

CFIUS TRANSACTION STRATEGY SERVICES

CFIUS MITIGATION

Among the many considerations for parties in a CFIUS transaction, compliance monitoring and auditing is arguably the most impactful.

Getting to “Yes”

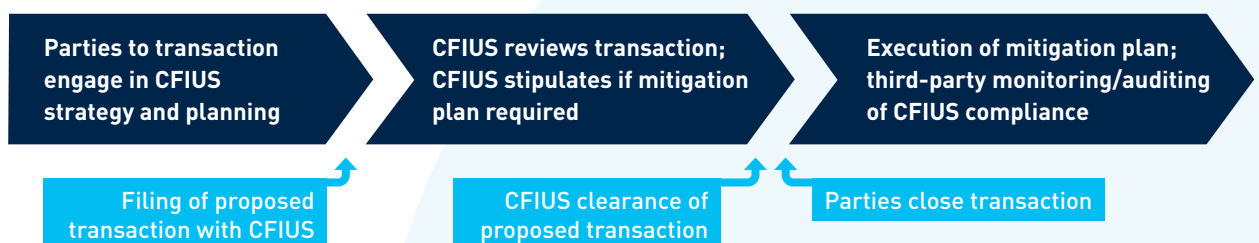
The Committee on Foreign Investment in the United States (CFIUS) reviews foreign direct investment (FDI) into the United States that may impact US national security. CFIUS deliberations follow a statutorily defined timeline to arrive at a decision to clear the transaction, clear the transaction with mitigation, or recommend that the president block the transaction. Cognizant of the importance of FDI to the United States, CFIUS wants to get to “yes”—but it will not do so at the expense of US national security.

Mitigation and Compliance

Mitigation is the US government’s way to maintain visibility into a transaction while enabling deals to move forward. But it can be contentious. For example, companies finding themselves facing mitigation with no Chinese entities involved often ask, “Why do we have to do this? This deal has nothing to do with China.” CFIUS is hardly just a China problem. Historically, approximately 10 percent to 15 percent of transactions per year require mitigation. Mitigation represents an additional expense to the transaction, and many clients are concerned that its implementation will impede the flow of business operations. In these cases, CFIUS often requires the use of an independent third-party monitor (TPM) and/or an independent third-party auditor to ensure a company’s compliance with the mitigation agreement and to serve as the US government’s eyes and ears.

- A **TPM** provides a more persistent presence in the ongoing transaction, often assists the specified party in improving or developing policies to address CFIUS requirements, ensures the mitigation plan is implemented and operationalized, and maintains a regular reporting cadence as directed in the mitigation agreement.
- The **compliance auditor** provides an annual or biennial look back into how effectively the terms of the mitigation agreement have been implemented. The compliance audit report may be included with the company’s annual report to the CFIUS Monitoring Agencies (CMAs) or provided directly to the CMAs, depending on the mitigation terms.

CFIUS Phases for Transaction Review, Mitigation, Clearance, and Compliance



Why BRG?

You have just signed a mitigation agreement with CFIUS, and the US government now requires you to have a TPM or a compliance auditor after your transaction closes. You want a firm that combines excellence in compliance oversight and deep experience in and understanding of CFIUS and US national security along with relevant industry experience—all while being sensitive to the flow of your business operations.

Look to the experts at BRG, a leading provider of US government monitoring and compliance auditing services. BRG's CFIUS team has extensive experience serving as TPMs and compliance auditors. Based on our experience working on the committee and our unique and deep understanding of US national security and CFIUS concerns, our CFIUS team recognizes and understands the technical and industry-specific nature of each mitigation agreement. Leveraging BRG's industry-recognized excellence and expertise in corporate governance, compliance, and risk management, as well as BRG's deep industry knowledge, we tailor each CFIUS monitorship team and compliance audit team to include experienced and credentialed national security, cybersecurity, information technology, and data privacy professionals and relevant industry experts to address the unique requirements of each mitigation agreement effectively and efficiently. While sensitive to a company's business environment and operations, we are aware of our fiduciary responsibility to the US government. Our collaborative and cost-sensitive approach helps your company ensure there are no surprises while our tightly managed teams operate efficiently and as unobtrusively as possible.

Find out more about BRG's overall [CFIUS Transaction Services Strategy practice](#), or please contact:

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About BRG

Berkeley Research Group, LLC (BRG) is a global consulting firm that helps leading organizations advance in three key areas: disputes and investigations, corporate finance, and performance improvement and advisory. Headquartered in California with offices around the world, we are an integrated group of experts, industry leaders, academics, data scientists, and professionals working beyond borders and disciplines. We harness our collective expertise to deliver the inspired insights and practical strategies our clients need to stay ahead of what's next.

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