

US Regulatory Considerations: The Committee on Foreign Investment in the United States

美国监管注意事项：关于美国外国投资委员会

Background

背景

China's investment in the US increased in 2015 by 30% to a record US\$15 billion. For non-greenfield investments alone, Chinese companies announced acquisitions in 2016 of US assets totaling US\$20 billion – more than all acquisitions in the prior year. And that was in just the first quarter.

中国企业在美国的投资在2015年增长了30%，达到了创纪录的150亿美元。而在2016年，仅第一季度已宣布的中国公司在美资产收购（仅在非绿地投资方面）总金额已达200亿美元，超过了上一年的收购总额。

With all this Chinese investment pouring into the US, Chinese companies need to be mindful that the US is a highly regulated country, and to recognize that certain government filings may be either required by law or prudent even if not mandatory.

在投身对美投资大潮时，中国企业切不可忘记美国是一个高度制度化和规范化的国家，并认识到即便是某些非强制性的政府申请或文件，在法律框架下甚至是仅从谨慎考虑的角度出发也是必要的。

Perhaps the most well-known of these, though often the least understood, is the voluntary national security filing with the Committee on Foreign Investment in the US or CFIUS. By statute, the US President has the authority to review any foreign company's purchase of a US business for any effects on US national security and to determine whether the transaction threatens to impair the national security interests of the US if such buyer gained control over the US target business. If the President concludes that the national security interests of the US could be at risk, then the transaction may be prohibited or the parties could be required to modify the terms of the transaction to eliminate such risks.

在这些文件中，也许最知名但往往也是最不被普遍理解的就是向美国外国投资委员会（即CFIUS，下同）自愿提交的有关美国国家安全审查方面的申请。依照法规，美国总统有权对任何外国公司对美国企业的收购交易进行审查，以确定该交易对美国国家安全是否会产生影响，以及在买家对美国目标企业进行控制后是否会对美国的国家安全利益造成威胁和损害。如果总统的结论是美国的国家安全利益可能因此面临风险，那么交易就有可能被禁止或要求双方修改交易条款以消除这种风险。

In reviewing and evaluating the purchase of US businesses by foreign buyers from the perspective of national security, the President acts through CFIUS. CFIUS is a Committee composed of representatives from 16 different US government departments and agencies, including the Department of Defense, the Department

of State, the Department of Commerce and the Department of Homeland Security. The Committee is chaired by the US Secretary of the Treasury.¹

总统从国家安全角度对国外买家对美国企业或业务的收购所进行的审查和评估就是通过CFIUS进行的。CFIUS是一个由国防部、国务院、商务部和国土安全部等16个不同的美国政府部门和机构派驻的代表所组成的委员会，美国财政部长担任该委员会的主席¹。

CFIUS compliance should be of particular concern to Chinese entities. Earlier this year, CFIUS released its annual report to Congress for 2014, which showed that for the third year in a row, Chinese acquirers filed the largest number of CFIUS notices, an increase of 16.3% over the prior year. In fact, between 2012 and 2014, Chinese were parties in 19% of all transactions reviewed by CFIUS, a figure that is six percentage points greater than the next largest source of filings (the UK). This article explains the CFIUS basics that all Chinese investors should know before attempting to make their next US acquisition.

CFIUS的合规事宜应该特别引起中国企业的关注。今年早些时候，CFIUS发布了向国会提交的2014年度报告，报告中指出中国收购者向CFIUS提交申请的数量已连续三年保持首位，比上年增长16.3%。事实上，在2012到2014年期间，在经由CFIUS审查的所有交易中，收购方为中方的交易占据了19%的份额，这个数字比排名第二的申请方（英国）高出6个百分点。本文阐述了所有中国投资者在试图进行在美收购交易之前所需要知道的有关CFIUS的基本知识。

Gauging Exposure

衡量风险

In deciding whether a CFIUS filing would be appropriate for a particular transaction in the US, the parties should first determine whether the transaction is a "covered transaction" by CFIUS.

为确认在美国进行的某项特定交易是否应向CFIUS提交申报，交易各方首先应确定该交易是否属于“受CFIUS管辖的交易”。

¹ One of our Washington DC partners was the chief enforcement counsel [actual title for Steve McHale was: Assistant General Counsel for Enforcement and Intelligence] at the Treasury Department for several years, so we are intimately familiar with the CFIUS process.

翰宇华盛顿办公室的合伙人Steve McHale曾在财政部担任了七年首席执行官法律顾问[当时他的头衔是财政部执法和情报部门的助理总法律顾问]，因此翰宇对CFIUS流程的熟悉程度非一般律所可比。

A transaction is a “covered transaction” if a foreign company or individual, directly or indirectly, “acquires ownership” of or “control” of a US business. The former occurs any time that the Chinese firm purchases 50% or more of the US company’s voting equity, but the latter may occur even where the amount of equity acquired is much less than 50%. Such a “change of control” may occur where a foreign company (1) chooses a significant percentage of board members, (2) holds a dominant minority interest, (3) exercises control because of a shareholders or voting agreement, (4) exerts control because of related financing arrangements, or (5) controls the company or its management through other means. As a result, almost any acquisition, however small, may be subject to CFIUS review if there is a “control” component. At the same time, greenfield investments are not “covered transactions” and are thus outside the scope of CFIUS’ review authority.

如果某家外国公司或个人通过某一交易直接或间接地“获得其所有权”或“控制”了一家美国企业，则该交易属于“受CFIUS管辖的交易”。无论何时，只要中国企业购入美国公司50%或以上有表决权的股权即被视为“获得其所有权”，但就“控制”而言，在被收购股权数量远低于50%时也有可能发生。当一家外国公司（1）选任相当比例的董事会成员；（2）持有占据支配地位的小股东权益；（3）通过一份股东协议或表决协议而行使控制权；（4）通过相关的融资安排发挥控制权；或者（5）以其他方式控制目标公司或其管理层时，就可能发生“控制权的变动”。因此，几乎任何收购（无论其规模多小），只要涉及“控制”，都会受到CFIUS的审查。而与此同时，由于绿地投资并非“受管辖的交易”，因而不包括在CFIUS的审查范围之内。

If a transaction is a “covered transaction” by CFIUS, the next step is to determine whether the transaction could negatively affect US national security interests.

如果一项交易已被确定为“受CFIUS管辖的交易”，那么下一步应明确的则是该交易是否会对美国的国家安全利益产生负面影响。

The US has formulated a broad definition of “national security interests,” going beyond traditionally sensitive areas, such as defense contracts, to include companies that provide access to verbal and electronic conversations (satellite telecommunications companies and internet service providers are covered), maintain the country’s ability to meet the energy needs of its citizens, or provide “critical infrastructure” that is considered necessary for national security. Some acquisitions have encountered CFIUS problems because of the proximity of the target company’s physical assets to US military installations (“proximity issues”).² CFIUS opposition to such deals is subject to a number of variables; however, the proximity issues raised in recent cases tend to concern relatively remote assets that offer the potential for surveillance.

2 Even Shuang Hui International’s purchase of Smithfield Foods, a producer of pork, was subject to a CFIUS review on national security grounds: though, it was eventually approved. The transaction was approved without any mitigation measures despite being located near a military installation.

甚至双汇国际（一家猪肉制品生产商）收购史密斯菲尔德食品公司的交易都因为国家安全原因受到CFIUS的审查（虽然最终获得批准）。不过针对该交易的审查并没有要求采取任何缓解措施。

美国对于“国家安全利益”的定义十分广泛，除了如国防合同等传统的敏感领域，还包括提供口头或电子会议服务的公司（包括卫星通信公司和互联网服务供应商）、帮助国家满足民众能源需求的公司或提供被认为是国家安全所需的“关键基础设施”的企业。此外，一些收购交易之所以在CFIUS遇到问题，是因为目标公司的实物资产邻近美国军事设施（“毗邻问题”）²。CFIUS反对此类交易可能出于很多原因，但是最近关于“毗邻问题”的案例表明其倾向于关注那些较偏远但可以提供潜在在监视可能性的资产。

Voluntary Filing with CFIUS early in an acquisition may be prudent.

较为谨慎的做法可能是在收购的早期向CFIUS主动申报。

The filing of a CFIUS notice when a PRC buyer acquires “control” of a US business is not mandatory; however, if the transaction (i) is a “covered transaction” (i.e., practically anything other than a greenfield investment) and (ii) raises the possibility of any national security issues, then we often recommend that a voluntary CFIUS filing be considered so that the buyer can benefit from the safe-harbor of CFIUS clearance. This assures the buyer that CFIUS will not come back, absent a material misrepresentation in the voluntary notice, in the future and impose some form of mitigation on the buyer. CFIUS has the authority to review and intervene in any covered transaction on national security grounds, and can do this even after an acquisition has been completed, which at that point the remedy normally imposed by CFIUS is divestiture, unwinding the transaction.³ In addition, CFIUS can set conditions on how parties abandon a transaction or conduct their divestitures, including requiring the seller to obtain CFIUS authorization of any potential buyers and seek CFIUS approval to access the US business prior to divestiture.⁴ Unwinding a transaction after closing could be disastrously difficult and expensive for the parties. We normally recommend a review of the prospective acquisition for CFIUS issues as soon as formal overtures are underway, and where appropriate, to begin preparations to engage with CFIUS about any particular issues well in advance of the formal notice to CFIUS of the transaction.

虽然当中国收购方获得一家美国企业的“控制权”时向CFIUS提交审查申请并非强制要求，但是如果交易（1）是“受CFIUS管辖的交易”（即绿地投资之外的几乎任何交易）以及（2）有可能涉及任何国家安全问题的情况下，我们通常建议交易方考虑向CFIUS主动申报，以使交易进入经CFIUS审查后的安全港。这一行动可使收购方确

3 This was the outcome in 2012 when the President ordered, pursuant to a recommendation by CFIUS, that the Ralls Corporation (owned by Chinese nationals) divest recently acquired wind farms. See our [publication](#) about this case.

2012年总统根据CFIUS的建议下令中方所拥有的Ralls Corp.放弃其最近收购的风电场。关于该案详情以及其后在法庭上的质疑详见翰宇的[文章](#)。

4 For example, following a CFIUS investigation in 2013, China National Machinery Industry Corporation’s agreed with CFIUS to divest indirect interests held in Lincoln Mining Corporation, and also agreeing to give “CFIUS advance notice of the intended purchaser(s) and restrict “access to the [US Properties] subject to the prior approval of specified United States government agencies.” This is most common for proximity cases. See, our Lincoln Mining Corporation [press release](#) (June 18, 2013).

比如在2013年，中国机械工业集团有限公司在经过CFIUS的调查之后同意放弃其在Lincoln Mining Corporation持有的间接利益，同时同意“就预期的收购者事先通知CFIUS”并同意“接近[美国资产]时要取得特定美国政府机关的事先批准”。这对涉及毗邻问题的案件而言最为常见。参见翰宇于2013年6月18日发布的有关[新闻稿](#)。

信，除非主动申报中存在重大不实陈述，否则CFIUS将来不会再找上门来并强加某种形式的缓解措施。CFIUS有权以国家安全的理由审查和干预任何受其管辖的交易，甚至在收购完成后也可以进行该等审查和干预，CFIUS在这个阶段通常实施的补救措施是要求进行剥离甚至放弃交易³。此外，CFIUS还可以对各方如何放弃交易或进行剥离设定条件，包括要求卖方获得CFIUS对任何潜在买方的授权以及在剥离前须获得其批准才可以接触美国业务⁴。在交割后放弃交易对于交易各方而言都是困难且损失巨大的。我们通常建议在正式开始进行计划中的收购时应尽快审查CFIUS相关事项，并且必要时，在向CFIUS正式申报该交易之前就开始充分的准备工作，与CFIUS接洽任何特别的问题。

Preparing the Filings

准备申报

A CFIUS notice must include the following information:

提交给CFIUS的申报须包含以下信息：

The parties must provide CFIUS with general background on the buyer and seller and the products and services of each.

各方应向CFIUS提供买卖双方的背景以及各方的产品和服务信息；

The US company must specify whether it has any products or services that are controlled under applicable US licensing and export regulations, and it must report whether it has or supplies products and services for any US government contracts.

美国目标企业须明确其是否有任何受美国许可和出口规定约束的产品或服务，还须报告其曾经或当前是否为任何美国政府合同提供产品和服务；

- The foreign controlled buyer must explain if any government owns all or any portion of the company.

由外资控制的买方须就其是否由任何政府机构全部或部分持有的情况作出说明；

- Both companies must confirm that the purchase will comply with applicable US licensing and export regulations.

双方公司均应确认该收购将遵守适用的美国许可和出口规定。

- The foreign buyer must provide detailed personal information about the directors, senior executives and its individual shareholders holding a 5% or greater ownership. In some circumstances, CFIUS has requested similar information with respect to entities having a large minority shareholding in the foreign buyer, if the minority shareholder possesses a level of “control” over the foreign buyer.

外国买方须提供其董事、高级管理人员和持有5%或以上股权的个人股东的详细个人信息。在某些情形下，如果外国买方的“控制权”在一定程度上被小股东拥有，CFIUS还会要求其提供在该外国买方中享有决定性小股东权益的实体的相关信息。

It is important to realize that much of this information will be available only in Chinese, and that all such information will need to be translated into English for the notice. The parties must therefore allow adequate time for this process.

需多加注意的是上述信息通常是中文形式，但为申报之需要，所有相关信息都要译成英文。各方应当为这一过程留足时间。

When all the necessary material has been prepared and translated into English, and the parties have consulted with CFIUS informally about the forthcoming notice, the formal notice may be filed with CFIUS. Recently, however, we often find that a CFIUS notice filed in connection with a particular acquisition will be rejected on technical grounds or that additional information will be requested before CFIUS will officially accept the filing. This is often a result of the heavy backlog of filings that CFIUS currently faces, but can also be a tool for CFIUS to extend its time for review. Whatever the reason, the parties need to recognize that even the process of filing the notice once the materials are assembled may require additional time.

在所有必备材料都准备完毕和译成英文，且各方已就需提交的申报与CFIUS进行了非正式磋商之后，就可以正式向其提交申报通知了。然而近期，我们发现向CFIUS提交的申报常常因技术原因被拒收或在申报正式“受理”之前被要求提供额外信息。这固然是CFIUS当前面临申报严重积压的后果之一，但也不失为其延长审查期限的手段。不论出于何种原因，各方须认识到即使在材料准备齐全的申报提交阶段，仍可能需要额外的时间。

The Review Process

审查流程

Once the notice is accepted, CFIUS will have 30 days from its acceptance of the formal filing to make a preliminary determination either to allow the transaction to proceed or to investigate it further. If CFIUS decides to investigate further, the Committee will have an additional 45 days to continue. (In recent years, 45-day investigations for acquisitions by Chinese companies with a level of state-ownership have become increasingly common.)

申报受理后，CFIUS会用30天的时间对正式申报作出“同意交易继续进行”或“还需进一步调查”的初步决定。如果是后者，CFIUS将延长45天继续进行审查。近年来，对中国国有企业进行的收购延长45天审查已变得越来越普遍。

At the end of that 45-day period, CFIUS may:

在45天期限届满之际，CFIUS可能：

1. Recommend allowing the transaction to proceed as-is.

建议按计划进行交易，或

2. Require the parties to accept some form of mitigation to address CFIUS concerns and then approve it.

要求各方接受消除CFIUS顾虑的某种形式的缓解措施，然后才批准交易，或

3. Recommend to the US President block the transaction, at which point, the President has 15 days to review (the President has always accepted CFIUS' recommendations).

建议美国总统阻止该交易，在此情况下，总统有15天的时间进行审查（但总统通常会接受CFIUS的建议）。

Each of these has occurred with respect to an acquisition by a Chinese company in recent years.

上述各种可能性在近年来中国公司的收购交易中都曾发生过。

Despite the deadlines, it sometimes happens that a CFIUS filing will require a longer period of time to be reviewed, but may not necessarily need to be investigated or blocked. In the event that CFIUS is unable to complete its review or investigation during the statutory time, but does not wish to make a recommendation to the President, it may allow the parties to withdraw the initial application and refile in order to restart the review clock. This practice typically occurs when there are issues related to the transaction, but CFIUS believes that those issues can be resolved.

虽然有截止日期，但有时向CFIUS提交的申报需要更长的时间来审查，同时又可能不存在被要求进行额外调查或被禁止的可能性。在CFIUS无法在规定期限完成审查或调查，但又不倾向于向总统建议（阻止交易）的情形下，可能会允许各方撤回最初的申请然后重新提交以便重新计时。这通常发生在交易存在某些问题，但CFIUS认为这些问题能够解决的情况下。

Trends

趋势

Chinese acquisitions in certain sectors (particularly semiconductors and hi-tech manufacturing processes) have attracted particular scrutiny from CFIUS during the past year. In these areas, CFIUS is focusing not only on individual transactions, but also on the potential impact for the entire sector (for example, CFIUS will look at whether enough "trusted" US suppliers will exist in the sector if the proposed transaction proceeds).

在过去一年间，中国企业在某些领域（尤其是半导体和高科技制造领域）的收购行动引发了CFIUS特别详尽的审查。在这些领域，CFIUS不仅针对某个具体交易进行审查，还将重点扩展到对整个行业的潜在影响（例如，CFIUS会考量如果该交易得以顺利进行的话，该领域中是否还会有足够的“受信任”的美国供应商存在）。

However, semiconductor and hi-tech manufacturing deals, despite the increased scrutiny, may still receive CFIUS clearance, if there has been proper legal guidance and a proactive filing. For example, in the case of Summitview Capital, CFIUS approved a semiconductor transaction, largely because the parties recognized the potential national security concerns and chose to make a filing that demonstrated the technology would not affect national security. Summitview Capital is also instructive because as the period for CFIUS review was nearing its expiration, rather than risking an expiration without approval, the parties chose to withdraw the original notification and then refile, starting the clock anew and giving the parties and CFIUS more time to resolve their issues. This retreat-and-re-engage strategy proved successful as CFIUS ultimately granted its approval.

然而，尽管CFIUS对半导体和高科技制造业的交易加大了审查力度，在主动申报和正确的法律顾问指导下，收购方仍可能顺利通过审查。以武岳峰资本(Summitview Capital)的交易为例，CFIUS批准这宗半导体行业交易的很大一部分原因是因为双方均认识到该交易所存在的潜在国家安全问题，从而在申请中强调并证明了相关技术不会影响到国家安全。而武岳峰资本在面临CFIUS审查期限将要届满时也采取了颇有启发性的举措，即选择撤回原来的申请然后再次提交以重新计算审查期限，这样就给予了交易双方和CFIUS更多的时间来解决问题。最终CFIUS的批准证明了这种撤退-再进攻战略是成功的。

Conversely, neglecting CFIUS considerations where potential issues exist may invite trouble. Sany Heavy Industry, through US-based Ralls Corp., acquired four wind power plants located not far from a US Naval facility. The parties chose not to make a CFIUS filing, and the holdings were directed by a Presidential order to be divested upon recommendation of CFIUS. Sany eventually reached a settlement with the US government, but only after a long and costly battle in court, which ultimately left Sany still unable to retain the disputed property.

与此相反的是，忽视CFIUS对潜在国家安全问题的考量就可能会引起麻烦。在三一重工通过在美国的子公司Ralls Corp.收购位于美国某海军设施附近的四家风力发电厂的交易中，因为交易双方没有主动进行CFIUS申报，最终总统在CFIUS的建议下下令将该项目强行中止。三一重工虽然经过漫长而昂贵的法庭程序与美国政府达成和解，但其最终仍然无法拥有这笔有争议的资产。

Another noteworthy trend that we are seeing is that US sellers are often now demanding that a Chinese buyer agree to pay a breakup fee if the transaction fails due to CFIUS concerns, arguing that it is riskier for them to sell to a Chinese buyer (particularly a state-owned enterprise) than to sell to a buyer from another country. Some Chinese companies are accepting such breakup responsibilities. Responding to this trend, we have seen that at least one insurance company is now offering an insurance policy against the risk of paying such breakup fee.

另一个值得注意的趋势是，美国的卖家现在经常要求中国买家同意对因无法通过CFIUS审查而导致交易失败的后果支付分手费（亦称终止交易费），他们认为将业务出售给中国（特别是国有企业）而非另一国的买家需要承担更大的风险，而一些中国公司也已经接受这样的赔偿责任。我们也注意到，为了应对这一趋势，至少有一家保险公司目前已出台针对该分手费风险的保险政策。

Best Practices

最佳实践

Based on the foregoing, we offer the following best practices when acquiring a company in the US:

综合上述情况，我们就在美收购企业提出以下“最佳实践”：

- Work with experienced advisors to determine whether the transaction (i) is a “covered transaction” by CFIUS and (ii) might raise any national security concerns.

与经验丰富的咨询顾问共同合作，以确定交易 (i) 是否属于CFIUS的“受管辖交易”，以及 (ii) 是否存在任何引起国家安全顾虑的可能性。

- If so, then file a CFIUS notice. Be prepared for significant disclosures regarding Chinese ownership of the buyer and operations of the US business, and allow sufficient time in the schedule for pre-filing CFIUS consultations, translations and further requests or modifications before the notice is formally accepted by CFIUS.

如果答案是肯定的，那么就应主动提交CFIUS申报，作好对有关买家的中方所有权以及美国目标业务运营情况进行大量披露的准备，在进度表中留出足够的时间以准备与CFIUS之间的申报前磋商、材料翻译以及在申报被正式受理之前所需要的进一步修改或其他要求。

- In making the joint filing, the parties should focus on the aspects of the transaction that are most likely to be of concern to CFIUS rather than seeking to avoid them.

在进行联合申报时，各方应把重点放在交易中那些最有可能成为CFIUS关注焦点的领域，而非寻求避免或绕过它们。

- At the earliest, and ideally prior to pre-filing consultations with CFIUS, develop a strategy to try to ensure that the transaction is neither prohibited nor materially modified, identifying the CFIUS members and interested parties that are most likely to question or challenge the transaction and work to eliminate or address their concerns.

在早期，最好是与CFIUS进行申报前的磋商之前就制定一项战略以尽量确保交易既不被禁止也不会被要求进行重大修改。找出交易中CFIUS成员和有关方面最有可能产生质疑或提出挑战的地方，并努力消除或解决他们的疑虑和问题。

Chinese state-owned enterprises attract particular attention from CFIUS. There is a presumption in the CFIUS regulations that requires CFIUS to undertake an investigation of acquisitions by any foreign government-controlled entities unless the chairperson and the head of a lead agency determine upon completion of a review that the transaction would not impair the national security of the US.⁵

中国国有企业通常会引起CFIUS的特别关注。CFIUS相关条例中存在某种推定，要求除非CFIUS主席和领导机构负责人在审查完成后确认该交易不会损害美国的国家安全，否则CFIUS就必须对任何由外国政府控制的实体进行收购的交易开展调查⁵。

The state-owned enterprise (SOE) should query whether any mitigation measures are available and whether the measures would materially impact the commercial feasibility of the proposed transaction. For example:

国企应咨询是否有任何可用的缓解措施，以及这些措施是否会对交易的商业可行性产生重大影响。例如：

- a. Requiring the target’s divestiture of government contracts or US licenses to do defense-related businesses (i.e., ITAR licenses).

要求收购目标将与国防业务有关的政府合同或美国许可证（如国际武器贸易条例项下的许可证）进行剥离。

- b. Where cybersecurity is involved, prescribing security protocols and limitations to authorized personnel, such as under a Network Security Agreement.

在涉及网络安全的情况下，规定安全协议和仅限于被授权人员等（例如，在网络安全协议项下进行规定）。

- c. Decreasing its share of the investment to a non-operational role or structuring a passive ownership. For example, the acquisition of assets in the Gulf of Mexico near a sensitive Louisiana military installation by state-controlled CNOOC was approved after it restructured the transaction to relinquish day-to-day control of the target.

将其投资份额降低到一个非经营性角色的水平，或构建一个被动性所有权。例如，国有控股企业中海油收购位于墨西哥湾且毗邻路易斯安那敏感军事设施的资产的交易，即是在将交易重组并放弃对收购目标的日常控制之后方获批准。

⁵ 31 CFR (美国联邦规则汇编) 800.503(c).

Lastly, the CFIUS filing should be prepared to show the following:

最后，CFIUS申报的准备工作还需要体现以下几点：

1. A purely commercial or otherwise acceptable basis for the investment, not a hidden motive.

表明投资是基于纯粹的商业目的或其他可接受的理由，而无任何隐藏动机。

- a. Avoiding the appearance of any unexplained premium in the purchase price.

在购买价格中避免任何不明原因的溢价，或

- b. Preparing a compelling synergy or other explanation for the acquisition.⁶

为收购交易的合并效果准备好令人信服的证明材料或其他解释⁶。

2. The SOE makes its decisions and operates its business with autonomy from the Chinese government and with minimal financial support from any government in the PRC.⁷

表明该国有企业的决策与经营不受中国政府的控制和影响，并且仅享受中国政府提供的最小限度资金支持⁷。

3. A record of transparency and compliance – if the SOE has any history of compliance and disclosure in another country, note it.

出示企业透明度和合规方面的记录。可能的话，着重强调该国有企业在其他任何国家经历过的合规和信息披露历史。

6 [Analysis of close proximity issues in transactions reviewed by CFIUS](#) (2015).

摘自《[经CFIUS审查的交易中毗邻问题的分析](#)》2015

7 See, e.g., Gary C. Hufbauer, Yee Wong, and Ketki Sheth, Institute for Int'l Econ., US-CHINA TRADE DISPUTES: RISING TIDE, RISING STAKES (2006) (describing CFIUS opposition to state-controlled CNOOC's acquisition of US oil producer Unocal Corporation in 2005).

见国际经济研究所Gary C. Hufbauer, Yee Wong及Ketki Sheth所著《美国与中国的贸易争端：上升趋势与风险》（2006年）（对CFIUS反对由中国政府控制的中海油于2005年收购美国石油生产商优尼科公司之交易的描述）。

Concluding Thoughts

结语

The process for navigating through the CFIUS regime should be understood and addressed carefully, not avoided. Because CFIUS does not publish opinions for its decisions, securing the guidance of counsel with intimate knowledge of the landscape and years of experience working inside the Committee is crucial for maximizing the likelihood of a successful US investment.

中国企业对CFIUS审查制度和流程应予充分理解，并致力于定位和解决问题，而不能采取避之则吉的态度。由于CFIUS并不对其审查决定作出公开解释，因而为了确保在美投资的最大成功率，与精通该领域且曾经在委员会内部拥有多年工作经验的法律顾问进行合作将成为至关重要的因素。

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