

Deal Breaker: What the TikTok Investigation Means for U.S. Businesses

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As the [Committee on Foreign Investment in the United States \("CFIUS"\)](#) continues its ongoing investigation of ByteDance, the Chinese parent company to the U.S.- based social media platform TikTok, U.S. businesses are once again reminded that national security concerns might unexpectedly affect their transactions.

CFIUS, a little-known but powerful federal committee comprised of cabinet-level officials from the U.S. Departments of the Treasury, State, Defense, Homeland Security, and others, as well as senior White House and trade officials, is authorized to review and address national security risks arising from certain transactions involving foreign investments in the U.S. Where a national security concern is identified, CFIUS is authorized to block, modify, or unwind a transaction.

To avoid these potentially catastrophic consequences, parties to a transaction may, and often must, provide prior notification to CFIUS. Once a transaction is cleared by the committee, the parties receive "safe harbor" treatment with respect to that transaction, i.e., CFIUS cannot subsequently review the transaction. In the case of ByteDance's acquisition of the platform that is now TikTok, CFIUS opened an investigation into the deal after it had closed without obtaining CFIUS' prior approval. The investigation, initiated out of concern that Chinese access to sensitive user data poses a potential risk to national security, has continued for years and has snowballed to include Congressional inquiries.

For any U.S. business considering a transaction in which a foreign person is a potential purchaser or investor, CFIUS review should be a consideration. CFIUS review is particularly likely to be required where a business handles critical technology, infrastructure, and sensitive data, but the committee's jurisdiction is not limited to specific industries. CFIUS also has jurisdiction over certain real estate transactions.

While CFIUS' ongoing investigation of TikTok has made headlines, other notable changes involving the committee have also occurred in recent months. In September 2022, President Biden issued Executive Order 14083, the first-ever executive order directing CFIUS to include specific sets of factors in assessing the national security risks arising from a transaction. In October 2022, CFIUS issued its first "CFIUS Enforcement and Penalty Guidelines," which provide previously unavailable insight into CFIUS' enforcement and penalty priorities.

Parties to any transaction involving a foreign person should consult with CFIUS counsel early in the transaction process to determine if a CFIUS notification is required or recommended. Barley Snyder advises clients concerning foreign investments in the U.S. and assists clients with all aspects of the CFIUS notification process. For more information, please contact [Amanda Kowalski](#) or any member of the Barley Snyder [Business Practice Group](#).

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