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NAVIGATING FOREIGN DIRECT INVESTMENT REGULATION: TECH

Control of foreign investment in Tech

FDI and Tech

In a modern world in which digital infrastructure underpins the day-to-day running of many industries - from financial institutions to the defence, energy, or manufacturing sectors - technology and national security have never been more interdependent. The potential for hostile actors to exploit digital vulnerabilities or repurpose dual-use technologies for military applications puts technology and the companies responsible for driving tech innovation under increased scrutiny.

Geopolitical troubles have raised further concerns regarding states' ability to maintain critical domestic capability in emerging technologies such as semi-conductors, artificial intelligence or quantum technologies. These debates are at the centre for calls to adopt "outbound" investment controls for these industries, mirroring the more traditional "inbound" FDI regimes.

The speed at which technology advances raises serious challenges for FDI regimes. The bright line between "traditional" industries and "tech" companies is increasingly blurred, and as new technologies are adopted by more businesses, it has never been more challenging to identify which technologies warrant enhanced FDI scrutiny without broadening the scope of FDI controls *ad infinitum*.

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 may typically require parties to notify a monitoring authority 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

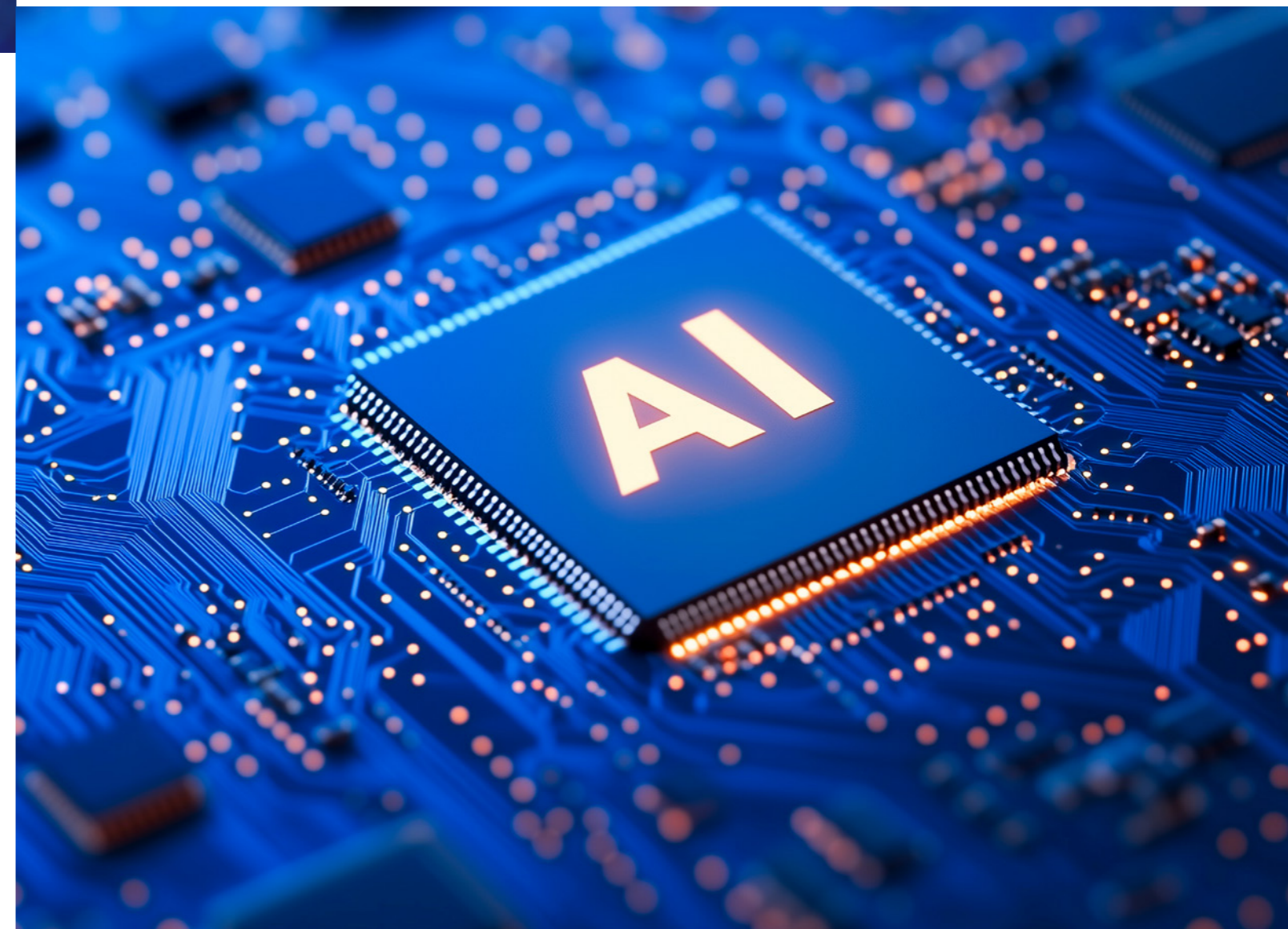
FDI regimes typically apply to **specified classes of investments** - increasingly these are not limited to controlling interests but can capture minority investments even where they do not confer control over the target business or its assets.

Often there are **no turnover or other thresholds** for the FDI rules to be engaged.

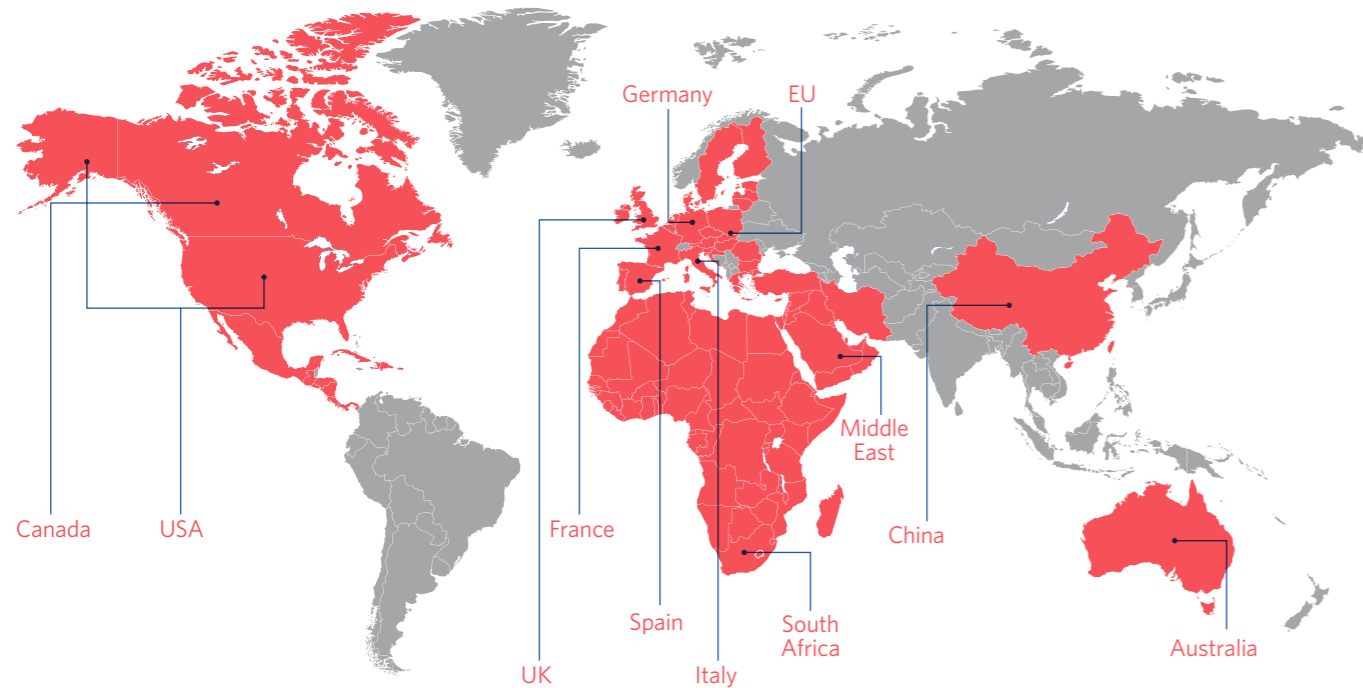
Mandatory notification obligations may apply and clearance may be required before transactions can complete.

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 and more difficult to explain.



Tech and FDI regimes around the world



EUROPE



UK

Under the National Security and Investment Act (NSIA) a mandatory and suspensory notification obligation applies to certain transactions involving a target entity that carries out activities in the UK of a specified description in one or more of the 17 specified sectors (certain transactions that do not trigger mandatory notifications can still be reviewed at the authority's discretion). Activities carried by tech companies may be captured by a large number of the specified sectors, including:

- Advanced Robotics
- Artificial Intelligence
- Computing Hardware
- Communications
- Cryptographic Authentication
- Data Infrastructure
- Quantum Technologies
- Military and Dual-Use
- Satellite and Space Technology
- Synthetic Biology

Some of these sectors are expansive in scope. In particular, the current definition of "Artificial Intelligence" has the potential to capture many businesses which do not necessarily identify as "AI companies". In December 2024 the UK government published a report on the regime, indicating that small changes could be made to some of the sector definitions, including AI.



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, but there is no obligation to adopt new FDI screening mechanisms.

The EU FDI Regulation sets out a non-exhaustive list of sensitive sectors and other relevant factors that may be taken into account to determine whether FDI poses a risk to security or public order. This includes the impact of the investment on supply of:

- critical infrastructure (including, *inter alia*, communications, data processing or storage),
- critical technologies and dual use items (including artificial intelligence, robotics, semiconductors, cybersecurity, aerospace, defence, energy storage, quantum and nuclear technologies as well as nanotechnologies and biotechnologies), and
- access to sensitive information, including personal data, or the ability to control such information.

Proposals have recently been introduced that, if implemented, will result in a stricter framework at EU level, including mandatory FDI screening mechanisms for all EU Member States.

In addition, on 15 January 2025, the European Commission published Recommendation 2025/63, requesting EU member states to monitor outbound investments in three critical technology sectors: semiconductors, quantum technology and AI.



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'Économie, des Finances et de l'Industrie) for foreign investments occurring in sensitive or strategic sectors if they result in the (i) acquisition of control of any French law entity or of branches/establishments (succursale) registered in France of a foreign company; (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 include:

- activities prejudicial to national defence, public authority or to public order and public security (including the security of information systems, cryptology, processing/transmission of certain data);
- infrastructure, goods or essential services that ensure the supply of certain services (including space operations, electronic communication networks, etc.); and
- R&D activities relating to critical technologies (including cybersecurity artificial intelligence, robotics, semiconductors, quantum technologies, biotechnology).



Germany

Germany has an active FDI regime that imposes mandatory filing requirements. The regime is suspensory ie pre-closing approval is required from the Federal Ministry for Economic Affairs and Climate Action.

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 artificial intelligence, cloud computing and robotics), in which case a mandatory filing is triggered; or (iii) 20% in certain other sectors (in which case a mandatory filing is triggered). The latter category includes companies which manufacture or develop goods or products with IT security functions.

The German government is particularly cautious with regard to the screening of transactions in the technology sector – the critical infrastructure sectors cover a broad spectrum of business activities. The partial vagueness of the affected sectors leads to legal uncertainty, increasing the need for advice on future investments. Approximately 25% of the German investment screening cases filed in 2024 related to targets active in information and communication technology.

A new investment screening act is expected to be adopted in Germany. There are indications that this will include stricter rules for sensitive sectors including semiconductors, cybersecurity and semiconductors. Draft legislation has not yet been published, was expected for Q 4 in 2024 but given the recent political developments in Germany and the early federal elections on 23 February 2025, new legislation is now expected in the second half of 2025.



Italy

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

Notifications are required for transactions relating to:

- a. strategic activities in the sector of defence and national security (including information storage systems, related IT infrastructure and other relevant measures to ensure information security);
- b. 5G technologies and cloud services; and
- c. new strategic sectors including artificial intelligence, robotics, semiconductors, and biotechnologies.



Spain

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

- a. a Foreign Investor (as defined below) acquires a shareholding interest of 10% or more in any Spanish company and/or Spanish asset; or as a result of any transaction, the Foreign Investor acquires effective control of such Spanish company and/or asset; and either
- b. the investment is made in Restricted Sectors, including critical and dual-use technologies (which includes telecommunications, artificial intelligence, robotics, nanotechnologies, and semiconductors); or
- c. when the Foreign Investor:
 - i. is directly or indirectly controlled by the government (including state bodies or the armed forces) of a third country; or
 - ii. has made investments or has taken part in sectors that affect public safety, public policy or public health in another Member State; or
 - iii. there is a risk that the Foreign Investor conducts illegal activities affecting public safety, public policy or public health.

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.

Some jurisdictions, such as Kuwait and Oman, have a 'negative list' which prohibit foreign ownership in certain sectors (eg real estate, labour recruitment, extraction of natural gas and crude oils, manufacturing of gas, etc). Activities in the technology industry do not appear to be identified on these 'negative lists'.

In the UAE, foreign investments in UAE companies are restricted in some strategic industries and prohibited in industries such as security and defence, financial services, insurance, TV and radio broadcasting stations, and satellite communication services.

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 may include public interest considerations which may bring transactions involving technology into the scope of review. This brings some uncertainty into the legislative environment in that the regulator can look at more general (and often more vague) public interest considerations in addition to competition considerations when, for example, it considers a merger control approval.

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.



South Africa

NORTH AMERICA



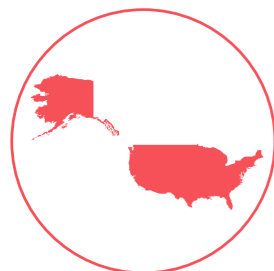
Canada

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).

Investments in certain sensitive areas such as critical infrastructure (which includes information and communication technology), sensitive data, or critical or dual-use technology are subject to heightened national security scrutiny. A non-exhaustive list of factors that will be examined to determine whether an acquisition by a 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.

In 2024, the Canadian government issued two policies focusing on interactive digital media (for example video gaming, virtual/extended reality, certain mobile apps and other digital media), indicating enhanced scrutiny for investments in this sector under its FDI regime, given the heightened risks of state-sponsored or influenced information manipulation.



USA

The USA has an active FDI regime (CFIUS), which includes a mandatory filing component. CFIUS is particularly concerned with transactions involving:

- critical infrastructure (which includes telecommunications services and internet protocol networks);
- critical technologies (which includes "emerging" technologies such as software for monitoring and analysis of communications and metadata acquired from a telecommunications service provider); and
- sensitive personal data (which includes certain financial data, consumer report data and biometric data).

Deal parties should anticipate heightened CFIUS scrutiny of transactions, particularly in the technology, semiconductor and telecommunications sectors, even where there are no US deal parties (but the transaction would result in non-US control of the target's US subsidiary and/or US technology portfolio). In 2024, CFIUS resolved an enforcement action against a telecommunications company, and imposed a \$60 million penalty for violations of a mitigation agreement, known as a National Security Agreement, entered into in connection with a 2018 merger involving foreign (non-US) ownership of the merged entity. CFIUS determined that the company did not take appropriate measures to prevent unauthorized access to certain sensitive data and did not report certain of these incidents promptly. In May 2019, CFIUS ordered Kunlun, a Chinese mobile gaming company, to sell the adult app Grindr after the US expressed security concerns regarding access to personal data of US data subjects.

Most recently, the U.S. Department of the Treasury's Final Rule on outbound investment screening went into effect on 2 January 2025. The Final Rule targets U.S. investment in Chinese or Chinese-owned companies involved in the semiconductors and microelectronics, quantum information technologies and artificial intelligence sectors. The Trump administration is now weighing new or expanded restrictions on outbound investment in China.

ASIA-PACIFIC



Australia

Australia has an active FDI regime (FIRB), with mandatory filings triggered both by the nature of certain businesses (ie "national security businesses" require mandatory filings), as well as certain transaction value thresholds or as a result of the identity of the purchaser (ie foreign government investors are subject to further scrutiny).

A foreign person acquiring a direct interest (>10 per cent) in a "national security business" will need to obtain FIRB approval prior to making the acquisition, regardless of the value of the investment. A business is a national security business if, among other things, is a responsible entity for a critical infrastructure asset (which includes critical inter alia telecommunication assets, data storage or processing, space technology), or develops, manufactures or supplies critical goods or critical technology that are, or are intended to be, for a military use, or intelligence use. FIRB recommends voluntary notification even where typical mandatory reporting thresholds are not triggered. Reviewable actions have low thresholds – including minority stakes (10%), or potentially even less in certain circumstances (eg where there is a position of influence or control, or other agreement).

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.

Certain activities are restricted by the Negative List regime, including certain value-added telecommunication services.



China

Additionally, mandatory notification applies in certain sectors under the separate National Security Review measures – namely those related to military and military support industries that concern national defence and security, as well as non-military industries important to national security, which includes important information technology and internet products and services. Mandatory filing requirements arise where there is an acquisition of a 50%+ stake, or where there are other circumstances that cause a foreign investor to have a significant impact on aspects such as business decision-making, personnel, finance, or technology.

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.

Technology transactions have been drawing more attention from governments and will continue to do so in view of the rise of emerging technologies and their associated vulnerabilities. The UK's recent order that a Chinese-registered firm sell its stake in a British semiconductor company FTDI Holding Limited is a pressing reminder that governments are ready to implement drastic measures where key technologies are at risk.

Foreign actors' access to sensitive personal data will continue to be a key issue for many governments, as the debate concerning the sale by Chinese-based ByteDance of social media app TikTok rumbles on in 2025.

In addition to reviewing investments from abroad, concerns about outbound investors handing over prized technologies to hostile states is leading to renewed focus into "outbound" investment controls for new technologies such as AI, semiconductors and quantum technologies.

For further insight, watch HSF Kramer's Foreign Investment Regulation Group Update: Spotlight on Tech M&A.



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