

Bird & Bird

Foreign Direct Investments in times of the COVID-19 Pandemic



Foreign direct investment in times of the COVID-19 pandemic

Do you need a quick overview of current screening and control rules for foreign direct investments (FDI) in one of the following countries in times of the COVID-19 pandemic? Just click on the corresponding country and you will find a comprehensive summary of the actual FDI restrictions, if any!



Bird & Bird has extensive contacts with preferred firms in countries where our firm does not have offices.

 <u>Australia</u>	 <u>Italy</u>
 <u>Belgium</u>	 <u>Netherlands</u>
 <u>China</u>	 <u>Poland</u>
 <u>Czech Republic</u>	 <u>Singapore</u>
 <u>Denmark</u>	 <u>Slovak Republic</u>
 <u>Finland</u>	 <u>Spain</u>
 <u>France</u>	 <u>Sweden</u>
 <u>Germany</u>	 <u>UAE</u>
 <u>Hungary</u>	 <u>UK</u>



Australia

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes, but as a general principle, the Australian government welcomes FDI.

If yes, which authority is responsible for the verification of an FDI?

The Treasurer of the Federal Government of Australia reviews investment proposals threatening the national interest on a case by case basis. The Foreign Investment Review Board (**FIRB**) of the Treasurer on Australia's foreign investment regime and is generally responsible for its day-to-day administration. The Australian Taxation Office also plays a role in compliance and enforcement of foreign investment relating to residential real estate while the Australian Prudential Regulation Authority (**APRA**) monitors FDI into the banking and financial sectors.

If yes, are these general restrictions or industry/sector-specific restrictions?

There are general as well as sector-specific restrictions. Sector-specific restrictions apply to industries that are considered to be sensitive, i.e. media, telecommunications, transport, defence and military, encryption and securities technologies and communication systems, and the extraction of uranium or plutonium or the operation of nuclear facilities. Additional sector specific laws also regulate FDI including banking and finance, shipping and insurance.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The restrictions apply to all "foreign persons (this term includes an individual who is not ordinarily resident in Australia, a foreign government investor or any corporation, trustee of a trust or general partner of a limited partnership in which a foreigner has at least a 20 percent interest or two or more foreigners have a 40 percent interest in aggregate; however, in respect of foreign investors from certain "agreement countries or regions", higher monetary thresholds usually apply before disclosure of certain proposed investments is required).

If yes, are these restrictions dependent on certain control thresholds being reached?

The application of restrictions on FDI depend on the type of investor, the type of investment, the industry sector of the investment and value of the proposed investment. In general, outside of sensitive sectors and land transactions, control thresholds may be reached by foreign persons acquiring a "substantial interest" (20 percent or more) or by "foreign government investors" acquiring a "direct interest" (10 percent or more). Sector specific laws also impose various control thresholds, such as the *Security of Critical Infrastructure Act 2018* (Cth), which requires that acquisition of at least a 10 percent interest in critical infrastructure (e.g. certain ports, water, gas and electricity assets) to be notified to the Department of Home Affairs for inclusion on a private register.

If yes, what is the administrative procedure?

A FDI subject to the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) will only need to be notified to the Treasurer if it is a "notifiable action". Whether an investment is notifiable depends on certain threshold tests. Where prior notification is required, the foreign person is required to lodge an online form containing information prescribed by FIRB. The type of information required to be included in a notice to FIRB includes details of the notifiable action, details of the entity taking the action and reasons why the proposed transaction is not contrary to Australia's national interest. An application for FIRB approval must be lodged in advance of any transaction taking place. Failure to obtain approval, if required, is an offence. It is common for transactions to be conditional on FIRB approval being obtained. Application fees for foreign investment notifications are charged by the Australian Government.

The Treasurer is required to make a decision within 30 days of receiving notice and notify the applicant of the outcome within a further 10-day period. It is not unusual for FIRB to invite an applicant to ask for one or more extensions of time to permit FIRB to consider an application. FIRB may also impose conditions on the transaction or business.

A different procedure applies to applications made to APRA.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

The Australian Government announced significant changes to FDI review framework to protect the national interest. Effective from 29 March 2020, all proposed FDI that is subject to the FATA will require approval, regardless of the value of the investment or the nature of the foreign investor. The Treasurer has implemented this policy by temporarily reducing all monetary screening thresholds to 0 for all foreign investments. These changes apply to all foreign persons subject to FATA and to all agreements entered into from 10.30pm 29 March 2020. The control thresholds remain unchanged. In addition, the Australian Government announced that FIRB will work with existing and new applicants to extend timeframes for reviewing applications from 30 days to up to 6 months and that it will only prioritise urgent applications that protect and support Australian businesses and Australian jobs.



Belgium

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Apart from sector-specific regulations which sometimes require a licence and/or specific conditions for operation, and which may vary depending on whether the company is from the EU or not, only Flanders (Flemish region of Belgium) has a FDI screening mechanism.

If yes, which authority is responsible for the verification of an FDI?

The Flemish government.

If yes, are these general restrictions or industry/sector-specific restrictions?

The above-mentioned screening mechanism applies to all acts by virtue of which a foreign investor would control public authorities or related bodies.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.

If yes, are these restrictions dependent on certain control thresholds being reached?

As soon as a foreign investor acquires control, i.e. the right or ability to exercise decisive influence on the appointment of the majority of the directors of the company or on the direction of the management of the company. Among other things, control is assumed to be irrefutable if someone holds the majority of voting rights in a company.

If yes, what is the administrative procedure?

The Flemish government can cancel or declare without effects decisions or acts of public authorities or related bodies that would allow foreign investors to control such public authorities or related bodies. This can only be decided when previous attempts to find an amicable solution have failed and when there is a threat of the strategic interests of Flanders.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No, but broadening the regime is currently on the agenda of the Flemish government.



China

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. In general, FDI is directly or indirectly regulated by the several Chinese laws, i.e. Special Management Measures for the Market Entry of Foreign Investment (**Negative List**) and Notice of the General Office of the State Council on Launching the Security Review System for Mergers and Acquisitions of Domestic Enterprises by Foreign Investors (**Notice 6**).

Regarding the FDI restriction, the Negative List stipulates the special management measures for the market entry of foreign investors, such as equity restriction and senior manager requirements. Foreign investors shall not invest in sectors in which FDI is prohibited under the Negative List. Sectors not included in the Negative List shall be managed according to the principle of equal treatment of domestic and foreign investment. For some sectors, such as culture, telecommunication and finance, foreign investors must meet not only the requirements stipulated in the Negative List, but also those requirements relating to the administrative approval, qualification requirements and national security, among others, which are provided in other laws and regulations. The Negative List will be updated by relevant authorities on a regular basis.

If yes, which authority is responsible for the verification of an FDI?

Ministry of Commerce is responsible for the review of the foreign investment fallen into the Negative list.

State Administration of Market Regulation is responsible for foreign invested entity registration and relevant business compliance regulation.

National Development and Reform Commission is responsible for foreign investment on project basis.

Furthermore, according to Notice 6 above, a joint ministerial meeting is responsible for conducting national security reviews of foreign investments the regards to military industrial enterprises or military industry-related supporting enterprises, enterprises located near key and sensitive military facilities, and other entities relating to national defence. Same applies to foreign investments in key domestic enterprises in areas such as agriculture, energy and resources, infrastructure, transport, technology, assembly manufacturing, among others, whereby the foreign investors might acquire the actual controlling right thereof. Such joint ministerial meeting is led by the state council and organised by the National Development and Reform Commission (**NDRC**), the Ministry of Commerce (**MOC**) and other relevant departments.

The content of foreign investment security review includes the impact of the foreign investment on the national security, the stable operation of national economy, the basic societal order and people's living conditions and the R&D capacity for key technologies related to the national security.

If yes, are these general restrictions or industry/sector-specific restrictions?

Mainly industry/sector-specific, but some general restrictions apply, such as for foreign currency regulations and M&A of domestic entities etc..

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.

If yes, are these restrictions dependent on certain control thresholds being reached?

In general not, with a few exemptions.

If yes, what is the administrative procedure?

Filing approval application for the business listed in Negative List with Ministry of Commerce.

Filing registration for business set up.

Filing approval with NDRC for specific investment project.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No.



Czech Republic

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

As of 1 May 2021, new FDI Screening Act No. 34/2021 Coll. (**FDI Screening Act**) will come into force, adapting the FDI Screening Regulation (EU) 2019/452. The FDI Screening Act will impose mandatory clearance of the Ministry of Industry and Trade (**MIT**) for non-EU FDI in certain strategic sectors, and screening of non-EU FDI that may threaten security of the Czech Republic.

If yes, which authority is responsible for the verification of an FDI?

MIT. If the FDI may threaten internal or public order or security of the Czech Republic, the Government will be consulted.

If yes, are these general restrictions or industry/sector-specific restrictions?

There will be general as well as sector-specific restrictions. FDI in particular sensitive sectors, such as military materials, certain dual-use equipment, critical infrastructures, and universal service will be subject to a prior approval.

Otherwise, MIT may initiate a screening procedure if the FDI could affect internal or public order or security, either (i) upon consultation by the foreign investor, or (ii) within 5 years of the completion of the FDI if the foreign investor has not submitted a request for consultation under (i). The MIT will further initiate mandatory screening proceedings if (x) the foreign investor failed to request required prior approval for the FDI, or (y) after 5 years from the completion of the FDI, as defined in the previous sentence, it becomes apparent that the foreign investor has withheld information for which the screening proceedings under (ii) could otherwise have been initiated.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The restrictions will apply to any FDI by a buyer who (i) is not an EU citizen; (ii) does not have registered office within the EU; or (iii) is directly or indirectly controlled by an entity/person under (i) or (ii).

If yes, are these restrictions dependent on certain control thresholds being reached?

Restrictions will apply where there is "effective control of business", i.e. (i) ability of a foreign investor to directly or indirectly control at least 10 percent of the voting rights of a domestic company; (ii) the membership of the foreign investor or its related persons in the domestic companies' corporate bodies; (iii) the ability of the foreign investor to dispose of the domestic target's asset; or (iv) other form of control resulting in the ability of a foreign investor to gain access to information, systems or technologies that are important for internal or public order or security of the Czech Republic.

If yes, what is the administrative procedure?

The screening proceedings will be initiated either upon foreign investor's request or ex officio by the MIT (see above). If the sector-specific restrictions apply, the foreign investor must apply for a permission to proceed with the FDI. The foreign investor must provide the MIT with all information required for the screening. The MIT will decide generally within 90 days of the initiation of the screening process whether the FDI is to be permitted, permitted under further conditions, or refuse permission.

The MIT may open screening proceeding even 5 years after the FDI has been completed, with the possibility of retroactively restricting or annulling the investment. In order to obtain legal certainty, the foreign investor may submit an application to the MIT for the voluntary consultation regarding the FDI, while mandatory consultation only applies to certain domestic companies in the media sector. The MIT will inform the foreign investor of its decision within 45 days of receipt of the application. The decision may be either that the foreign investor may proceed with the FDI or that the FDI must be examined in the screening proceedings.

Significant fines of up to 2 percent of the total turnover or CZK 100 million (approx. EUR 3.9 million) may be imposed for non-compliance.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

There is currently no official information about tightening the FDI restrictions due to the COVID-19 pandemic. However, the process of implementing the screening mechanism may be accelerated in view of the [European Commission Guidance](#) issued in late March 2020.



Denmark

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

No. Denmark has no legislation that specifically regulate FDI other than a permit requirement for the acquisition of real estate (see below) and currently Denmark does not have any policies aimed to differentiate between domestic and foreign investors. There is, however, a broad political will to introduce restrictions on FDI and ownership of critical infrastructure by limiting the ability to acquire and resell such ownership and imposing conditions on the completion of such acquisitions, whilst balancing the protection of the services and sectors that are considered critical for securing the fundamental functions of the society and the need for FDI in Denmark. Nevertheless, no legislation has yet been introduced.

If yes, which authority is responsible for the verification of an FDI?

The only restriction on foreign ownership in Denmark is the requirement to obtain a permit from the Danish Ministry of Justice when purchasing real estate if the buyer is not domiciled in Denmark. However, the possibilities to obtain such permits are limited.

EU and EFTA companies may purchase real estate in Denmark, without obtaining the permission of the Danish Ministry of Justice i. e. (i) the company has its head office or registered office in EU or an EFTA member state and (ii) the company has established or will establish subsidiaries or agencies or will provide services in Denmark.

If yes, are these general restrictions or industry/sector-specific restrictions?

See above.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

N/A

If yes, are these restrictions dependent on certain control thresholds being reached?

N/A

If yes, what is the administrative procedure?

N/A

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No.



Finland

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes.

If yes, which authority is responsible for the verification of an FDI?

The Finnish Ministry of Economic Affairs and Employment (**MEAE**).

If yes, are these general restrictions or industry/sector-specific restrictions?

These are mainly industry/sector-specific. All acquisitions involving the defence and dual-use sectors always require prior approval by the MEAE (pre-closing application procedure). In addition, in the non-military sector, acquisitions of companies that are considered critical to securing vital functions of Finnish society are monitored (in practice, these are always submitted to the MEAE for advance approval).

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The filing obligation concerning the defence and dual-use sectors apply to all acquisitions where the buyer is a non-Finnish entity (there's no difference between EU and non-EU countries). In other sectors monitoring of transactions only applies to non-EU/ non-EFTA buyer.

If yes, are these restrictions dependent on certain control thresholds being reached?

The restrictions apply to all transactions through which a buyer acquires control of at least one tenth (10 percent), one third (33.33 percent) or half (50 percent) of the voting rights conferred by all shares in the company (covering also ownership arrangements where the voting power/decision-making authority is acquired indirectly). In addition, the MEAE may also oblige the buyer to file an application or a notification regarding an increase of the buyer's influence in the company that does not exceed the above-mentioned thresholds.

If yes, what is the administrative procedure?

There are no formal requirements for the application and notification submitted to MEAE. However, the Authority has drawn up instructions for preparing the application/notification. Please click [here](#) or [here](#) for further information. MEAE may request additional information from the buyer within the first three months after processing the submitted and complete application/notification. All applications/notifications are processed urgently, and the processing times vary case by case (depending on the complexity of the matter). A fee of EUR 5,000 will be charged for processing of each application/notification.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No.

France

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. FDI are subject to authorisation if they involve activities (i) in the exercise of public authority, (ii) that could be harmful to public order, public security or the interests of national defence, or (iii) activities of research, production or marketing of arms, ammunition, explosives and biotechnology.

If yes, which authority is responsible for the verification of an FDI?

The French Minister of Economy and Finance (**FMEF**).

If yes, are these general restrictions or industry/sector-specific restrictions?

Restrictions apply to the sensitive sectors listed exhaustively by the French Monetary and Financial Code (art. L. 151-3 and R. 151-3). This includes investments in activities (i) which may harm public order, public security or national defence interests, or (ii) are related to research, production or marketing of arms, ammunition, explosives and biotechnology.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

In principle, restrictions apply to Restricted Investments (as defined below) by any foreign investor (defined as any foreign citizen, French citizen not having its tax residence in France and entities of foreign law or governed by French law but controlled by one or more of the above persons or entities. In addition, any entity or individual that is part of a chain of control may also qualify as a Foreign Investor. However, the 25 percent threshold condition on Foreign Investments does not apply to EU and EFTA investors from countries that have concluded an administrative assistance agreement with France to prevent tax fraud and tax evasion).

If yes, are these restrictions dependent on certain control thresholds being reached?

Restricted Investment: Any action that would result (i) to the acquisition of control (control within the meaning of French Commercial Code) in a company governed by French law, (ii) a total or partial acquisition of a branch or business activity governed by French law, or (iii) in exceeding the threshold of 25 percent of the share capital or voting rights of a company governed by French law.

If yes, what is the administrative procedure?

In principle, Foreign Investors are required to request an approval for an Investment. Within 30 working days of receipt of the application for approval, the FMEF notifies the Investor either (i) that the Investment falls outside the scope of the approval procedure, or (ii) that it is approved without conditions, or (iii) that further examination is required to determine whether the protection of national interests can be ensured by setting conditions to the approval. If there is no reply within this period, the application for approval is deemed to be rejected. In the event of a further examination, the Minister is given additional 45 working days to reject or approve the investment, subject to conditions if necessary. If there is no response within this period, the application for approval will also be deemed to be rejected. There is the possibility to make a preliminary request. The target or the Foreign Investor (with target's approval) can consult the French administration prior to the Investment to find out whether target's activity falls within the scope of the French FDI scheme.

However, there are exceptions to the approval requirement if (i) the Investment is between companies of the same corporate group, (ii) the Restricted Investor exceeds the 25 percent threshold and has already received approval on the prior acquisition of control, or (iii) the investor acquires control of a company and has already exceeded the 25 percent threshold, after receiving approval to do so.

Once the investment is completed, the Restricted Investor must submit a certain statement within two months of completion.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Yes. Since the EU Commission encourages the use of appropriate filtering tools by Member States and urges them to be vigilant in order to avoid the Covid-19 crisis leading to massive divestments of European companies and industries, especially in the health sector or predatory acquisitions in a context of significant falls in stock market valuations, on April 29, 2020 the FMEF has now announced two measures related to the control of Investment: (i) the biotechnology sector is now subject to control (ministerial decree of April 27, 2020), and (ii) the 25 percent threshold condition has been decreased to a 10 percent threshold condition, this measure shall come into force in the second semester of this year and shall end on 31 December 2020.



Germany

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. To avoid a threat to the public order or security of Germany acquisitions of shares in or assets of domestic companies by a foreign buyer can be examined, restricted and prohibited on a case-by-case basis.

If yes, which authority is responsible for the verification of an FDI?

Federal Ministry of Economics and Energy (**BMWi**)

If yes, are these general restrictions or industry/sector-specific restrictions?

There are general (cross-sector) as well as sector-specific restrictions. The latter are intended to prevent foreign investors from buying companies that are active in particularly sensitive sectors, such as manufacturers of war weapons or other military technology and security products in the IT industry.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The general (cross-sector) restrictions limit acquisitions by a non-EU/ non-EFTA buyer.
The sector-specific restrictions limit acquisitions from any foreign buyer.

If yes, are these restrictions dependent on certain control thresholds being reached?

The general (cross-sector) restrictions apply to all transactions through which a buyer directly or indirectly acquires control of at least 25 percent of the voting rights of a domestic company; provided, however, that this threshold is reduced to 10 percent if the domestic company is active in particularly sensitive sectors (e.g. operators of critical infrastructures like energy, water, food, information technology and telecommunications, cloud computing, health, finance and insurance, transport and traffic, telematics or other particularly security-relevant services).
The sector-specific restrictions apply to all transactions through which a buyer directly or indirectly acquires control of at least 10 percent of the voting rights of a domestic company.

If yes, what is the administrative procedure?

If the general (cross-sector) restrictions apply, the buyer has to notify the BMWi of the transaction if the domestic company is active in particularly sensitive sectors, otherwise the BMWi can open an examination proceeding, but is not obliged to do so. In order to obtain legal certainty as to the applicability of the general (cross-sector) restrictions, in the latter case the buyer may submit an application for approval. If the application is not rejected within 2 months of receipt by the BMWi, the approval is deemed to have been granted. In case of the proceedings being opened, the buyer must provide the BMWi with all documents required for the examination. As soon as all necessary documents are available, the BMWi has a 4-month review period within which it can prohibit the transaction. The transaction is not legally effective unless explicitly approved by the BMWi.
If the sector-specific restrictions apply, the buyer has to notify the BMWi of the transaction. If upon receipt of such notification the BMWi does not open the proceedings within 2 months of receipt, the approval is deemed to have been granted. In case of the proceedings being opened, the buyer must provide the BMWi with all documents required for the examination. As soon as all necessary documents are available, the BMWi has a 4-month review period within which it can prohibit the transaction. The transaction is not legally effective unless explicitly approved by the BMWi.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

On 3 June 2020 as well as on 17 July 2020, several changes concerning FDI came into force - and thus making it more difficult for investors to take control over domestic companies being active in strategically important areas. The scope of notifiable FDI has been expanded to now include critical services for government communication infrastructures and COVID-19 relevant goods and services. Investments from non-EU buyers are to be examined more comprehensively and with greater foresight (including probable interference with public order or public security and taking into account the security interests of other EU states). Furthermore, now all notifiable transactions, irrespective of whether cross-sector or sector-specific restrictions apply, are subject to a ban on execution until approved by the BMWi. Furthermore, the deadlines for the examination process have been revised. Now a period of two months applies to the preliminary proceedings. When the actual examination procedure is opened, four months are added; in complex cases an extension of up to eight months is possible. According to the announcement of the Federal Government, another amendment of the FDI rules will follow. It is expected that the catalogue of rules will be supplemented by critical technologies (including artificial intelligence, robotics, semiconductors, biotechnology and quantum technology) to which both the described notification obligation and the screening threshold of 10% will then apply.

Hungary

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. FDI restrictions and a pre-screening control mechanism apply to all FDI made in sectors and industries that are important to national security. The rules of FDI control and the list of protected sectors and industries are defined primarily by the so called **FDI Act**. Please note that certain FDI restrictions also apply to the acquisition of agricultural and non-agricultural real estate by foreign persons.

If yes, which authority is responsible for the verification of an FDI?

The Minister of Interior (**MI**) is entitled to conduct the FDI control procedure and to either approve or prohibit an FDI falling within the scope of the FDI Act. Compliance with FDI regulations by foreign investors and economic operators are monitored by the Constitution Protection Office as a security intelligence agency.

If yes, are these general restrictions or industry/sector-specific restrictions?

The FDI Act covers sectors and industries considered important to the national security. This includes traditionally important industries such as of production of arms and ammunition, military technology, dual-use items and intelligence equipment, as well as other strategic sectors such as financial services, certain public utilities and development and operation of electronic systems used by state and local authorities. In these protected sectors and industries, the FDI control system covers the establishment or acquisition of a domestic company or a branch, change of its registered business activities or acquisition of operational rights in respect to infrastructure, facilities and assets.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The FDI Act applies to foreign investors, i.e. (i) all non-EU / non- EFTA citizens, (ii) all non-EU / non-EFTA legal persons or other entities, and (iii) all legal persons or other entities in which a shareholder, falling within the scope of either (i) or (ii) above, has majority control as defined in the Hungarian Civil Code.
Special FDI-related restrictions apply to acquisitions of real estate by non-EU /non- EFTA citizens. Under the relevant laws, these buyers are (i) prohibited from acquiring agricultural land, and (ii) in case of the acquisition of non-agricultural real estate, are subject to an authorisation procedure by the competent government office.

If yes, are these restrictions dependent on certain control thresholds being reached?

If the FDI is carried out through establishing or acquiring a Hungarian company, the FDI Act applies only if the foreign investor (i) acquires more than 25 percent of the direct or indirect shares in the company (with the exception of listed companies, where the threshold is lowered to 10 percent) or (ii) acquires a controlling influence as defined by the Hungarian Civil Code. If more than one foreign investor has an interest in a non-publicly traded company, all foreign-owned shares shall be calculated together to determine whether the 25 percent control threshold has been reached.

If yes, what is the administrative procedure?

Foreign investors must notify the MI within 10 days of the execution of the underlying agreement or registration of the new activity. The notification shall be submitted along with the underlying agreement, a summary on past economic activities of the investors and details of ownership structure. The MI has 60 days to either approve or prohibit the FDI; this period may be extended by additional 60 days. In the course of the procedure, the MI examines whether the proposed FDI harms the national security interests. It is important to note that the approval is a preliminary condition for other merger control and sector-specific authority approvals as well as for exercise of shareholder rights in the company or conduct of planned business activities.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Yes. On 25 May 2020, the Hungarian government introduced an additional FDI screening mechanism. This additional FDI screening mechanism was originally effective only until 31 December 2020 but was subsequently extended to 30 June 2021. At the same time, a new provision has been added to the existing rules which limits the scope of the FDI screening mechanism by exempting transactions between affiliated companies from FDI control.

Besides some similarities to the FDI Act in terms of structure and procedural rules, the new temporary FDI screening mechanism also shows several differences, making the new regulation go far beyond the scope of the FDI Act. The main differences in the new regulation are the following:

- (i) Compared to the FDI Act, which covers sectors important to the national security of Hungary, the temporary FDI screening mechanism applies to the sectors provided by the Regulation (EU) 2019/452 and also some other sectors, including, among others: energy, transport, water, health, food and agriculture, construction, communications, media, aerospace, defence, artificial intelligence, robotics, semiconductors, cybersecurity, quantum and nuclear technologies;
- (ii) In terms of the investors covered, in addition to the foreign investors defined above, the investments valued at least HUF 350 million (approx. EUR 1 million) made by EU / EFTA citizens and companies are also caught up by the temporary screening mechanism in certain cases, i.e., if an EU / EFTA citizen or legal person acquires a majority influence in a strategic company by any of the following methods applied in relation to a strategic company: an acquisition of shares, an increase of capital, a merger or demerger, an issuance of convertible bonds or grant of a usufruct (a form usage rights) on the shares; and
- (iii) The temporary screening mechanism also extends (a) to cases when foreign investors reach the thresholds of 10 percent of the share or voting rights in a strategic company as a result of any of the transaction mentioned in paragraph (ii) above, provided that the total value of the investment is at least HUF 350 million (approx. EUR 1 million), and (b) to transactions by which the thresholds of 15 percent, 20 percent and 50 percent are exceeded regardless the value of the investment.

Instead of the MI, the Minister of Innovation and Technology (**MIT**) must be notified of the transaction subject to the temporary FDI control within 10 days of the signing and prior to the conclusion, and the MIT is responsible to monitor the observance of the notification obligation. The confirmation of the MIT must be obtained for the transaction, otherwise, a substantial fine will be imposed on the foreign investor. Furthermore, the transaction is deemed to be null and void in such case and the foreign investor will not be able to exercise voting rights stemming from its ownership. If a transaction falls within the scope of both of the FDI Act and the new regulation, both MI and MIT shall be notified as the two regulations exist in parallel with each other.



Italy

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. In 2012 a screening mechanism on FDI was established (so called "golden powers"). Under this mechanism the Government may prohibit or restrict is entitled to raise its veto against FDI in particularly sensitive sectors, such as defence, national security, energy, telecommunications and transports.

If yes, which authority is responsible for the verification of an FDI?

The Presidency of the Council of Ministers (**PCM**).

If yes, are these general restrictions or industry/sector-specific restrictions?

Until October 2019 the screening mechanism was limited to the following sectors: defence, national security, energy, telecommunications and transports. It was subsequently extended to the following sectors:

- critical infrastructures, whether physical or virtual, including energy, transport, water, health, communications, media, data processing or storage, aerospace, defence, electoral or financial infrastructure, and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure; and
- 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.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

If the target company operates in the defence sector or in the national security sector, these restrictions applies to any foreign buyer.
As far as other sectors (i.e., energy, transport, telecommunications, are concerned, the restrictions only apply to non-EU buyer.

If yes, are these restrictions dependent on certain control thresholds being reached?

If the FDI takes the form of a share purchase, in the defence and national security sectors the threshold triggering the obligation to notify the PCM are 3 percent (the buyer is required to repeat the notification when the following thresholds are reached: 5 percent, 10 percent, 15 percent, 20 percent, 25 percent and 50 percent).
In any other sector (i.e., energy, transport, telecommunications,), the buyer is required to notify any share purchase resulting in the acquisition of control in a domestic company.

If yes, what is the administrative procedure?

The FDI must be notified to the PCM within the following 10 days. The PCM then has a 45days to veto or to impose specific regulations / conditions for the approval of the FDI. After the expiry of the 45-days period without government intervention, the golden powers shall be deemed to have not been exercised. However, until that time, the validity of the transaction is suspended and, in case of share purchases, the associated voting rights are suspended.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Italian Government has temporarily tightened the golden powers mechanism, to avoid that domestic companies carrying out activities in strategic sectors may be the target of speculative transactions or may be purchased indiscriminately (and at "discount" prices) by foreign operators. The main amendments are the following:

- screening mechanism applies to all the sectors provided by EU Regulation 2019/452. Consequently, the Italian Government is entitled to intervene and exercise the golden powers in sectors which provide (i) supply of critical inputs (e.g. energy, raw materials and food), (ii) access to or the possibility of controlling sensitive information, including personal data and the freedom and pluralism of the media. In addition, now also outside the sectors of defense and national security, PCM must be notified in case of share purchase by EU buyers.
- the PCM must be notified of the until 31 December 2020 about (i) all actions which entail a change in the ownership, control or availability of strategic assets or a change of their intended use by companies operating in one of the five sectors identified in Art. 4 EU Regulation 2019/452, including the financial sector and the credit and insurance sector; and (ii) share purchase by foreign entity, including EU-based ones, by which the buyer obtains control in a domestic company holding strategic assets, (Art. 2359 Italian Civil Code and

	Legislative Decree no. 58/1998) or through which a non-EU entity reaches the thresholds of 10 percent of the share or voting rights, provided that the total value of the investment is at least EUR 1 Mio. Acquisitions by which the thresholds of 15 percent, 20 percent, 25 percent and 50 percent is exceeded are also subject to the notification requirements.
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Netherlands

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

With the exception of certain specific sectors deemed vital for security or public interest, Dutch law does not provide for general restrictions on or screening of FDI. However, a number of draft bills are currently pending to restrict FDI in sectors deemed to be vital for national interest (see below).

If yes, which authority is responsible for the verification of an FDI?

N/A

If yes, are these general restrictions or industry/sector-specific restrictions?

Certain restrictions apply on foreign ownership in sectors deemed vital for national interest (transportation, energy, defense and security, finance, postal services, public broadcasting). Sector-specific acts (e.g. the Mining Act, the Electricity Act, the Gas Act, the Drinking Water Act) may apply (and impose restrictions) to FDI in these sectors of vital interests, including limited FDI screening (e.g. the Gas and Electricity sectors).

At this moment, the Netherlands has no formal FDI screening mechanism; as mentioned, there are two draft bills pending which are relevant:

- the “*Foreign Direct Investments Screening Regulation (Implementation) Act*”. The draft bill serves to implement *Regulation (EU) 2019/452* and (inter alia) regulates enforcement of the obligation to screen non-EU FDI in the Netherlands and the authority to collect information from investors. The draft bill does not (yet) implement any new (additional) screening mechanism or investment test.
- the “*Telecommunications Sector (Undesirable Control) Act*”. Pursuant to this draft bill, the Minister of Economic Affairs may prohibit an acquisition if it has a significant influence on the Dutch telecom sector and compromises national security or public order in the Netherlands. The Minister may also eliminate existing control over a telecommunication company if national security or public order in the Netherlands are violated. For example, a party has “control” if it can exercise at least 30 percent of the voting rights in the company’s general meeting or if it can appoint or dismiss the majority of the company’s managing or supervisory directors.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

N/A

If yes, are these restrictions dependent on certain control thresholds being reached?

N/A.

Pursuant to the draft bill (“*Telecommunications Sector (Undesirable Control) Act*”), a party that intends to acquire a controlling interest in a telecommunications party must notify the competent minister if such control will lead to relevant influence within the telecommunications sector (see above)

If yes, what is the administrative procedure?

N/A

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No.



Poland

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. In general acquisitions of shares in a company owning real estate (and direct acquisitions of real estate) by foreigners are restricted. Also, there are additional restrictions regarding acquisitions of certain companies (both share and asset deals), which apply irrespective of the nationality of the buyer, including Polish buyers.

If yes, which authority is responsible for the verification of an FDI?

In case of acquisitions involving real properties – the Ministry of Internal Affairs, if the real property is classified as agricultural property – the Polish National Office for Agricultural Support, in case of other acquisitions – the Ministry of State Owned Assets, the Ministry of National Defence the Ministry of Marine Economy, or the Polish Financial Supervision Authority as the case may be.

If yes, are these general restrictions or industry/sector-specific restrictions?

There are general (cross-sector), as well as sector-specific restrictions. General restrictions apply to acquisitions involving real properties. The latter are intended to control any contemplated acquisitions of companies that are active in particularly sensitive sectors, such as energy, telecommunication, financial, military or the chemical industry.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

As a rule, the general (cross-sector) restrictions limit acquisitions involving real properties by a non-EU/ non-EFTA buyer. However, if real property is classified as agricultural real property then restrictions apply to all buyers (irrespective of their home jurisdiction). The sector-specific restrictions restrict any acquisitions and concern both Polish and foreign buyers.

If yes, are these restrictions dependent on certain control thresholds being reached?

The general (cross-sector) restrictions apply to all transactions by which a buyer directly or indirectly acquires any shares in a company holding real properties. The sector-specific restrictions apply to all transactions through which a buyer directly or indirectly acquires control of 20 percent, 25 percent, 33 percent and 50 percent of the voting rights or shares in the share capital of a domestic company except for companies from the financial sector, such as banks, insurers and brokerage houses, where the following thresholds apply: 10percent, 20percent, 33 percent and 50 percent.

If yes, what is the administrative procedure?

In case of general (cross-sector) restrictions, all acquisitions of companies holding real properties require obtaining a prior positive decision from the Ministry of Internal Affairs. The procedure requires certain documentation regarding the target real property (the company owning the real property) and the prospective buyer must be presented to the Ministry.

In case of acquisitions of companies holding agricultural real properties, the Polish National Office for Agricultural Support may exercise a pre-emption right regarding the shares of the company concerned, which is the subject of the transaction. The Office may carry out its own due diligence in relation to the target company. The office has 2 months to decide whether to exercise its pre-emption right. In case of sector-specific restrictions, in certain cases prior approval from the competent ministry must be obtained in order to proceed with the transaction and the procedure is very formalized. As a rule, the relevant authority has 60 or 90 days (depending on the case) to make its decision. In some other cases, the relevant ministry may object to the transaction within 14 days from being notified.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Yes, under the so-called Anti-Crisis Shield 4.0 (the **Act**) published on 23 June 2020, additional restrictions for certain foreign investments in Polish companies by investors from outside the EU, EEA, or OECD have been imposed. The restrictions apply 30 days after the Act is published i.e. from 24 July 2020 and will remain in force for 24 months. The Act defines investments which trigger the restrictions, including purchases of shares (both direct and indirect) by which shares and votes, as the case may be, exceeding 20 percent, 40 percent or 50 percent of the protected company's total share capital / votes are transferred, as well as the purchase or lease of the protected company's operating business or parts thereof. Companies to be protected by the restrictions include, i.a., public companies, companies owing critical infrastructure, developing critical IT software, or operating in strategic sectors, provided that their annual turnover in each of the last two years exceeds EUR 10 Mio. The screening procedure under the Act is modelled on the current procedure for antimonopoly clearance.



Singapore

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. While in general, there is no distinction in treatment of foreign and domestic investment in Singapore, some restrictions on FDI for a limited list of sectors are permitted by the relevant sector-specific legislation.

If yes, which authority is responsible for the verification of an FDI?

There is no central authority regulating and verifying an FDI, and any restrictions on foreign investment are implemented by the relevant sectoral regulatory authority.

If yes, are these general restrictions or industry/sector-specific restrictions?

There are no general restrictions, but industry/sector-specific restrictions apply in areas such as telecommunications, financial services, professional services, media and land ownership.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.

If yes, are these restrictions dependent on certain control thresholds being reached?

The thresholds vary based on the sector in question. For example:

- Real estate, foreign ownership of certain types of residential property (including vacant land, landed residential property, public residential housing units) is restricted in its entirety, whereas private high-rise residential condominium units, housing on Sentosa Island and industrial and commercial real estate are generally not restricted.
- Domestic newspaper and broadcasting companies require prior approval from the Info-communications Media Development Authority (IMDA) with regards to funds from a foreign source.
- For domestic broadcasting companies whose operations requires a broadcasting licence, the IMDA will not grant such licence if the company is controlled by foreign investors or if foreign investors hold more than 49 percent of the shares or voting power of the company.

If yes, what is the administrative procedure?

As explained above, the procedure varies for each sector and is set forth in the relevant sector-specific legislation.

While some transactions (such as restricted foreign land ownership) are not permitted and will be deemed null and void, other decisions are taken by the relevant regulatory authority on a case-by-case basis, such as those relating to applications for foreign financing of domestic newspaper and broadcasting companies. Certain industries such as domestic banking and telecommunications have a licensing regime in which the competent regulatory authority applies qualitative and quantitative criteria to determine whether new entrants should be granted a licence to operate in the sector in Singapore.

Broadly speaking, the Singapore government remains open to foreign investment and encourages, where possible, consultation with regulatory authorities when applications are made by foreign investors applying for approvals to invest into controlled sectors.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No additional FDI restrictions have been implemented, though it is worth noting that as of 23 March 2020, all short-term visitors (from anywhere in the world) have not been allowed to enter or transit through Singapore.



Slovak Republic

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

As of 1 March 2021, a specific FDI screening mechanism has been implemented in Slovakia by Act No. 72/2021 Coll. amending the Critical Infrastructure Act No. 45/2011 Coll.

If yes, which authority is responsible for the verification of an FDI?

Two authorities are responsible (i) the Ministry of Economy and (ii) the Slovak Government.

If yes, are these general restrictions or industry/sector-specific restrictions?

The new screening mechanism shall apply to companies in critical infrastructure in the following sectors:

- mining,
- electric power engineering,
- gas, petroleum,
- pharmaceutical,
- chemical, and
- metallurgical.

Mechanism for general restrictions should be introduced as well, however, a concrete legislative proposal is not yet available.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No.

If yes, are these restrictions dependent on certain control thresholds being reached?

Restrictions apply in case of (i) a transfer of more than 10 percent of the share capital or voting rights in a domestic company to any investor (domestic or foreign), (ii) or if a new investor has the means to control the management of a domestic company equivalent to an interest in the aforementioned percentage.

If yes, what is the administrative procedure?

A planned FDI shall be reported to the Ministry of Economy, which may review the FDI in terms of public order and national security. After reviewing the transaction, the Ministry of Economy shall file a motion to the Slovak Government either to approve the transaction, to approve the transaction subject to certain conditions or to prohibit the transaction.

The Slovak Government may withdraw its approval if (i) the approval was granted on the basis of false or incomplete information provided by the applicant or the applicant failed to disclose material circumstances for the granting of the approval and such circumstance would have had a significant effect on the granting of the approval, or (ii) the buyer does not or will not comply with the conditions stipulated by the Government.

The applicant may appeal the Slovak Government's decision to deny the approval or withdraw the approval before the Supreme Court.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

There is currently no official information about tightening the FDI restrictions due to the COVID-19 pandemic.



Spain

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Yes. But FDI are mainly subject to notification obligations for purely statistical purposes. Only certain investments related to national defence require prior approval by the Council of Ministers. In addition, different specific requirements apply to foreign investors in regulated sectors (e.g., gambling, media, air transport, telecommunications or energy).

If yes, which authority is responsible for the verification of an FDI?

A notification has to be filed before the Registry of Investments of the Ministry of Industry, Commerce and Tourism.

If yes, are these general restrictions or industry/sector-specific restrictions?

Notification obligations are cross-sector

If yes, do these restrictions apply to buyers from specific jurisdictions only?

Notification obligations apply to any foreign buyer (any natural person residing outside Spain, any legal person domiciled outside Spain and any foreign public entity).

If yes, are these restrictions dependent on certain control thresholds being reached?

Investments in real estate or in the framework of certain legal forms of joint below 500.000 pesetas (approx. EUR 3 Mio.) are exempted from notification obligation. Such exceptions do not apply to investments from tax havens.

If yes, what is the administrative procedure?

Prior notification to the Registry of Investments is required for FDI from tax havens (except if the FDI is made in listed shares or investment funds registered with the Spanish Securities Market Commission or involving less than 50 percent of the share capital of the Spanish company). Ex-post notification is mandatory for all investments (including those previously notified). As a general rule, this obligation applies to foreign investors, but special rules apply. Notification has to be submitted through using a special form.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Yes. In response to COVID-19 related economic crisis, Spanish law on FDI now stipulates that FDI in some strategic sectors are subject to prior approval by the Spanish Government.

Restricted investors: Non-EU or Non- EFTA buyers who invest either directly or through EU or EFTA companies, if the non-EU/non-EFTA buyer directly or indirectly hold more than 25 percent of the share capital or of the voting rights or otherwise control such companies.

Restricted investment: Acquisition of at least 10 percent of the share capital of a domestic company or any other transaction that allows the restricted investor to effectively participate in the management or control of the domestic company provided that, alternatively:

- the investment relates to assets and activities that are likely to affect public order and security, such as critical infrastructure, critical technologies and dual use items, supply of critical inputs, access to or control over sensitive information, including personal data, and media; **or**
- the buyer is directly or indirectly controlled by a foreign government, including public bodies or the armed forces, irrespective of the sector in which the domestic company operates, was already involved in activities that are likely to affect security or public order (as defined above) in other EU Member State or there is a serious risk of engagement in illegal or criminal conduct.

The Directorate General for International Commerce and Investments (Ministry of Industry, Commerce and Tourism) has 6 months from the date of the application by the foreign investor to approve the FDI. If no decision is made within this period, the FDI shall be deemed rejected.

Execution of the restricted investment without the required prior approval is subject to a fine of up the value of the transaction and is not valid from a contractual perspective.

Temporarily, investments below EUR 1 Mio. are exempted from prior approval requirement and investments below EUR 5 Mio. benefit from a 1-month fast-track procedure.

Although these new rules have been approved in the context of COVID-19 pandemic, they might still remain in force once the situation is over.



Sweden

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

No. But a working group set up by the Swedish government was assigned to assess the need for and possible design of a FDI screening mechanism. The working group's report, with proposals for adjustments and supplementary provisions to EU Regulations will be presented no later than 4 May 2020. The working group shall publish its final report no later than 2 November 2021. However, Swedish regulations, require that the seller of a national security related operation must notify the Swedish Security Service or the Swedish Armed Forces before initiating a sale of its operation to a foreign investor. Furthermore, the operator of a public or private company sensitive for national security is obliged to carry out a security analysis. The requirements as to what is to be considered nationally protected technology are subject to interpretation. Based on the results of such analyse, the operator must take certain actions as required depending on the specific operation, the presence of classified information and other circumstances. Thus, the Swedish regulation transfers the responsibility to the operator – not the buyer. There are no sanctions in connection with the Swedish regulation, it focuses on information and is not an FDI screening mechanism. If an acquisition concerns sensitive information, the operator is obliged to notify the state, but the acquisition itself does not require approval.

If yes, which authority is responsible for the verification of an FDI?

N/A

If yes, are these general restrictions or industry/sector-specific restrictions?

There is no FDI screening mechanism. The obligation to notify the state on FDI only applies if the target company is sensitive for national security. The sectors most affected are energy production, distribution of energy, mail and telecommunication, defence and nuclear safety.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

The aforementioned explanations apply regardless of the origin of the acquirer.

If yes, are these restrictions dependent on certain control thresholds being reached?

The obligation to notify the state on FDI only applies if the target company is sensitive for national security. The sectors most affected are energy production, distribution of energy, mail and telecommunications, defence and nuclear safety. The Swedish regulation also requires conclusion of a specific security agreement if a business operator who's operation is sensitive from a national security intends to conduct a procurement, conclude an agreement, or commence any other form of cooperation or collaboration with an external party. There are three types of the security agreements (level 1, level 2 and level 3), with different requirements e.g. to ensure that adequate training in security protection is provided to those participating in a security sensitive business. The level of the security agreement depends on the security classification of the company's operations. The business operator must also inform the Swedish Security Service that a security agreement has been concluded.

If yes, what is the administrative procedure?

There is no FDI screening mechanism, but anyone who intends to transfer security-sensitive operations (incl. foreign investors) must report this to the Swedish Security Service or, if the operator is a part of the Swedish Armed Forces' supervisory authority, to the Swedish Armed Forces.

In addition, the operator must notify the foreign investor that the Security Protection Act (2018: 585) applies to the operation. The notification shall include a reminder of the obligations that apply under the Security Protection Act to the person responsible for a security-sensitive operation.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

No.



United Arab Kingdom (UAE)

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

The government of the UAE has introduced a FDI Law in 2018 (the **FDI Law**) which provides for the possibility of up to 100 percent foreign ownership for mainland companies (incorporated outside designated free trading zones). However, the FDI Law provides restrictions on the sectors and activities where 100 percent foreign ownership may be possible. Restrictions include (i) minimum share capital investments, (ii) UAE national employment percentages, and (iii) limited choice of legal entity type, which is essentially restricted to limited liability companies and private joint stock companies.

If yes, which authority is responsible for the verification of an FDI?

The Ministry of Economy, and more specifically the Foreign Trade Sector Investment Department and the FDI Committee therein, and the respective licensing authority in each Emirate (i.e. the Department of Economic Development).

If yes, are these general restrictions or industry/sector-specific restrictions?

The “positive list” introduced by the FDI Law allows 100 percent foreign ownership across 122 sectors and activities in various industries and activities in agricultural, service, and industrial sectors. In addition, each of these sectors and activities have specific share capital requirements and must meet several criteria such as the use of innovative technology and achievement of high added value.

The FDI Law also includes a “negative list”, according to which foreign investors in certain sectors are not eligible for greater levels of foreign ownership and are confined to 49 percent ownership (Federal Law No. 2 of 2015 concerning Commercial Companies, as amended (the “Commercial Companies Law”). Activities under the negative list include, but are not limited to, banking and finance activities, insurance, petroleum-related exploration and production activities and postal, telecommunications and audio-visual services.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

No, the restrictions generally apply to all foreign investors and are relevant to all non-UAE (and non GCC) citizens and corporate entities. Please note, however, that certain federal laws in the UAE are currently in force which may impact the foreign ownership of certain nationalities, given the nature of their political relationship with the UAE.

If yes, are these restrictions dependent on certain control thresholds being reached?

The FDI Law provides for exceptions to the UAE's foreign ownership restrictions under the Commercial Companies Law, which limits a foreign (i.e. non-UAE national) shareholder to holding a maximum of 49 percent of the shares in a company incorporated onshore in any of the Emirates.

The FDI Law now allows foreign citizens and corporate entities to own up to 100 percent in a limited liability company or a private joint stock company and to retain a controlling majority in a UAE-based entity onshore. Equally, the FDI Law allows other foreign investors to restructure their existing shareholding arrangements in the UAE in order to own a controlling majority, if not all the shares in a UAE-based entity.

If yes, what is the administrative procedure?

In order to obtain an approval under the FDI law, a request must be submitted to the competent authority (who will determine based on the activity and the thresholds of share capital and other criteria being satisfied) if an approval for 100 percent foreign owned company can be granted. This does not apply for companies whose activities fall under the negative list.

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

Currently no further restrictions are foreseen to be imposed by the relevant authorities as a result of the COVID 19 outbreak. Since the positive list of the FDI Law was published and enacted in April 2020, we flag that its implementation in practice is in its infant stages.



United Kingdom

FDI restrictions prior to the COVID-19 pandemic

Do FDI restrictions apply?

Although the UK does not currently have a dedicated framework to regulate FDI, plans were announced in November 2020 for a new regime to be introduced and it is anticipated that this new regime may have retrospective effect (see below).

Under current law, where transactions concern businesses or capabilities critical to UK interests, the UK Government may act to ensure that control remains within the UK. The key sources of such controls/powers are as follows:

Public Interest: The UK Government (acting via the Secretary of State) can intervene to review transactions under the UK's merger control legislation on grounds other than competition concerns, where considered necessary to protect the UK's public interests, and in such cases the nationality of a party can have greater relevance. The particular 'public interest grounds' are specified at s.58 of the Enterprise Act 2002 and these includes issues of national security (including public security), media plurality and financial stability.

Special public interests: The UK Government can also intervene where the relevant EU or UK merger control thresholds are not met but the relevant transaction raises special public interest considerations. These special public interests are narrowly defined and are limited to certain mergers in the newspaper and broadcasting sectors or mergers involving contractors or subcontractors who hold or receive confidential government information or material relating to defence. In addition, under s.13 of the Industry Act 1975, the Secretary of State may block an acquisition of an "important manufacturing undertaking" by a non-UK based entity, where this would be contrary to the interests of the UK.

Other public regulatory bodies: Certain sectors have regulators who must scrutinise and authorise certain transactions related to that sector. Without the required approvals, businesses within the scope of these regulations will not legally be able to undertake certain operations. This is unlikely to be applied to investments purely on the basis of the nationality of the investor, but it would still remain potentially relevant to investors generally. Examples of such bodies include Ofgem, the regulator of gas and electricity supply, Ofwat, the water regulator, Ofcom, the regulator of communications, the Office for Nuclear Regulation in respect of the nuclear industry and the Civil Aviation Authority in respect of aviation. Transactions concerning the defence sector may also require approval from the Ministry of Defence (MOD).

If yes, which authority is responsible for the verification of an FDI?

N/A

If yes, are these general restrictions or industry/sector-specific restrictions?

Certain industries critical to national security are more likely to be subject to the provisions concerning national interest. In June 2018, the UK Government amended the Enterprise Act to allow it to intervene in certain sectors at lower thresholds, where UK merger regulation might not otherwise be applicable. These sectors are: (i) goods and services with military or dual-use, (ii) computer hardware technologies, and (iii) quantum technologies. With such sectors, the turnover threshold has been reduced from GBP 70 million to GBP 1 million, and the share of market test (i.e. the requirement that there should be an increase in share of supply, where the share is 25 percent or more) has been removed.

If yes, do these restrictions apply to buyers from specific jurisdictions only?

Restrictions apply equally to domestic and international investment globally, although certain states may be seen to present a higher threat to national security and therefore inform the extent to which intervention might be considered to be in the national interest.

If yes, are these restrictions dependent on certain control thresholds being reached?

The UK Government has its most extensive powers once UK merger control thresholds have been reached. However, as outlined above, it has the ability to intervene under other provisions without any threshold being attained.

If yes, what is the administrative procedure?

N/A

FDI restrictions in light of the COVID-19 pandemic

Have FDI restrictions temporarily been tightened?

The UK has introduced emergency legislation to add a public health emergency category to its list of public interest issues. This will allow the Government to intervene in transactions involving a variety of businesses critical to the UK's ability to combat public health emergencies and their effects, including companies involved in vaccine development, production of personal protective equipment and improving testing capacity.

In November 2020, the UK government published proposals to reform the UK FDI's regime through a new National Security and Investment Bill (**NSI Bill**), which would replace the regime under the Enterprise Act 2002 and allow the government to intervene in transactions on the grounds of national security. Whilst the NSI Bill will be subject to Parliamentary debate and approval before it becomes law, the new regime is intended to be retrospective in effect and the Government will be able to 'call in' transactions for review if they occurred after introduction of the NSI Bill (i.e. after 11 November 2020).

Under the NSI Bill:

- Authority: The Secretary of State for Business, Energy and Industrial Strategy (via a new Investment Security Unit) will be responsible for reviewing FDI transactions.
- Sectors: A Government consultation will determine the specific sectors which will be subject to a mandatory notification regime, but sectors expected to be affected include energy, data infrastructure, communications, defence, transport, artificial intelligence, computing hardware, advanced materials and quantum technologies. If a transaction subject to the mandatory regime is not notified and approved, it will be legally void (unless retrospectively validated). There will also be a voluntary notification regime, where businesses can submit a notification of a 'trigger event' if the transaction does not involve a mandatory sector but may still have a national security element. Transactions may also be 'called in' for review by the Government where it reasonably suspects a risk to national security (regardless of whether such transaction is subject to the mandatory notification regime and has been notified or is subject to the voluntary notification regime).
- Jurisdictions: The restrictions will apply to investors from all countries.
- Thresholds: The FDI restrictions will not be dependent on certain thresholds being met (unlike under the Enterprise Act).

The NSI Bill is expected to become law in early 2021.

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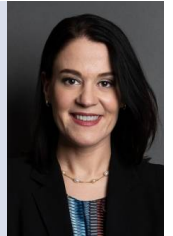
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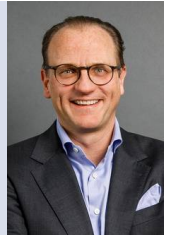
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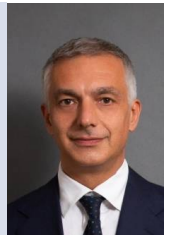
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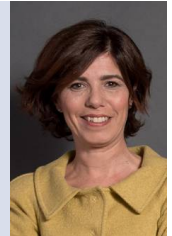
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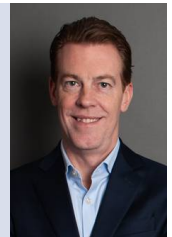
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