

CFIUS TRANSACTION STRATEGY SERVICES

BRG's CFIUS Capabilities

The Committee on Foreign Investment in the United States (CFIUS), an interagency committee under the direction of the US Department of the Treasury, presents a unique set of challenges for foreign investors seeking to invest in the US and US firms looking to attract capital from foreign sources. CFIUS's operations are guided by the implementation of the 2018 Foreign Investment Risk Review Modernization Act (FIRRMA).

CFIUS addresses US national security concerns around foreign parties' involvement in certain types of investment transactions. Driven by the potential for unwanted foreign control of, or access to, critical US technology and infrastructure, these concerns must be identified in the early stages of the transaction, addressed in the terms setting out the structure of the transaction, and in some cases mitigated with US government-required compliance audits and/or monitors.

US and non-US corporates, banks, private equity firms, institutional investors, law firms, strategic communications companies, and government agencies from around the world—in both advanced countries and emerging markets—seek out BRG's CFIUS experts to help design and execute cross-sectoral strategies to navigate and manage business opportunities and risks associated with the CFIUS decision-making process.

While CFIUS was once seen as largely a legal matter, this is no longer the case. BRG's veteran interdisciplinary CFIUS team, unlike some CFIUS advisors, provides to clients integrated strategic and operational pre- and post- transaction CFIUS services. BRG's experts have a unique perspective on the CFIUS process, having participated in authoring key CFIUS-related legislation while working on Capitol Hill, served on CFIUS during their tenure in the White House, developed intelligence assessment processes to support CFIUS decision makers while serving in the intelligence community, authored and reviewed several hundred CFIUS intelligence assessments, and served as CFIUS third-party monitors (TPMs) and compliance auditors. BRG's CFIUS team also has significant hands-on experience structuring complex international business transactions, involving investors from not only advanced countries but also the emerging markets that have been the main sources of deals reviewed by CFIUS in recent years.

Our CFIUS team leverages BRG's cybersecurity, information technology, and data privacy professionals, as well as BRG's deep expertise in corporate governance, compliance and risk management, corporate intelligence and due diligence, turnaround and restructuring, bankruptcy, capital markets, and investment banking. The CFIUS team also draws on BRG's extensive industry-specific knowledge of the technology, manufacturing, healthcare, infrastructure, energy, financial services, private equity, and telecom, media, and entertainment sectors—all industries in which transactions could be subject to CFIUS review.

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BRG's CFIUS Solutions Include:

Transaction planning

We advise during the strategic planning process undertaken by foreign investors and US parties on various aspects of proposed deals, such as market conditions, geopolitical considerations, and potential options and avenues to achieve goals while accounting for potential CFIUS concerns and potential impacts. Leveraging our extensive expertise in global business risk-mitigation strategy, corporate finance, restructuring, and work-outs, and implementing US national security policy, combined with our experience working in a wide range of industries, enables us to assist clients to refine strategic options potentially required in the CFIUS process in a timely matter.

Pre-transaction threat assessment

We assess critical aspects of a proposed foreign investor to highlight areas where CFIUS may have national security concerns about the transaction. Similarly, our experts assess for the US parties' various foreign investors going through a down selection process while being considered for a particular transaction. This enables more effective pre-transaction planning and avoids discovering issues after a transaction review has commenced under CFIUS's statutory timeline.

Mitigation planning

Our CFIUS experts assist the client and client's counsel in developing a strategy to alleviate US government concerns around a transaction. This service could range from providing technical expertise in support of developing a mitigation plan to bench-testing the feasibility of such a plan prior to submission to CFIUS.

Mitigation implementation

Our team operationalizes the terms of mitigation agreements, a complex and highly technical process that focuses on protecting sensitive personal data or a specific technology. We leverage BRG's cybersecurity, information technology, and data privacy practices to maximize the use of best practices and ensure the implementation is conducted effectively, efficiently, and in a cost-effective manner while meeting US government requirements.

Third-Party Monitor/Compliance Auditor

BRG's CFIUS team has extensive experience serving as independent TPMs and as compliance auditors for CFIUS transactions. These roles are defined in CFIUS mitigation agreements and are required by the US government to gain clearance for certain transactions. Areas typically subject to monitoring and auditing include corporate security plans (physical, IT, cyber), physical and logical access controls and logs, electronic communication plans, technology control plans, training plans and records, whistleblower programs, data management, access to sensitive personally identifiable information (PII), personal health information (PHI), employee records, and governance policies. Our TPMs and compliance auditors are experienced national security practitioners with a deep understanding of US government concerns in these areas. We tailor each TPM and audit team to provide the specific technical and industry expertise needed to support the unique nature of each CFIUS third-party monitorship and compliance audit.

Previous Representative CFIUS-Related Engagements*

US Global Telecommunications Service Provider. A US global telecommunications service provider was acquired by a European-based global telecommunications equipment company in a multibillion-dollar CFIUS transaction. The BRG CFIUS team provided policy and technical advisory services to the US company to help bring it into compliance with its executed national security agreement (NSA). The services consisted of helping to develop a detailed security plan that included novel logical and physical access restrictions, vendor management, integration restrictions, remote work restrictions, and training requirements. Additionally, the BRG CFIUS team provided a gap assessment of over fifty corporate policy and procedure documents to better align the policies with the NSA and security plan requirements; provided discovery and cyber-risk management services across numerous lines of business to help the company identify the locations of its CFIUS-defined sensitive assets; assisted in determining who in the company's global workforce has access those sensitive assets; and provided recommendations on supply chain and vendor management improvements.

US Healthcare Services Company. A European-based private equity (PE) fund, which included a number of recently sanctioned individuals, was selling a US healthcare services company. A BRG CFIUS expert served as the third-party monitor (TPM) for the transaction. The BRG TPM team smoothly and efficiently integrated the necessary monitoring activities into the transaction parties with minimal impact on the business operations of both the US company and the PE fund. Particular emphasis was placed on communications between the company and the PE firm, including email, web-enabled conferences, and the transaction data room, as well as logical and physical access requirements. Additionally, the TPM advised on current process and technology enhancements to meet weekly and monthly communication and access log review requirements.

Global Financial Services Firm. A Chinese company acquired a US-based global financial services firm without clearance from CFIUS. Post-transaction, CFIUS ordered a directed forensic audit to determine if unauthorized transfers of data had occurred. A member of our team, as the CFIUS-approved third-party auditor, designed and led the audit of the China-based company, the first time such a US national security audit was conducted in China on Chinese-owned IT systems. In consideration of Chinese sensitivities around data in China, our team's understanding of China's data security and national security laws was critical to enable successful completion of the audit in the required timeframe.

Global Technology Company. A US Fortune 50 global technology company divested a business unit to a Chinese company in a multibillion-dollar CFIUS transaction. A member of our team served as the CFIUS-approved compliance auditor for the deal, working with internal colleagues to design the audit plan and assemble a team capable of effectively and efficiently addressing the different areas of compliance covered in the mitigation agreement.

US Financial Services Firm. A US financial services firm was acquired by a Chinese company in a multibillion-dollar CFIUS transaction. A member of our team served as senior advisor and deputy to the CFIUS-approved TPM team in what is widely recognized as the most complex mitigation agreement in recent history, with its focus on restricting foreign access to, and preventing foreign exploitation of, several million records of PII and PHI.

US Private Equity Firm. A US private equity firm, planning a multibillion-dollar CFIUS-sensitive acquisition of a US global semiconductor and telecommunications company, required national security-related due diligence on potential foreign investors being considered as partners. The report provided a CFIUS-like assessment of potential foreign investors and was highly influential in informing the US private equity firm's decisions on inviting certain foreign investors to participate.

Renewable Energy Company. A foreign company acquired a US solar power facility in a CFIUS-approved transaction. The terms of the CFIUS mitigation agreement called for an independent TPM and a compliance auditor. The engagement presented a unique challenge, as this industry has had little exposure to, and has not developed a full understanding of, CFIUS mitigation requirements and oversight by CFIUS monitoring agencies. A member of our team served as a senior advisor to both the monitorship team and the audit team and worked closely with the US company to help it understand CFIUS terms and requirements.

Foreign Infrastructure Company. A foreign company planned to acquire a US infrastructure company and was interested in getting the perspective of CFIUS before committing to the transaction. Our team conducted national security diligence on both the foreign company and the US target company. These assessments were used to inform corporate leadership of the foreign company of likely CFIUS national security concerns that would need to be addressed as the acquisition was planned and executed.

Asian Textile Company. Our team was contacted by the Chinese CEO of a large privately owned textile firm based in Eastern China about his desire to acquire one of the largest and most modern spinning mills in the US—one whose workforce was one of the largest in the state within the sector. Since the CEO was not readily familiar with the CFIUS statutes or implementing regulations, we were hired to develop for him and his team a rigorous framework that generated a series of probability-ranked “CFIUS risk”-scenarios associated with his potential attempt to purchase the US asset.

CFIUS/Antitrust Aspects of US Advanced Technology Firm. After CFIUS had blocked the sale of a US-based advanced technology firm to an Asian entity, the business was acquired by a larger US firm that produced competing products. When the combined firm became interested in being sold to another Asian entity, our team was hired to advise management on its CFIUS strategy. Our assessment indicated that there would be not only CFIUS hurdles to overcome, but also serious antitrust policy impediments to mitigate.

** Note that some engagements took place prior to the expert(s) joining BRG.*

Thought Leadership and Commentary on CFIUS

Forbes: "CFIUS Under Biden Just Got Tougher" [LINK >](#)

Foreign Investment Watch: "CFIUS: Key 2022 Takeaways and Bold 2023 Predictions: 'Excessive Degree of 'Foreignness' in Sensitive Sectors'/'Sustainability and ESG Coming for CFIUS Assessments" [LINK >](#)

Antitrust Chronicle: "Balancing Antitrust and National Security Impacts of Foreign Investment in the US" [LINK >](#)

International Financial Law Review: "National Security Regulation of Foreign Investment Is Globalization's 'New Normal'" [LINK >](#)

CNN: "Why a Growing Number of States Are Cracking Down on TikTok" [LINK >](#)

International Financial Law Review: "'Outbound-CFIUS' Could Change US National Security Landscape" [LINK >](#)

Security Info Watch: "Cybersecurity Experts Say Governors' TikTok Bans Make Sense" [LINK >](#)

International Financial Law Review: "CFIUS Guidelines Ring in Enforcement Era" [LINK >](#)

The Capitol Forum: "Indian Deals Could Face Tougher CFIUS Reviews Following Country's Refusal to Support Sanctions Against Longtime Ally Russia" [LINK >](#)

The Capitol Forum: "CFIUS Extends Reach on Non-Notified Deals, as Biden Administration Seeks to Deepen National Security Scrutiny in 2022" [LINK >](#)

International Financial Law Review: "CFIUS Updates Reflect Changing World" [LINK >](#)

International Financial Law Review: "CFIUS Annual Report Reveals a Maturing Agency with Increased Agility" [LINK >](#)

Foreign Investment Watch: "Responding to CFIUS Follow-Up Questions: A Guide to Building Trust" [LINK >](#)

Foreign Direct Investment Intelligence: "The Slippery Slope from Security to Sovereignty" [LINK >](#)

International Financial Law Review: "CFIUS Policy to be More Cohesive Under Biden" [LINK >](#)

Forbes: "Trump's TikTok Tactics Provoke China's Countering CFIUS As New Data Portend Decoupling" [LINK >](#)

Forbes: "As CFIUS Turns 45 Years Old, US Regulation of Foreign Investment Is The Strictest Among Advanced Countries" [LINK >](#)

International Financial Law Review: "Is The Enhanced CFIUS Regime Causing The US Economy More Harm Than Good?" [LINK >](#)

Wall Street Journal: "TikTok Deal Faces Questions Over Security, Ownership" [LINK >](#)

Forbes: "US Foreign Investment Policy Gets A Tougher But More Transparent CFIUS" [LINK >](#)

Forbes: "Naiveté About CFIUS' National Security Policy Towards Foreign Investment In The US" [LINK >](#)

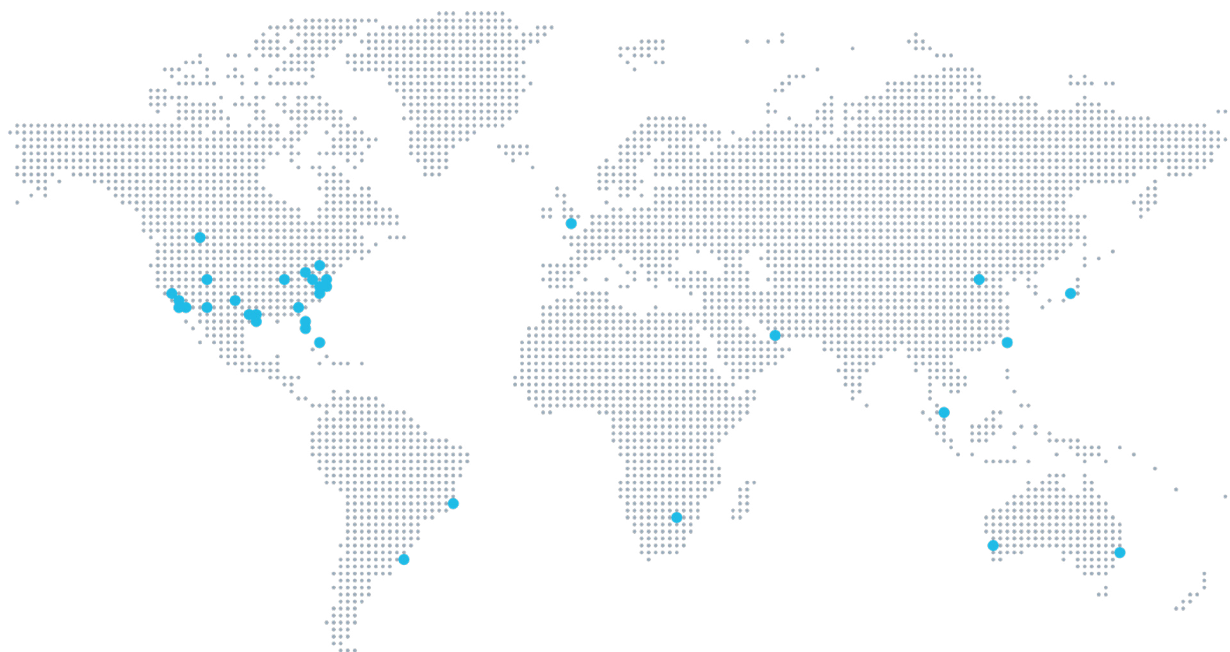
International Financial Law Review: "CFIUS v the UK NSI: How Similar Are They Really?" [LINK >](#)

San Francisco Chronicle: "The National Costs of Harming Qualcomm" [LINK >](#)

Forbes: "US Antitrust's Myopic View Of National Security Threats To Competitiveness" [LINK >](#)

CNN: "TikTok Will Partner With Oracle In The United States After Microsoft Loses Bid" [LINK >](#)

CNBC: "TikTok, Microsoft, Oracle and CFIUS" [LINK >](#)



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About BRG

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