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NAVIGATING FOREIGN DIRECT INVESTMENT REGULATION: INFRASTRUCTURE

Control of foreign investment

Foreign Direct Investment (**FDI**) regulation is an area of increasing activity and enforcement worldwide. Against a backdrop of heightened geopolitical tensions and the residual pressure to keep strategic industries 'onshore', an increasing number of FDI regimes globally now apply not only to outright acquisitions but also to minority investments, even where the interests acquired do not confer control over the target business or its assets.

FDI controls typically require parties to notify a monitoring authority (usually a government agency) of their intended transactions. Where a notification obligation applies, it will frequently be unlawful for parties to complete the transaction without first obtaining consent from the monitoring authority. In some cases, however, countries do not maintain FDI screening regimes in this traditional sense, but instead regulate FDI via "negative list" arrangements that limit or prohibit foreign ownership, or impose other regulatory requirements on foreign ownership.

FDI regimes are typically applied as an additional layer of regulation on top of other rules such as merger control and industry regulations. Moreover, especially in significant cross-border investments, it is quite possible for multiple FDI regimes to apply to a single transaction. With this in mind, conducting a multi-jurisdictional FDI analysis is now an essential part of any M&A or investment due diligence exercise.

Common features of FDI regimes

- FDI regimes typically apply to specified classes of investments – increasingly these are not limited to controlling interests but can capture minority investments (eg as low as around 10%) even where they do not confer control over the target business or its assets.
- Often there are no turnover or other thresholds for the FDI rules to be engaged.
- Mandatory notification obligations may apply and clearance may be required before transactions can complete.
- Some regimes prohibit or restrict all foreign investment in specified industries.
- Decision-making can be far more politically-driven and secretive than in other regulatory processes such as merger control. Outcomes can therefore be harder to predict.

FDI and infrastructure

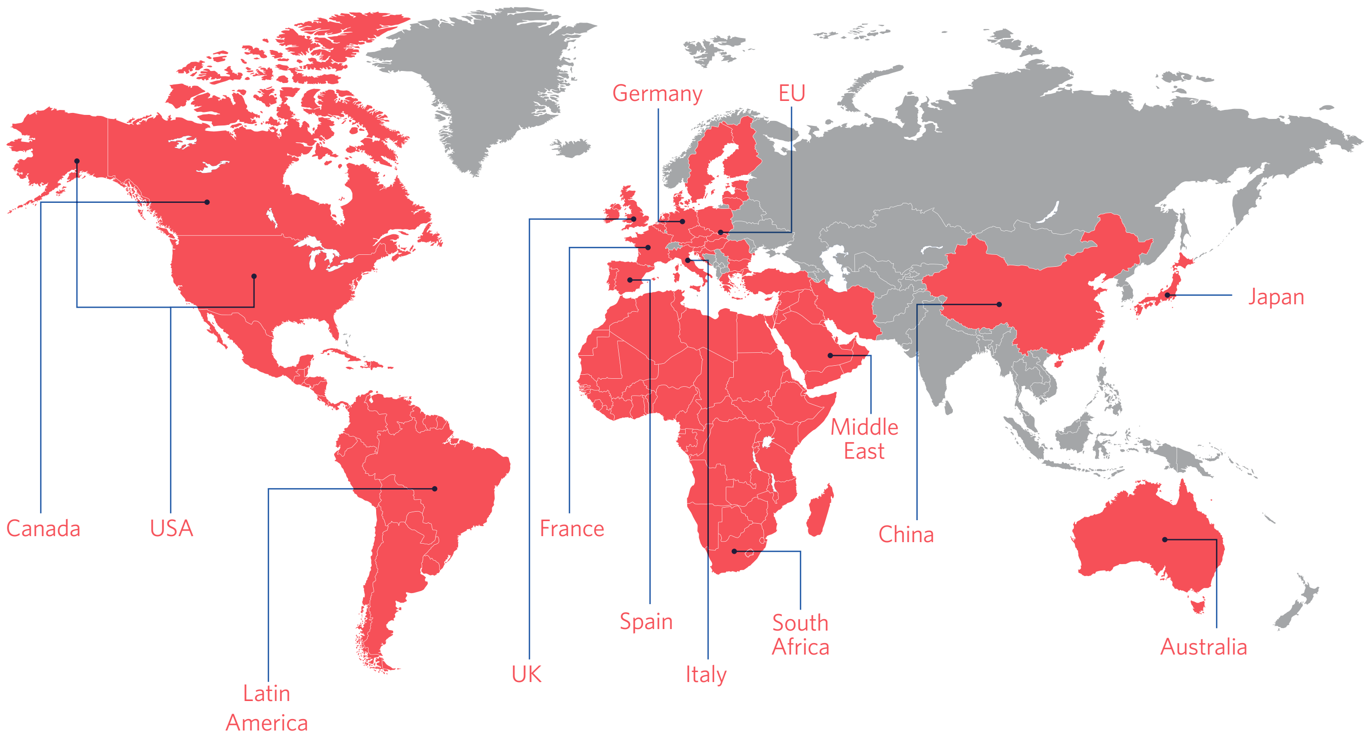
FDI controls are focused on protecting national security interests. Traditionally this has focussed on areas such as defence (eg military and dual-use goods or services), but there has been a gradual expansion to areas of critical infrastructure.

Infrastructure, in its various forms, is a pillar of modern industrialised economies and is therefore considered essential to national security and resilience. Compromising a country's vital infrastructure - whether in transport, communications, utilities, or data - can be potentially very harmful. Consequently, many FDI regimes expressly identify infrastructure as a sector in which foreign investment is subject to regulatory scrutiny and control.

Infrastructure is typically defined in broad terms across many regimes, capturing, among other things: electricity generation and distribution networks, oil and gas pipelines, water supply and treatment facilities, railways, roads, airports, seaports, telecommunications and broadcast infrastructure, as well as data centres and cloud storage services. The scope often extends to both the ownership and operation of such assets. In some instances, specific sub-sectors - such as national data infrastructure, or civil nuclear facilities - are delineated separately or in addition to general infrastructure definitions. The scope of FDI regimes is not harmonised, so each FDI regime works on the basis of differing definitions of critical infrastructure and there can be significant differences as between regimes.

As technological advances and new infrastructure models emerge - for example, smart grids, digital communications networks, or hydrogen and battery storage facilities - FDI regimes are adapting to ensure these innovations are also brought within regulatory oversight. It is therefore increasingly likely that both traditional and novel forms of infrastructure will fall within the ambit of FDI controls, requiring careful analysis at the outset of deal planning and, where necessary, notification and clearance prior to investment.

Infrastructure and FDI regimes around the world



EUROPE

UK

Under the National Security and Investment Act (**NSIA**) a mandatory and suspensory notification obligation applies to transactions which involve passing through a 25%, 50% or 75% shareholding in a target entity that carries out activities in the UK in one or more of 17 specified sectors (certain investments that do not trigger mandatory notifications can also be reviewed at the authority's discretion). Activities potentially relating to infrastructure are currently captured by mandatory sectors including Civil Nuclear, Communications, Critical Suppliers to Government, Data Infrastructure, Energy, and Transport.

These sectors capture a broad range of activities including: nationally significant infrastructure projects (for example large-scale electricity generation projects, ports, harbours and airports); communications (cable systems and broadcast infrastructure); and data infrastructure (for example data centres, cloud storage services and data storage, processing and transmission).

In July 2025, the UK Government announced plans to update the NSIA. In additional to updating the existing specified sectors, the Government proposes to add water to the list of mandatory filing areas.

EU

The Regulation for the screening of FDI into the EU on security and public order grounds became fully operational on 11 October 2020 (**EU FDI Regulation**). The EU FDI Regulation does not establish FDI screening at EU level but creates a framework for pan-EU cooperation on FDI screening:

Each Member State must notify the Commission and other Member States of any FDI in their territory undergoing screening.

The Commission may request information on FDI likely to affect security or public order of another Member State or a project or programme of EU interest.

Common criteria and standards are set for national FDI mechanisms if maintained or adopted. In determining whether FDI is likely to affect security or public order, Member States may consider its potential effects on inter alia critical infrastructure (eg energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral/financial, sensitive facilities, real estate).

A number of new FDI screening regimes have come into force in the EU in the previous two years. There are now FDI regimes or plans to implement FDI regimes in almost all of the EU Member States. The only EU Member State which has not yet introduced a screening mechanism is Cyprus, but its new regime will apply as of April 2026.

France

France has an active FDI regime that imposes mandatory filing requirements. The regime is suspensory ie clearance must be obtained pre-closing.

Pre-completion approval is required from the Ministry of Economy (Ministère de l'Economie, des Finances et de l'Industrie) for foreign investments occurring in sensitive or strategic sectors if they result in the (i) acquisition of control by a foreign company of any French law entity or of branches/establishments (succursale) registered in France; (ii) acquisition of all or part of any business division (branche d'activité) operated by a French law entity; or (iii) for non-EU/EEA investors only, the acquisition, directly or indirectly, solely or in concert, of more than 25% of voting rights of a French law entity, or for listed French companies, 10% or more.

The sensitive/strategic sectors address the following infrastructure areas:

a. infrastructure, goods or essential services that ensure the supply of certain services (eg energy, water, transportation, electronic communication networks and services, data centres, etc.) including the integrity, security and continuity of the installation, facility or structure considered by the French government to be of vital importance; and

b. R&D activities prejudicial to these activities

In 2024, essential infrastructure, goods and services in the civil sector (including the integrity, security or continuity of energy and water supplies, the operation of transport networks and services, and the protection of public health) accounted for 37% of the investments authorised by the Ministry of Economy.

Germany

Germany has an active FDI regime that imposes mandatory filing requirements. The regime is suspensory ie clearance must be obtained pre-closing from the Federal Ministry for Economic Affairs and Energy.

The FDI regime is engaged by acquisitions of either: (i) 25% (direct or indirect control) of voting rights in a German company by a non-EU/EFTA company (in which case the Ministry is entitled to call-in the transaction for review); (ii) 10% if the target company operates in certain sectors (eg critical infrastructure in sectors such as energy, telecommunications, and transport), in which case a mandatory filing is triggered; or (iii) 20% in certain other sectors (in which case a mandatory filing is triggered).

Infrastructure is one of the sectors that is within scope of the regime and therefore there is considerable potential for investments in the sector to require filings. In 2024, investments in the energy and information & communication technology sectors accounted for more than 35% of the total number of FDI filings that were made.

New investment screening legislation is expected to be adopted in Germany. There are indications that this will include stricter rules for sensitive sectors. Draft legislation has not yet been published: given the recent political developments in Germany and the early federal elections in February 2025, new legislation is now expected in 2026.

Italy

Italy has an active FDI regime that imposes mandatory filing requirements. The regime is suspensory ie clearance must be obtained pre-closing from the Presidency of the Council of Ministers for qualifying investments.

Notifications are required for transactions relating to 'strategic assets' in four sectors. These sectors include energy, transport, networks and communications, which incorporate:

a. critical infrastructure in which fuels, nuclear materials or radioactive waste are stored, as well as infrastructure for the processing, management and transport of these;

b. electricity and gas supply infrastructure and management activities connected to the use of these;

c. strategic activities in the transport sector; and

d. strategic activities in the communications sector including service routing and general and long-distance telecom networks (as well as the infrastructure required to ensure that users have access to broadband and ultra-wideband networks).

Electoral or financial infrastructure and non-military aerospace infrastructures are also covered by strategic sectors introduced in 2020.

Spain

Spain has an active FDI regime. There is a suspensory FDI screening mechanism in place that applies in the following scenarios:

a. a foreign investor (broadly speaking non-EU and non-EFTA persons or, where the value of the investment is at least EUR 500 million, non-Spanish EU and EFTA persons) acquires a shareholding interest of 10% or more in any Spanish company and/or Spanish asset; or

b. as a result of any transaction, the foreign investor acquires effective control of such Spanish company and/or asset; and either:

- **i.** the investment is made in restricted sectors; or
- **ii.** when the foreign investor:
  - **a.** is directly or indirectly controlled by the government (including state bodies or the armed forces) of a third country; or
  - **b.** has made investments or has taken part in sectors that affect public safety, public policy or public health in another EU Member State; or
  - **c.** there is a risk that the foreign investor conducts illegal activities affecting public safety, public policy or public health.

The restricted sectors include critical infrastructure (including energy, transport, water, health, communications, media and data processing or storage) and the land and real estate crucial for that infrastructure, dual-use technologies and the supply of critical inputs. The critical infrastructure sector is narrowly defined for the purposes of the regime.

In 2024, the Spanish government blocked a public takeover bid by the Hungarian consortium Ganz-Mavag to acquire train manufacturer Talgo. The government cited the need to protect Spain's national security and public order, given Talgo's strategic role in the railway sector:Ganz-Mavag withdrew its bid for Talgo.

MIDDLE EAST

Middle East

FDI in the Middle East is relatively nascent, and the majority of jurisdictions do not have FDI regimes requiring pre-notification and clearance.

Although a number of jurisdictions, such as Kuwait and Oman, have a 'negative list' which prohibits foreign ownership in certain sectors including certain energy related sectors, they do not expressly include the infrastructure sector.

The UAE has taken steps over recent years to liberalise restrictions on foreign ownership and investments. 100% foreign ownership is now permitted for companies on the "permitted list", primarily covering agriculture, services and manufacturing. In relation to infrastructure, construction, electrical works, plumbing, marine water transport and internal water transportation are now included on the "permitted list". However, companies with a "strategic impact" are still restricted, which includes services related to fisheries (100% Emirati ownership required) and telecommunications (subject to approval by the Telecommunications and Digital Government Regulatory Authority).

In Saudi Arabia, a new investment law applicable to all investors (local and foreign) came into effect in February 2025. The new law does not include a 'negative list' containing all activities in which foreign investment is prohibited, but instead provides that ministerial approval will be needed to undertake 'excluded activities' as will be updated by relevant authorities.

AFRICA

Africa
(excluding South Africa)

Most African countries do not have specific FDI regimes. Instead, they may regulate and monitor foreign investment through other means, such as through exchange control regulations and treasury approvals. In some cases, FDI regulation is more nebulous – regulation is carried out by way of broad policy considerations conveyed to investors through informal discussions with government or through licensing requirements imposed on an ad hoc basis at the time of the investment.

Many African countries also regulate foreign investment by ensuring that such investment is carried out in a responsible manner and for the benefit of the country (eg linking it to a social responsibility requirement to local communities or local industry).

Competition law regulations sometimes include public interest considerations which may bring transactions involving infrastructure into the scope of review.

South Africa

While there is currently no separate foreign direct investment authority in South Africa, the South African Competition Commission (**SACC**) reviews mergers that meet prescribed financial thresholds.

Foreign investors will, through this process, often be required by the SACC and/or Department of Trade, Industry and Competition to provide commitments that are responsive to the SACC's public interest mandate, notably in respect of local ownership, employment and procurement.

Aside from the merger notification, there is no general obligation to notify acquisitions in South African companies by foreign investors, or the establishment of new South African companies by foreign investors. However, foreign investment in South African companies active in the aviation, mining, and broadcasting sectors is restricted.

AMERICAS

Canada

Canada has an active FDI regime. All acquisitions of control of Canadian businesses by non-Canadians are subject to review under the Investment Canada Act (**ICA**).

Critical infrastructure is a specifically designated sensitive sector under the current regime. This includes energy and utilities, finance, food, information and communication technology and water. Investments that fall within the scope of this sensitive sector are subject to heightened national security scrutiny.

A non-exhaustive list of factors that will be examined to determine whether an acquisition by a state-owned entity (**SOE**) would be approved include:

- the size, scope and location of the Canadian business; the nature and strategic value to Canada of the business involved;
- the degree of control or influence an SOE would likely exert on the Canadian business, the supply chain and the industry;
- the effect the transaction may have on the ability of Canadian supply chains to use the asset or access alternative sources (including domestic supply); and
- the current geopolitical circumstances and potential impact on allied relations.

Amendments to the ICA passed in March 2024 will also introduce (once in force) a mandatory and suspensory notification and review process for foreign investments in certain defined business sectors. As at the date of writing, the sectors to be covered, have not been finalised. It is currently expected that these amendments will not enter into force until at least the first half of 2026.

USA

The USA has an active FDI regime (the Committee on Foreign Investment in the United States, **CFIUS**), which includes a mandatory filing component.

Notification under the CFIUS regime is largely voluntary and mandatory filings are generally only required (i) where the US target business produces or develops a product that is subject to US export control regulations or (ii) where a foreign government owns 49% or more of the investor and the investor will acquire 25% of more of a US business, where in both instances the US target business involves certain critical technology, sensitive personal data, or critical infrastructure.

Whether a transaction involves critical infrastructure is assessed on a case-by-case basis and is generally defined as systems and assets, whether physical or virtual, so vital to the United States that the incapacity or destruction of such systems or assets would have a debilitating impact on national security. This can include telecommunications services, submarine cables and related systems, utilities, energy, internet protocol networks and transport-related systems.

Even in the absence of mandatory CFIUS filing obligations, there is a very active CFIUS investigation and call-in regime that is not sector specific, and CFIUS has broad discretion to investigate and call-in for review covered transactions where CFIUS believes the transaction may present US national security concerns.

In July 2025, President Trump prohibited the February 2020 acquisition of US-based Jupiter Systems, LLC by China-based Suirui Group and ordered Suirui Group to divest its ownership of Jupiter Systems following a CFIUS investigation that identified national security risks linked to Jupiter's audiovisual technology being used in military and critical infrastructure settings. The order highlights CFIUS's broad authority to review and unwind foreign investments even well post-closing, where no prior CFIUS filing was made nor CFIUS approval received, and especially where sensitive technology or infrastructure is involved. It also imposed strict interim measures and buyer approval conditions, underscoring the importance of pre-closing CFIUS risk assessments for foreign investors.

Latin America

Latin America

Regulation in the region is increasingly intense, including with respect to protection of the environment and communities.

There are few mandatory and suspensory FDI screening regimes that are active in the region.

ASIA-PACIFIC

Australia

Australia has an active FDI regime (**FIRB**). Mandatory filings are required for the acquisition of 10% or more of "national security businesses". These include critical infrastructure businesses, widely defined to include various categories of assets critical to the economy in sectors such as utilities, fuels, ports, data processing, freight and transport.

China

China has an FDI screening regime as well as a screening list (Negative List). The Negative List regime applies to acquisitions by foreign investors in Chinese companies (and other forms of foreign investment in China) and does not apply monetary jurisdictional thresholds.

The mandatory notification regime extends to industries relevant to national "economic security". The list of sectors included includes important infrastructure.

Japan

Japan has a reasonably active but limited FDI regime. The regime is generally only mandatory and suspensory in respect of certain listed Japanese companies that are active in defined sectors. These sectors include national security and public order (for example telecommunications, transportation, electricity, water supply and railway services). Acquisitions of 1% or more of the shares or voting rights in these listed companies engage the regime.

Outlook for the future

In recent years, FDI regulation has featured increasingly on the radar for cross-border M&A, against a backdrop of amplified protectionist rhetoric.

Infrastructure has been and remains a key sector for FDI regulators, given its importance for industry and national security more broadly. As technological advances and new infrastructure models emerge, the technologies and industries that are subject to notification requirements continues to evolve.

FDI regimes continue to develop globally, and more and more regimes are coming into force and becoming increasingly active. Going forward we can expect to continue to see a high level of intervention in this area.

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