



HERBERT SMITH
FREEHILLS
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Foreign Direct Investment Regulation

Integrated global capability

Public interest scrutiny in the M&A process is on the increase globally, against the backdrop of amplified protectionist rhetoric and political anxieties about the impact of foreign direct investment (FDI). Heightened geopolitical tensions have accelerated these trends, with existing FDI regimes being expanded and new ones being adopted (particularly in the EU). This presents additional hurdles and uncertainties to navigate in the execution of cross-border M&A, exacerbated by a lack of transparency in decision-making in many FDI regimes that can make it difficult for investors to understand how the review process will play out in practice and to gauge potential execution risk for a particular transaction.

Our global FDI team (drawn from our Competition, Regulation and Trade, Mergers & Acquisitions and Dispute Resolution practices) has extensive experience in formulating and implementing coordinated strategies to secure global FDI clearances and successful completion, taking this ever-changing landscape into account. Our integrated global team submits FDI filings regularly and is therefore very close to day-to-day developments and regional nuances in FDI regimes. Our team has also been very closely involved in detailed discussions about the scope of newly developed FDI regimes (in the UK, the EU and beyond). In addition, we work together with our investment treaty experts when structuring transactions to maximise available treaty protections against regulatory change and government action.

Key global trends for investors

- **Increased use of mandatory notification and lowering of thresholds:** mandatory notification – at least in certain sectors – is becoming the norm, even in regimes historically based largely on voluntary notification (such as Germany and the US). At the same time, shareholding/turnover thresholds are being lowered, as seen in France, Italy and Japan.
- **Expansion of sectors in which FDI regulation applies:** most FDI regimes now extend well beyond military/defence matters and critical infrastructure, and can also encompass transactions relating to communications assets, advanced technology and data, healthcare, and even food security. The precise definition of sensitive sectors can vary considerably between jurisdictions, requiring detailed knowledge of the relevant legislation.
- **The risk of a non-notified transaction being called in for review is increasing:** regulators now pro-actively monitor market intelligence and initiate investigations into non-notified transactions (particularly in the UK and the US), which in some cases has resulted in post-completion divestment orders. We are seeing a corresponding increase in voluntary notifications in the interests of obtaining legal certainty before completion.
- **FDI risk allocation is a critical issue for cross-border investments in deal documentation and investment structuring:** this includes not only use of conditions precedent and warranties, but also consideration of reverse termination fees and addressing risks such as the investor changing their ownership during the course of an FDI review. Structuring to maximise investment treaty protections is also important.
- **Co-ordination between FDI agencies – both formal and informal – is becoming more common:** this means it is vital to take a global and coordinated approach to assessing national security considerations and securing any necessary FDI clearances.

Expertise



Integrated global team drawn from cross-practice experts

- Competition, Regulation and Trade
- M&A
- Dispute Resolution



Proactive approach to the process

- Making FDI filings involves more than “form-filling” or “tick the box” exercises – our deep experience means that we can help to identify the pertinent issues in advance and ensure that filings include the relevant context to help navigate the process as smoothly as possible
- Unconditional clearance is always the goal, but if FDI agencies do have national security concerns, offering up appropriate remedies

proactively can assist with securing clearances

- We have extensive experience negotiating and agreeing bespoke remedies in FDI (and merger control) cases across the globe



Experience dealing with FDI agencies

- We regularly deal with FDI agencies around the world and have an excellent track record securing FDI clearances: we understand how the FDI agencies process and consider cases in practice, and can “open the black box” of often very non-transparent regimes
- In many countries, we have been very closely involved in the design/update of the FDI regime, taking part in consultation exercises and governmental reviews and briefings

- FDI agencies liaise with different stakeholders in different countries during the review process: we have experience navigating these different processes



Seamless coordination of multiple filings

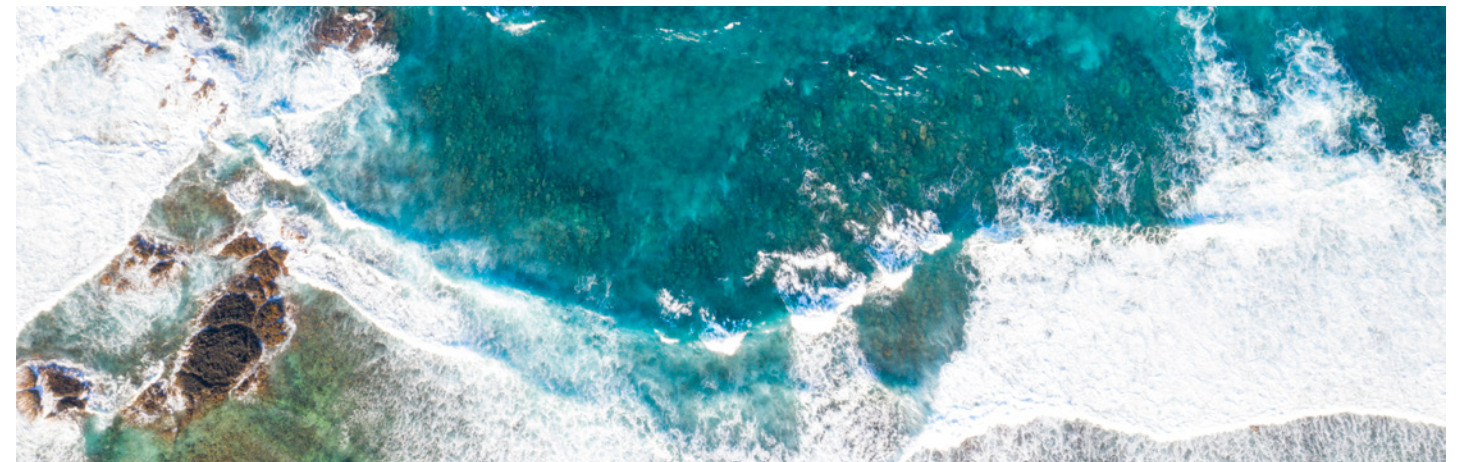
- Some FDI agencies have formal mechanisms for liaising with each other and sharing information eg the Five Eyes and the European FDI network
- Other FDI agencies liaise with each other informally behind the scenes on specific cases
- This means that a consistent global approach and strategy is required for multiple FDI filings – our global team works seamlessly on cases involving multiple filings

Chinese investment heavily scrutinised – but not the only focus

- The majority of prohibition/divestment decisions issued by FDI authorities in recent years have involved Chinese investment, and given current geopolitical trends it seems likely that Chinese investment will continue to be more heavily scrutinised.
- However, in our experience, approval for Chinese investment is still possible in certain cases – including unconditional clearance – and it is important to be aware that FDI agencies are not solely focussed on China: investment from other jurisdictions is also coming under increased scrutiny, including for example the Middle East and countries like the US and Canada.
- The latest annual reports issued by CFIUS, Germany's BMWK and the UK Investment Security Unit (covering 2023/2023-24) all confirm this trend, with at least 90% of reviewed transactions involving non-Chinese purchasers.
- This widening focus also flows through to in-depth investigations; for example, almost one-third of acquisitions subject to an in-depth investigation under the UK NSI regime in 2022/23 involved investment associated with the UK, and a fifth involved investment associated with the US.
- We have extensive experience of dealing with regulators around the world and obtaining clearance in relation to transactions involving investment from China as well as other jurisdictions.

Highlight global experience

- **Altran Technologies**, a multinational provider of engineering and R&D services, on CFIUS issues and securing CFIUS clearance of Altran's sale to Capgemini
- **Bharti Group** on its acquisition of the satellite company OneWeb jointly with the UK government, including obtaining merger and FDI clearances, and subsequent investments by SoftBank, Eutelsat and Hanwha, and for **OneWeb** and **Bharti Group** on OneWeb's combination with Eutelsat including a number of merger and FDI processes
- **Altra Industrial Motion Corp.** on its acquisition by Regal Rexnord, advising on the FDI aspects of the transaction and securing FDI clearances in seven countries
- **Certares** on the merger control and FDI aspects of its €300m equity investment in Avia Solutions Group
- **Reaction Engines** on the UK National Security and Investment conditional clearance for an investment by UAE venture capital firm Tawazun Strategic Development Fund (SDF)
- **Sichuan Development Holding Co Limited** on the NSI conditional clearance of its acquisition of Ligeance Aerospace Technology Co. Ltd.
- **An interested party** on the NSI conditional clearance of the acquisition of Electricity North West Limited by Redrock Investment Limited
- **Rheinmetall AG** on the CFIUS and other FDI aspects of its acquisition of Expal Systems S.A
- **Sydney Aviation Alliance** on its acquisition of Sydney Airport, the largest takeover in Australian history, including its successful FIRB application
- An **international investor** in relation to a phase 2 FDI investigation by the German ministry for economic affairs with involvement by the Ministry for Economic Affairs German Ministry of Defence
- A consortium of investors (including **QIC, GIP, Borealis, Future Fund, Chinese Investment Corporation, CalPERS and National Pension Service of Korea**) on its acquisition of a 50-year lease of the Port of Melbourne from the Victorian Government, including its successful FIRB application
- A **Chinese Civil Engineering and Construction Company** on securing FDI clearance for its acquisition of the parent company of six PPP infrastructures projects in Spain
- **Incitec Pivot Limited** on the FDI aspects of its acquisition of Explinvest, the holding company of Titanobel group, a French commercial explosives manufacturer and distributor, as well as obtaining FDI approval in France
- **Corlieve Therapeutics**, a biotech company that specialises in R&D for gene therapies, on the FDI aspects of its acquisition by UniQuore
- A **Chinese investor** in relation to acquiring an international aircraft fueling company and regulatory and FDI issues
- **Ant Group** on its pre-IPO investment into online marketplace PT Bukalapak.com Tbk, and subsequently on Bukalapak.com's IPO and related FDI issues
- Securing CFIUS clearance for **CSLI**, a South Korean language translation software provider, in connection with its acquisition of Systran SA
- **Hiscox** on the sale of its Southeast Asian insurance business, Direct Asia, to Ignite Thailand Holdings, the parent company of online insurer Roojai
- **Canal+ International SAS** on its acquisition of shares in Viu International Limited in Asia, the Middle East and South Africa
- An **Indonesian coffee chain** on the first-ever F&B unicorn in Southeast Asia, on its business expansion in Thailand
- **Amentum** on some merger control and FDI aspects of its proposed agreement to merge with Jacobs' Critical Mission Solutions and Cyber and Intelligence Businesses
- **Sosteneo SGR** on the FDI aspects related to the acquisition from ENEL Italia of 49% of the share capital of Enel Libra Flexsys Srl, a company specialised in the development and management of a portfolio of battery energy storage projects
- **GIC** on the merger control and FDI aspects of its acquisition of an interest in the telco infrastructure service provider CETIN Group
- **Engie** on the competition and FDI aspects of the disposal of the Equans business including securing NSI clearance
- **Stonepeak** on the merger control and FDI aspects of its acquisition of an interest in Cellnex subsidiaries in Sweden and Denmark
- **InterGen** on the competition and FDI aspects of the disposal of its electricity generation business including securing NSI clearance
- **Lumibird**, the European leader in laser technologies, on the FDI aspects of the cross-border acquisition of the "Convergent Photonics Business" from Prima Industrie



Key contacts

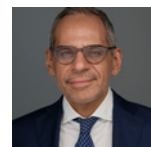
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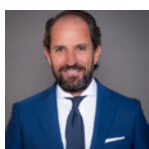
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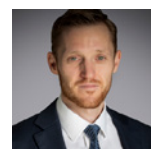
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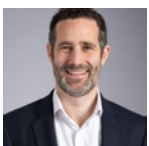


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