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# **The CFIUS Review Process: Trends and Challenges**

**Presentation to the Delegation of the State-owned Assets Supervision and  
Administration Commission (SASAC), People's Republic of China**

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# 美国外国投资委员会审查程序 趋势及挑战

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纽约

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# The CFIUS Review Process



- “Chinese leaders and companies are really frustrated, always puzzled by and angry about the difficulties in accessing the U.S. market.”
  - Cheng Li – Director of Research and Senior Fellow, John L. Thornton China Center, Brookings Institution (Washington Post, October 7, 2011)

# 外国投资委员会审查程序



“中国的官员和公司对于进入美国市场的艰难都感到十分沮丧、不解和愤怒。”

李成

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外交政策项目高级研究员

(《华盛顿邮报》2011年10月7日载)

# CFIUS: Authority

- Section 721 of the Defense Production Act (“DPA”), as amended by the Foreign Investment and National Security Act of 2007 (“FISIA”) establishes the process for reviewing the national security impact of foreign acquisitions and certain investments and joint ventures of U.S.-located firms by the Committee on Foreign Investment in the United States (“CFIUS”).
  - Applies to all foreign investments in U.S. defense and critical infrastructure businesses regardless of whether they have classified contracts
  - The President of the U.S. has the authority to suspend or terminate such transactions if they present “credible threats” to national security that cannot be adequately mitigated under other laws, excluding the International Economic Emergency Powers Act

# 美国外国投资委员会：权力范围

- 由2007年《外国投资和国家安全法》(FISIA)修正的《国防生产法》第721条确立了由美国外国投资委员会 (Committee on Foreign Investment in the United States; CFIUS) 审查外国的合并收购和某些美国本土公司的合资企业对国家安全所产生的影响的程序。
  - 适用于国防和关键基础设施相关的公司进行的所有外国投资，无论美国本土公司是否有机要合同
  - 倘若某类交易对国家安全构成“可信威胁”且这种威胁无法通过其他任何法律（《国际经济非常时期权力法》除外）充分减轻，则美国总统有权暂停或终止此类交易

# CFIUS: Covered Transactions

- **“Covered Transaction”** is any transaction “by or with any foreign person, which could result in control of a U.S. business by a foreign person.”
- **“Foreign Person”** is any “foreign national, foreign government, foreign entity,” or “any entity over which control is exercised or exercisable by a foreign national, foreign government, or foreign entity.”
  - includes acquisitions of control in U.S. companies or entities with foreign parents or significant foreign shareholders

# 美国外国投资委员会：应受审查交易

- “应受审查交易”被定义为“由任何外国人投资的或与任何外国人共同投资的、可能引起由外国人控制一家美国企业的”任何交易。
- “外国人”被定义为“外国公民、外国政府或外国实体”或“由某一外国公民、外国政府或外国实体行使了或可行使控制权的任何实体”。
  - 这一广泛定义包括了有外国母公司或有重要外国股东的美国公司



# CFIUS: Summary of Recent Reviews

## Covered Transactions, Withdrawals, and Presidential Decisions 2007 – 2009 (CFIUS Annual Report, 2010)

Year	Number of Notices	Notices Withdrawn During Review	Number of Investigations	Notices Withdrawn During Investigation	Presidential Decisions
2007	138	10	6	5	0
2008	155	18	23	5	0
2009	65	5	25	2	0
<b>Total</b>	<b>358</b>	<b>33</b>	<b>54</b>	<b>12</b>	<b>0</b>

# 外国投资委员会：近期审查一览表

应受审查交易、撤回申报的交易, 和送交总统决定的交易

2007年 – 2009年

来源: 外国投资委员会2010年年度报告

年度	申报件数	审查期间 撤回的申报件数	调查件数	调查期间 撤回的申报件数	送交总统决定的 申报件数
2007	138	10	6	5	0
2008	155	18	23	5	0
2009	65	5	25	2	0
<b>总计</b>	<b>358</b>	<b>33</b>	<b>54</b>	<b>12</b>	<b>0</b>

# CFIUS: Industry Areas of Recent Filings

**Covered Transactions by Sector and Year, 2007-2009  
(CFIUS Annual Report, 2010)**

Year	Manufacturing	Information	Mining, Utilities and Construction	Wholesale and Retail Trade	Total
2007	60 (43%)	58 (42%)	11 (8%)	9 (7%)	138
2008	72 (46%)	42 (27%)	25 (16%)	16 (10%)	155
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
<b>Total</b>	<b>153 (43%)</b>	<b>122 (34%)</b>	<b>55 (15%)</b>	<b>28 (8%)</b>	<b>358</b>

# 外国投资委员会：近期申报所涉及的行业

## 按行业统计的应受审查交易

2007年-2009年

来源：外国投资委员会2010年年度报告

年度	制造业	信息产业	矿业、基础设施 和建筑业	批发 和零售业	总计
2007	60 (43%)	58 (42%)	11 (8%)	9 (7%)	138
2008	72 (46%)	42 (27%)	25 (16%)	16 (10%)	155
2009	21 (32%)	22 (34%)	19 (29%)	3 (5%)	65
<b>总数</b>	<b>153 (43%)</b>	<b>122 (34%)</b>	<b>55 (15%)</b>	<b>28 (8%)</b>	<b>358</b>

# CFIUS: Principal Nations Filing for Transactions

## Covered Transactions by Acquirer Nation (CFIUS Annual Report, 2010)

Country	2007	2008	2009	Total
United Kingdom	33	48	16	97
Canada	21	6	9	36
France	7	12	7	26
Israel	6	12	5	23
Australia	9	11	1	21
<b>China</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>13</b>
Japan	1	8	4	13
Netherlands	7	2	4	13
United Arab Emirates	7	2	2	11
Switzerland	6	4	0	10
Italy	3	5	2	10
Germany	6	3	1	10

# 外国投资委员会：申报交易的主要国家

## 应受审查交易的收购方国家

来源：外国投资委员会2010年年度报告

国家	2007	2008	2009	总计
英国	33	48	16	97
加拿大	21	6	9	36
法国	7	12	7	26
以色列	6	12	5	23
澳大利亚	9	11	1	21
<b>中国</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>13</b>
日本	1	8	4	13
荷兰	7	2	4	13
阿联酋	7	2	2	11
瑞士	6	4	0	10
意大利	3	5	2	10
德国	6	3	1	10

# CFIUS: Composition

- **Permanent members of CFIUS (from FINSA)**
  - Treasury Department (chair)
  - State Department
  - Commerce Department
  - Department of Defense
  - Department of Justice
  - Department of Homeland Security
  - Department of Energy, and
  - Department of Labor (*ex officio*)
  - Director of National Intelligence (*ex officio*)
- **White House, by Executive Order, added:**
  - US Trade Representative and Office of Science and Technology Policy, as members; and
  - National Security Council, Council of Economic Advisors, Office of Management & Budget, and others, as non-voting participants
  - Other agencies participate as relevant to particular cases

# 美国外国投资委员会：组成

- **美国外国投资委员会永久成员（依据《外商投资和国家安全法》而定）**
  - 财政部（主席）
  - 国务院
  - 商业部
  - 国防部
  - 司法部
  - 国土安全部
  - 能源部，及
  - 劳工部（职权成员）
  - 国家情报总监（职权成员）
- **白宫按照行政命令增加了下列成员**
  - 美国贸易代表、科技政策办公室作为正式成员；和
  - 国家安全会议、经济顾问理事会、管理预算办公室和其他机构，作为无表决权参与者；以及
  - 与特定案例相关的其他参与机构



# CFIUS: Filing Process

- The CFIUS review process typically begins with the parties filing a voluntary joint notice with the Committee.
  - It is common practice if possible to notify CFIUS of a pending transaction and provide a “pre-filing” one week prior to the final filing.
  - CFIUS may ask questions of the parties or request additional information, either as part of the pre-filing process or after accepting the joint notice.
  - A pre-filing allows the parties to gather any requested information and incorporate it into the final joint notice without being subject to any regulatory time constraints.
  - After filing a joint notice, the parties are required to respond to CFIUS’ requests for additional information within three business days.
- CFIUS also can unilaterally initiate a review of any defense or critical infrastructure-related transaction, so parties to such transactions ordinarily file a joint notice voluntarily.
- Under the National Information Security Program Operating Manual (“NISPOM”), when a government contractor with a facilities security clearance enters into negotiations for a proposed transaction affecting control, it must notify the Defense Security Service (“DSS”) of the commencement of the negotiations.

# 美国外国投资委员会：申报程序

- 美国外国投资委员会的重要程序通常始于各方共同向委员会提出自愿申报：
  - 通常的做法是告知委员会有关未定交易并在申报之日前至少一个星期提供详尽的“预申报”介绍
  - 美国外国投资委员会可能会作为预申报程序的一部分或在接受共同申报之后，向各方提出问题或要求提供更多材料
  - 预申报使得各方能够集中所有被要求的资料汇总，纳入共同申报内容之中，却不受任何规定的时间限制
  - 提出共同申报之后，各方必须回应外国投资委员会提出的要求，在三个工作日内提供附加补充材料
- 外国投资委员会还可以对任何有关国防或关键基础设施的交易单方提出审查，因此该交易各方通常会共同自愿提出申请。
- 依据《国家信息安全计划操作手册》，当一个有进出政府机构安全证的政府承包商开始为某项拟定交易进行谈判时，其必须通知国防安全局谈判的开始。

# CFIUS: Timing

- **30 Day Initial Review**
  - The majority of transactions filed with CFIUS are approved at end of this period or determined not to be “covered transactions” subject to CFIUS jurisdiction
- **45 Day Investigation Period**
  - If CFIUS still has concerns about the transactions after the 30 day initial review, it may initiate a second, 45 day, investigation period
  - Pursuant to FINSA, a 45 day investigation is mandatory when a transaction involves foreign government control or the acquisition of critical infrastructure. This requirement can only be waived by the deputy heads of the co-lead agencies reviewing the transaction. The co-lead agencies are CFIUS and the member agency most related to the industry involved.
- **15 Day Presidential Review Period**
  - If CFIUS cannot reach a consensus to allow the transaction, or recommends a Presidential rejection, or in other special circumstances, the transaction goes to the President for a final decision, followed by a report to the Congress

# 外国投资委员会：时间表

- **30天初审期**

- 在外国投资委员会申报的大部分交易会在此阶段结束时获得批准或确定不属于外国投资委员会规定范围内“所包括交易”。

- **45天调查期**

- 如果外国投资委员会在30天初审后仍有任何问题，它可以启动第二阶段45天的调查。
- 依照《外国投资和国家安全法》，如果交易涉及外国政府控制和/或对关键基础设施进行收购，则必须进入45天的第二阶段调查。这一要求只能由审查交易的联席领导机构豁免。联席领导机构包括外国投资委员会和其他与所涉及行业密切相关的成员机构。

- **15天总统审查期**

- 如果外国投资委员会不能就某项交易达成一致意见，或建议总统干预，或在其他特殊情况下，交易由总统最后决定，然后向国会汇报。

# CFIUS: FOCI Mitigation

- If CFIUS determines that the transaction will result in foreign ownership, control, or influence (“FOCI”) over a company that has access to classified information or that FOCI might adversely affect the performance of classified contracts, CFIUS ordinarily will require the parties to enter into a mitigation agreement prior to approving the transaction.
- From 2007 through 2009, 21 transactions filed resulted in mitigation agreements.
- In 2009, member agencies of CFIUS negotiated mitigation measures for five transactions, involving acquisitions of U.S. companies in the computer software, telecommunications, and energy sectors.

## 外国投资委员会：缓解外国所有权、控制或影响

- 如果外国投资委员会确定交易会对能够获得机密信息的某家公司产生外国所有权、控制或影响，或外国的所有权、控制或影响可能会对机要合同产生负面影响，则委员会通常会要求各方在批准交易之前达成一个缓解协议。
- 2007年至2009年，有21项申报的交易需要采用缓解协议。
- 2009年，外国投资委员会的成员机构曾为5项交易就缓解办法进行谈判，这些交易涉及计算机软件、通讯和能源行业对美国公司的收购。

# CFIUS: FOCI Mitigation Agreements

- There are different types of mitigation agreements that CFIUS may require the parties to enter into depending on the level of foreign ownership, control, or influence:
  - Board Resolution or letters of assurance
    - Available when minority foreign investor does not have power to appoint a member to the board of directors. A Board resolution prevents the company from sharing classified information with foreign investor.
  - Special Control Agreement (“SCA”)
    - Required when minority foreign investor has power to appoint a board member. Requires the appointment of an approved outside director to the board with responsibility for monitoring compliance with the SCA.

## 外国投资委员会：外国所有权、控制或影响缓解协议

- 依据外国所有权、控制或影响的程度不同，外国投资委员会可要求各方签署不同类型的缓解协议：
  - **董事会决议**
    - 当持少数股权的外国投资商无权任命董事会成员时采用董事会决议，防止公司将机密信息与外国投资商分享。
  - **特别控制协议 (“SCA”)**
    - 当持少数股权的外国投资商有权任命董事会成员时，要求签署特别控制协议，该协议要求任命一位获批准的外部董事负责监测对特别控制协议的履行和遵守。



# CFIUS: FOCI Mitigation Agreements

- Special Security Agreement (“SSA”)
  - Requires appointment of several approved outside directors to serve on the board along with inside/foreign directors. Procedures must be established to regulate communications and visits between the company covered by SSA and foreign parents/affiliates. A National Interest Determination (“NID”) is required before a company under an SSA may receive access to certain “proscribed” classified information.
- Proxy Agreement or Voting Trust Agreement
  - Foreign parent foregoes direct control over U.S. company, which is managed by approved outside directors. Procedures must be established to regulate communications and visits between company covered by agreement and foreign parents/affiliates. No NID is required before company covered by a proxy agreement or voting trust agreement receives access to classified information.

# 外国投资委员会：外国所有权、控制或影响缓解协议

## — 特别安全协议 (“SSA”)

- 要求任命若干位批准的外部董事与内部/外部董事同时服务于董事会。必须确定程序以监管该协议项下的公司与外国公司/关联公司之间的访问与交流。特别安全协议项下的任何公司在可能获得某些“禁止的”机密资料之前，必须先要确定其对国家利益的影响。

## — 代理协议或表决权依托协议

- 外国母公司放弃对美国公司的直接控制，而由已批准的外部董事管理。必须确定程序以监管该协议项下的公司与外国公司/关联公司之间的访问与交流。在代理协议或表决权依托协议项下的公司获得机密资料之前，无需事先确定其对国家利益的影响。

# CFIUS: Practical Considerations

- What happens if the parties don't file a voluntary notice and CFIUS decides to investigate the transaction?
  - FINSA does not apply only before closing of a transaction; if security issues are raised post-closing, and CFIUS calls the parties requesting a filing, it could then review and force dissolution of the deal.
  - If CFIUS calls the parties before closing and requests a filing, the closing of the deal could be delayed or compromised if the purchase agreement does not contemplate such government clearance or filings and the 30-day review extends beyond the purchase agreement's closing date.
  - As a practical matter, if a voluntary filing is not made, CFIUS may learn of any security concerns from other sources (*e.g.* competing bidders who may complain to Congressional representatives; public notices required by U.S. securities law; CFIUS' own monitoring of acquisitions)
    - *Many government-supply contracts contain provisions requiring notification to the relevant agency in the event of a transfer of control.*

# 外国投资委员会：实际考虑

- 如果各方不主动申报，而外国投资委员会决定对交易进行调查，怎么办？
  - 外国投资国家安全法不仅适用于交易完成之前；如果在交割后提出了安全考虑，且外国投资委员会要求各方进行申报，则其可以审查交易，甚至解散交易。
  - 如果外国投资委员会在交割前要求各方进行申报，并且如果收购协议并未预期此类政府认可或申报的可能，而为期30天的审查超过了收购的交割日期，则有可能延迟或影响交易的完成。
  - 实际上，如果未主动申报，外国投资委员会由可能经由其他管道获知安全问题（如：可能向国会代表申诉的竞争持有人，按照美国证券法要求发出的公高；外国投资委员会对收购的自行检测。）
    - 注：许多政府供应合同包含要求在控制权转移前通知相关机构的要求。

# CFIUS: Practical Considerations

- How do you know whether the contemplated transaction involves “national security assets” or “critical infrastructure”?
  - The definition of national security and critical infrastructure assets is vague and imprecise.
  - In practice, it clearly covers traditional categories such as military weapons and technology, but also covers:
    - Items and materials used in weapons research;
    - Certain computer software;
    - Bioterrorism agents, such as certain drugs, facilities, equipment, material and technologies;
    - Natural gas and oil transmission lines;
    - Oil reserves and refineries;
    - Telecommunications and broadcast facilities;
    - Certain computer and information technology products;
    - Bridges and ports.

# 外国投资委员会：实际考虑

- 如何知道预期交易是否涉及“国家安全资产”或“关键基础设施”？
  - 国家安全和关键基础设施的定义含糊不清。
  - 在实践中，它不仅明确涵盖了诸如军事武器和技术等传统类别，而且涵盖了：
    - 武器研究用品和材料；
    - 某些计算机软件；
    - 生物恐怖主义制剂，如特定药物、设施、设备、材料和技术；
    - 天然气和石油输送线；
    - 油库和炼油厂；
    - 电信设施；
    - 某些计算机和IT产品；
    - 桥梁及港口。

# CFIUS: Practical Considerations

- Critical questions in determining whether CFIUS likely would want to review a transaction, and thus whether the parties should decide to voluntarily file, include:
  - Is the foreign purchaser a private or public (*i.e.*, government controlled) entity (if the latter, special rules of review timing apply)?;
  - What is the nationality of the purchaser (for example, China, Israel, and France can be expected to raise more interest in review than Great Britain, Italy, or Japan), including that of sovereign wealth funds?;
  - Do the facilities or personnel of the acquired entity have security clearances and, if so, at what level?;
  - Are the products or services direct or indirect components of weapons systems or critical infrastructure and, if indirect, how many steps removed they are from the final product or service and the degree of modification of the components in final assembly?;

# 外国投资委员会：实际考虑

- 确定美国外国投资委员会是否要审查某项交易从而使当事各方决定是否自愿申报的关键问题包括：
  - 外国购买方是私营实体还是公共实体（若是后者，由于新修正案的原因，应适用特别审查规则）；
  - 购买方的国籍（例如，法国、以色列和中国可能比英国、意大利或日本引起更大的审查兴趣），包括主权财富基金的情况；
  - 被收购实体的设施或人员是否获得了安全许可，若是，安全许可是什么级别；
  - 产品或服务是否是武器系统或关键基础设施的直接或间接组成，若是间接组成，它们距离最终产品或服务还有几个步骤，部件最终装配的改装程度如何；



# CFIUS: Practical Considerations

- (Continued)
  - What government supply contracts exist, with what security classifications, and with what obligations of confidentiality and restrictions on the ability to transfer such contractual obligations to others without notice and/or permission?;
  - Whether production or research facilities to be acquired will be closed or removed from the U.S. post-acquisition?;
  - Has the foreign acquirer or one of its affiliates ever taken action adverse to U.S. national security policy or interests?;
  - Whether any ancillary agreements required to be entered into as conditions of the acquisition raise concerns?

# 外国投资委员会：实际考虑

- (接上页)
  - 现有哪些政府供应合同，它们是何种安全分类，在保密性方面承担哪些义务，对在不经通知和/或许可的情况下将此类合同义务转移给他人的能力有哪些限制；
  - 拟收购的生产或研究设施是否打算在收购之后关闭或搬离美国；
  - 外国购买方或其某个关联公司是否曾经采取不利于美国国家安全政策或利益的行动；
  - 作为收购条件而要求签署的任何辅助性协议是否产生了问题。

# CFIUS: Practical Considerations -- Political and Public Relations Contacts

- **Government Contacts:**
  - It is often advisable for officials of the US target company and the foreign purchaser to alert government purchasing and Defense Security Services officials to the potential transaction to obtain their views as to whether a FOCI mitigation agreement appears necessary or warranted and determine if there appear to be any initial concerns regarding the potential transaction.
- **Political Contacts:**
  - Where it is likely that a transaction will result in an investigation by CFIUS, it may also be advisable for the parties to contact appropriate Congressional representatives, of the states in which facilities are located or who are on relevant Congressional committees, and state and local government officials, to inform them of the proposed transaction and emphasize the positive aspects of the transaction (*e.g.*, new investment, job protection, no shutdown of plants).
- **Public Relations Contacts:**
  - It also may be advisable to contact unions/employee groups, and national, local, and trade press to explain the purpose and positive effects of the transaction.
- All government and public relations contacts must be closely coordinated and must present a consistent message about the transaction.

# 外国投资委员会：实际考虑 – 政治与公共关系

- 政府关系

- 通常建议美国目标公司的高级职员和外国购买方提醒政府采购官员和国防安全局官员注意潜在交易，以便就是否有必要采用“外国所有权、控制和影响”缓解协议或者以此作为保证，获得他们的观点，并确定关于潜在交易是否出现了任何初步的问题。

- 政治关系

- 尽管任一项交易都有可能由外国投资委员会调查，建议当事各方与设施所在地那个州的国会代表或国会委员会成员以及州和地方的政府官员联系，告知其潜在交易的存在及其积极影响（如新投资、对工作机会的保护、未关闭任何工厂等）。

- 公共关系

- 也建议当事各方联系工会/雇员集团以及国家的、地方的和行业的媒体，解释交易的目的是和积极影响。

- 所有政府和公共关系一定要密切合作，就有关交易必须传达一致的信息

# CFIUS: Challenge Regarding Cleared Transaction

- Dubai Ports
  - In 2006, Dubai Ports World (controlled by the United Arab Emirates), acquired a company that operated six major U.S. ports, following CFIUS review and clearance.
  - Notwithstanding CFIUS clearance, the U.S. Congress expressed strong opposition to the acquisition, relating to asserted security risks presented at the ports if operated by a UAE government-controlled entity.
  - Dubai Ports, in response, stated in 2007 that it would divest its interest in the U.S. ports.
  - This controversy concerning the Dubai Ports acquisition was a major basis for enactment of the Foreign Investment and National Security Act of 2007, which broadened CFIUS' review authority.

# 外国投资委员会：获准交易所遭遇的挑战

- 迪拜环球港务集团

- 2006年，由阿联酋政府控制的迪拜环球港务集团在获得外国投资委员会审查和批准后收购了一家美国公司，该公司经营着五座美国重要的港口。
- 尽管获得了外国投资委员会的批准，但美国国会却因有关港口倘若交由受控于阿联酋政府的实体经营则会产生安全风险的指控，对此项收购表示强烈反对。
- 2007年，迪拜环球港务集团在其回应中表示，将其在这些港口中的权益从中剥离出来。
- 就迪拜环球港务集团收购事项的这一争议为2007年《外国投资和国家安全法》的颁布奠定了主要基础，扩大了外国投资委员会的审查权限。

# CFIUS: Recent Challenges Regarding China Transactions

- Huawei Technologies
  - In May 2010, Huawei purchased the intellectual property of a U.S. computer software company, 3Leaf, and hired many of its employees, for \$2 million. It did not file a voluntary notice with CFIUS.
  - In late 2010, CFIUS notified Huawei that it was retroactively reviewing the transaction.
  - In early 2011, CFIUS concluded that the transaction posed a threat to national security and informed Huawei that it would recommend that the President block the transaction if the assets were not divested voluntarily.
  - After initially proposing to challenge CFIUS' conclusion, Huawei decided to divest the 3Leaf assets and took the novel step of negotiating an ongoing oversight agreement with CFIUS to encourage open communication between Huawei and CFIUS concerning any future proposed transactions.

# 外国投资委员会：近期中国公司遭遇的挑战

- 华为技术有限公司
  - 2010年五月，华为以200万美元收购美国计算机软件公司3Leaf的知识产权，并聘用了许多3Leaf雇员。华为没有就此向外国投资委员会主动申报。
  - 2010年底，华为被告知，外国投资委员会正在对这项交易展开回溯审查。
  - 2011年初，外国投资委员会断定这项交易对国家安全造成威胁，并通告华为如果资产没有自愿剥离，外国投资委员会将建议总统阻止这项交易。
  - 华为最初对外国投资委员会的结论提出挑战，之后决定剥离3Leaf资产，并与外国投资委员会就持续监督协议展开新的谈判，以鼓励华为和外国投资委员会之间在未来交易申报中建立开放式的沟通。



# CFIUS: Challenges Regarding China Transactions

- In 2005, the China National Offshore Oil Company's ("CNOOC") attempted acquisition of Unocal Corp. prompted criticism from members of the U.S. Congress. The political opposition to the transaction is often cited as contributing to the passage of FINSA in 2007.
- Since the aborted Unocal transaction, however, CNOOC has successfully acquired substantial stakes in oil and gas assets in the U.S. through several minority investments that did not result in "control" of the assets.

# 外国投资委员会：近期中国公司遭遇的挑战

- 2005年中海油试图收购优尼科公司，遭到美国国会议员的批评。政治上对交易的反对通常被认为是2007年FINSA法案通过的原因之一。
- 对优尼科公司的收购中止后，中海油通过几次小额收购，成功在美国收购了大量油气资产，并未引发对资产的“控制”。

## CFIUS: Potential Future Issues

- A leading China e-commerce company, Alibaba Group, is reported to have expressed interest in acquiring Internet web portal and search engine Yahoo Inc. Such a proposed transaction may raise significant issues relating to whether CFIUS properly should review transactions involving acquisitions of U.S. businesses with only indirect connections to national security, but which are major Internet service providers with access to substantial data. (Wall Street Journal, Oct. 3, 2011).

## 外国投资委员会：未来潜在的问题

- 据报道，中国领先的电子商务公司阿里巴巴集团有意收购互联网门户网站和搜索引擎雅虎。这项潜在交易的收购对象虽然是与国家安全仅仅有着间接联系的企业，但却能够提供大量信息的主要互联网服务提供商，因此可能会引发是否由外国投资委员会对此交易进行审查的这一重要问题。

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**Morgan Lewis**

together

# **The CFIUS Review Process: Trends and Challenges**

**Presentation to the Delegation of the State-owned Assets Supervision and  
Administration Commission (SASAC), People's Republic of China**

**October 18, 2011  
New York, N.Y.**

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## 谢谢

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