a company as a sole proprietorship, association, organization, partnership, joint venture, limited partnership, limited liability partnership, or limited liability company. This includes subsidiaries (majority-owned or wholly owned subsidiaries), parent companies, or affiliates that exist to make a profit.

[iii] Tex. Bus. Orgs. Code Ann. § 1.001(2)(62) (Describing an organization to be broader than a company by expanding the types of potentially prohibited parties to include any for-profit, nonprofit, domestic, or foreign organizations).

[iv] Tex. Prop. Code Ann. § 5.251(7) (Defining a transnational criminal organization as two or more persons who are citizens or a domiciled party of a designated country who operate internationally with identifiable leadership and regularly engage in corruption, violence, or other criminal activities).

[v] CFIUS is an interagency committee authorized under Section 721 of the Defense Production Act to promote an open investment climate while ensuring national security is not compromised by the acquisition of real property interests in the U.S. by foreign individuals and entities. See <https://home.treasury.gov/policy-issues/international/the-committee-on-foreign-investment-in-the-united-states-cfius>.

[vi] FinCEN, a bureau of the U.S. Department of Treasury, is tasked with analyzing financial transactions that may serve to disguise illicit activity and/or money laundering that threatens national security. See <https://www.fincen.gov/>

[vii] While FinCEN issued an interim final rule on March 21, 2025, removing beneficial ownership information reporting requirements for all U.S. companies and U.S. persons, foreign entities registered to do business in the U.S. remain subject to reporting obligations under new deadlines.

[viii] CFIUS defines “control” as: “The power, direct or indirect, whether or not exercised, through the ownership of a majority or a dominant minority of the total outstanding voting interest in an entity, board representation, proxy voting, a special share, contractual arrangements, formal or informal arrangements to act in concert, or other means, to determine, direct, or decide important matters affecting an entity; in particular, but without limitation, to determine, direct, take, reach, or cause

decisions regarding the following matters, or any other similarly important matters affecting an entity: (1) The sale, lease, mortgage, pledge, or other transfer of any of the tangible or intangible principal assets of the entity, whether or not in the ordinary course of business; (2) The reorganization, merger, or dissolution of the entity; (3) The closing, relocation, or substantial alteration of the production, operational, or research and development facilities of the entity; (4) Major expenditures or investments, issuances of equity or debt, or dividend payments by the entity, or approval of the operating budget of the entity; (5) The selection of new business lines or ventures that the entity will pursue; (6) The entry into, termination, or non-fulfillment by the entity of significant contracts; (7) The policies or procedures of the entity governing the treatment of non-public technical, financial, or other proprietary information of the entity; (8) The appointment or dismissal of officers or senior managers or, in the case of a partnership, the general partner; (9) The appointment or dismissal of employees with access to critical technology or other sensitive technology or classified U.S. Government information; or (10) The amendment of the Articles of Incorporation, constituent agreement, or other organizational documents of the entity with respect to the matters described above.” 31 C.F.R. § 800.208.

[ix] Under the Corporate Transparency Act, as enforced by FinCEN, a “beneficial owner” of a reporting company is any individual who, directly or indirectly: (1) exercises “substantial control” over the reporting company; or (2) owns or controls at least 25% of the ownership interests of the reporting company. “Substantial control” is defined broadly by FinCEN and includes any individual who: (a) serves as a senior officer (such as President, CEO, CFO, COO, General Counsel, or similar function); (b) has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); (c) is an important decision-maker, meaning someone who can direct, determine, or substantially influence important decisions of the company (such as business scope, major contracts, or financial decisions); and/or (d) has any other form of substantial control over the reporting company, even if not covered by the above categories. 31 C.F.R. § 1010.380(d)(1).