Foreign Investment Control: Thresholds for key jurisdictions (July 2020)

### Australia

**Key facts**

Australia operates a dual track process for regulating foreign investments in Australian shares, assets or land:

(i) mandatory filing where certain valuation thresholds are met (**notifiable actions**); and

(ii) voluntary filing where a transaction does not meet the valuation thresholds but raises "national interest" concerns (**significant actions**).

In response to the Covid-19 crisis, on 29 March 2020 the Australian Government announced, as a temporary measure, that all transactions which occur after this date are subject to a A$0 valuation threshold and that review periods are extended from 30 days to six months. In light of these measures, if a transaction involves a foreign buyer acquiring Australian shares, assets or land, FIRB approval is very likely to be required unless it can benefit from an exemption (e.g. acquisition of less than 20% stake in a company in a non-sensitive sector by an ordinary investor).

**Key thresholds**

A foreign investment filing with the Foreign Investment Review Board (FIRB) is required for notifiable actions. Filing thresholds are separated according to whether a transaction involves the acquisition of Australian shares or assets on the one hand or an interest in Australian land on the other. In general, the thresholds vary by acquirer type – principally whether an acquirer is from a country that has a free trade agreement with Australia or not (higher valuation thresholds for free trade countries) – and for sensitive sectors. Foreign government investors (including State-Owned Enterprises) also have separate thresholds. However, in response to the Covid-19 crisis, on 29 March 2020 the Australian Government announced, as a temporary measure, that all transactions which occur after this date are subject to a A$0 valuation threshold.

For significant actions, parties must self-assess whether a transaction raises “national interest” concerns and FIRB approval should therefore be sought voluntarily. This is not defined, however typically includes considerations regarding national security, competition, other Australian government policies (e.g. tax), the impact on the economy and the character of the investor.

*In June 2020, the Government proposed some further changes to the FIRB regime. If passed, among other things, the changes will impose a permanent $0 threshold for all foreign investments in sensitive national security businesses, whilst the current temporary A$0 threshold for all other foreign investments will revert to the pre-29 March 2020 thresholds.*

**Transactions covered by the rules**

A 20% interest is deemed to grant control for foreign investment purposes. However, lower thresholds apply for foreign government investors and certain sensitive sectors.

**Key sensitive sectors**

Sensitive sectors include: Media, telecommunications, transport, defence, land, military-related industries, nuclear-related activities.

### Canada

**Key facts**

Canada has an extensive and long-standing foreign investment regime. Given enforcement to date, national security should be top of mind for foreign investors. In April 2020 in light of the Covid-19 pandemic, Canada announced enhanced scrutiny for foreign investments in public health, the supply of critical goods and services, or those undertaken by state-owned enterprise investors.

**Key thresholds**

Transactions covered by the rules

A 20% interest is deemed to grant control for foreign investment purposes. However, lower thresholds apply for foreign government investors and certain sensitive sectors.

**Key sensitive sectors**

Sensitive sectors include: Media, telecommunications, transport, defence, land, military-related industries, nuclear-related activities.
The Investment Canada Act (ICA) applies to all non-Canadians investing in or establishing a Canadian business.

An acquisition of control will be “notifiable” or “reviewable” depending on the transaction structure, non-Canadian’s identity, and target’s value/nature:

- “Notifiable”: transaction is below the applicable monetary threshold; requires filing a short notification either before, or within 30 days of closing.
- “Reviewable”: transaction is above the applicable monetary threshold; requires approval before closing and typically requires negotiation of undertakings with the Canadian government.

If an acquisition of a cultural business does not trigger the thresholds, a review may still be ordered. In addition, all investments, regardless of size, can be reviewed on national security grounds.

Control rules are complex, but generally: i) acquisition of a majority of the voting or undivided ownership interests of an entity constitutes control; and ii) there is a rebuttable presumption that the acquisition of at least 33.3% of voting shares of a corporation constitutes control.

As part of the additional Covid-19 measures, a draft legislative proposal allowing the extension of review timelines under the ICA was introduced in Parliament on 10 June 2020. This will provide the Minister deference to extend timelines in ICA national security reviews by up to six months.

Transactions covered by the rules

The filing requirements generally apply to (i) direct and indirect acquisitions of control of a Canadian business, (including minority share acquisitions of 33.3%, unless no control was acquired); and (ii) the establishment of a new Canadian business. The ICA rules apply to foreign investments in any sector.

Key sensitive sectors

Investments by state-owned enterprises; further, sensitive sectors include: military/defence; Canadian cultural heritage; and, during the Covid-19 pandemic, public health and critical goods/services.

China

Key facts

Foreign investors should consider whether any of the below five foreign investment regimes in the PRC apply to their transactions. The key criterion is always whether a foreign investor is proposing to acquire a Chinese company/asset or is otherwise involved in an investment in the PRC. Several changes to the regimes came into effect on 1 January 2020. To date, no specific COVID-19 restrictions have been included in the legislation or regulations governing foreign investment in the PRC.

Key thresholds

National Security Review (“NSR”) - applies where:

- the target is in one of the applicable categories of the Security Review Circular. If in a Category A sector (e.g. military or national security/defence), a pre-closing filing will be required, even if only a minority share is acquired. If in a Category B sector (e.g. key technologies, important energy or infrastructure; see further detail under “sensitive sectors” below), a pre-closing filing will only be required if actual control is obtained; and
- the transaction is structured in a particular way (e.g. as an acquisition or subscription of equity in a non-foreign invested Chinese domestic enterprise, or as an acquisition of equity from the Chinese shareholder, or subscription of equity, in a Foreign Invested Entity (“FIE”), or any acquisition of equity or assets in an existing enterprise in a free trade zone (“FTZ”), by a foreign investor).

Pre-closing approval by the Ministry of Commerce (“MOFCOM”) - for the acquisition of a Chinese entity where the “foreign” investor (i) is a Chinese entity acquiring a domestic entity through an offshore
entity; (ii) is using offshore shares as the consideration for the acquisition; or (iii) acquires control of a famous brand or household name or control of an entity in a key industry.

Depending on the specific rules, “control” in the above contexts can include a shareholding of 50% (or a lower ownership percentage with significant influence over the target), or effective control of the target’s business policies, irrespective of shareholding.

**Registration with the relevant bureau of the State Administration for Market Regulation (“SAMR”)** - required if the investment involves a direct change in the shareholding of a FIE or changes to its legal representative, directors, supervisors or manager. SAMR is also responsible for reviewing transactions where the target is active in a sector (“Restricted Sector”) covered by the national or respective FTZ “negative list”. Restricted Sectors limitations on foreign ownership/management, as well as industry specific regulatory approvals/filings, may apply.

**Pre-closing approval by, or filing with, National Development and Reform Commission (“NDRC”) at the relevant level** – required for industrial/infrastructure projects invested by a foreign investor. Not required if the target is in a financial sector.

**MOFCOM information reporting** – MOFCOM has introduced new information reporting requirements for all FIEs which came into effect from 1 January 2020, replacing the previous filing-based system for establishment of, and changes to, FIEs.

**Transactions covered by the rules**

The regimes generally apply to share purchases and some asset purchases. In addition, the NSR review can apply more broadly (e.g. to contractual control, nominee or trust arrangements, reinvestments, offshore transactions, leasing, subscription of convertible bonds etc.)

**Key sensitive sectors**

Certain industry sectors are categorised as prohibited for investment into China (e.g. fishery, publication and broadcasting). Sensitive sectors include: military; defence; security; key technologies; major equipment manufacturing; agriculture; energy; transportation; important cultural and important IT products.

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**European Union**

**Key facts**

In response to Covid-19 the European Union published additional guidance for foreign investment screenings in the EU and encourages all Member States to implement fully-fledged foreign investment screening mechanisms and make full use of the regimes already in place at Member State level. Within the EU, currently 16 Member States have active foreign investment regimes, namely Denmark, Germany, Spain, France, Italy, Latvia, Lithuania, Hungary, the Netherlands, Austria, Poland, Portugal, Romania, Finland (and the UK), Czech Republic and Slovenia have also recently adopted regimes. The aim is to protect key European companies weakened by the impact of Covid-19 as well as essential value chains (in particular in the healthcare business).

**Key thresholds**

The European Union does not operate an own foreign investment review but co-ordinates and encourages the harmonization of the national foreign investment review rules of its Member States. To align the national investment reviews, the European Union issued an FDI Screening Regulation, which will be applicable from 11 October 2020. The FDI Screening Regulation seeks to promote best practices, cooperation and information sharing regarding foreign investment control between the European Commission and EU Member States, including a list of sensitive sectors which are likely of relevance for public security and order.

Since there is no separate foreign investment regime exercised by the European Union it does not contain specific acquisition thresholds. However, the Commission can issue opinions in case the FDI
might have an effect on security or public order in more than one Member State, or if it has relevant information in relation to the FDI. The opinions are non-binding on the Member States.

**Transactions covered by the rules**

The FDI Screening Regulation considers as foreign investment any kind by a foreign investor aiming to establish or maintain lasting and direct links to the target, including control over the target company. The FDI Screening Regulation addresses investments by third countries, i.e. non-Member States.

**Key sensitive sectors**

Critical infrastructure (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), critical technology (artificial intelligence, robotics, semiconductors, cyber security, aerospace, defence, dual use goods/services, energy storage, quantum technologies, nuclear technologies, nanotechnologies biotechnologies, critical input suppliers (e.g. raw materials), food security, companies using and storing personal data, and media companies.

For more information, see our publications below

- Client Alert: Foreign Investment Control: the impact of COVID-19 and sectors to watch
- Key Antitrust Issues and Opportunities for Private Equity and Financial Sponsors - Increasing foreign investment intervention
- Client Alert: EU endorses new foreign investment screening mechanism

**France**

**Key facts**

The French foreign investment regime is a long-standing and well-established mandatory regime. Where a transaction falls within the scope of the French foreign investment rules, a filing must be made to the Minister for the Economy to request an authorisation. The French foreign investment regime is suspensory, which means that the parties cannot close until they have obtained clearance from the Minister for the Economy. The Minister has the authority to authorise the transaction with or without conditions. The Minister also has the authority to block transactions by means of a reasoned decision.

As a consequence of the Covid-19 outbreak, the statutory review periods had been suspended until 24 June. In practice, the Ministry for the Economy keeps on working and we have not experienced major delays. The suspension of the statutory review periods is not specific to foreign investment control, and our ongoing cases have been dealt with almost as usual, with slight delays not exceeding a week.

**Key thresholds**

There are no turnover thresholds under the French foreign investment regime, and a filing may be required even where the turnover of the French target is very low. The requirement for prior approval is also not dependent on the importance of the activity at issue, compared to the overall activities of the target. For instance, a single government contract may be sufficient to trigger a filing obligation and a case-by-case assessment is required in each case.

**Transactions covered by the rules**

A filing to the Minister for the Economy will be triggered if a “foreign investor” (including French nationals residing outside France) acquires control, exceeds 25% of voting rights (save for investors from the European Union) or acquires all or part of the assets of a French law entity operating in certain sectors.
From 6 August 2020, the threshold at which the foreign investment screening regime is triggered will be temporarily lowered, from 25% to 10% of voting rights for non-EU investors acquiring shares in listed companies.

**Key sensitive sectors**

Sensitive sectors include: defence, energy, water, transport, space, electronic communications, police, health, agricultural products that contribute to national food safety objectives, print and online press services for political and general information, quantum technologies and energy storage.

The list of sectors falling within the scope of the French foreign investment regime can be extended by decree (i.e., almost overnight) when needed (e.g. the Alstom/General Electric merger).

With effect from 1 April 2020, the list of sensitive sectors is now the same for all foreign investors, regardless of whether they are located within or outside the European Union.

For more information, see our publication below

- Client Alert: Foreign Investments in France: last step of the reform
- Client Alert: Three questions accessing the latest amendment to France's foreign investment regime

**Germany**

**Key facts**

The German regime is a long-standing regime which underwent major changes in the past three years, including a significant extension of its scope of application sanctions. Depending on the type of sector affected, it may kick in from 10% of voting rights and requires a mandatory filing for a wide range of transactions.

Most recently, we have seen a number of very significant reforms. The main changes are (i) the tightening of the review standard as the threshold for the German Finance Ministry to intervene is lowered to encompass all transactions “likely to affect public order or security in Germany”, (ii) the extension of gun jumping rules to all mandatory notifications (previously this applied only to transactions under the sector-specific regime), (iii) the introduction of severe sanctions including imprisonment of up to five years in case of intent or fines in case of negligence of up to EUR 500,000 and (iv) amendments to the timelines.

**Key thresholds**

The German foreign investment regime distinguishes between acquisitions triggering a mandatory filing requirement and those which only fall under a voluntary filing regime. Mandatory filings are required for investments in the defence sector and certain infrastructure for processing state classified information (mandatory sector specific review) as well as for investments in critical infrastructures (a broad concept applying to many sectors where the target’s activities exceed certain quantitative thresholds aligned with the average demand of 500,000 people), software specifically developed for critical infrastructure operations, telecommunication surveillance, cloud computing, telematics, media, personal protective equipment (including preliminary products and components), essential drugs (including starting materials and active ingredients), in vitro diagnostics in the field of infectious diseases (including precursors and components), medical devices for infectious diseases (including preliminary products and components) and services necessary to ensure the proper functioning and continuity of governmental communication infrastructure of the Federal Agency for Digital Radio Safety (mandatory cross sector review). Targets active in sectors outside the mandatory sector specific review and the
mandatory cross sector review still can be reviewed ex officio within five years after signing and, thus, a voluntary notification may be advisable depending on the target’s activities.

**Transactions covered by the rules**

For transactions in the “mandatory sectors” a filing is required in case that a non-EEA investor acquires (indirectly/directly) 10%+ or more of the voting rights in the target. In certain instances, this regime applies also to all non-domestic investors. The voluntary sectors enable an ex officio investigation in case of (indirect/direct) acquisition of 25% of voting rights by non-EU/non-EFTA investors. Asset deals can also be reviewed under the foreign investment rules.

**Key sensitive sectors**

Sensitive sectors include: Healthcare, medical devices and diagnostic equipment, biotechnology, defence, robotics, semiconductors, cybersecurity, aerospace, quantum technologies, nuclear technologies, artificial intelligence, nano technologies, supply of critical inputs (energy or raw materials as well as food safety), access to sensitive information (including personal data), media, telematics, dual use services/goods, cloud computing, critical infrastructures such as energy, water, IT and telecommunication, finance and insurance, transport and food. Further, investments in certain companies of the “German Mittelstand”, in particular the so called “hidden champions” may attract scrutiny.

**Italy**

**Key facts**

On 9 April the Italian Government strengthened its foreign investment rules, the so-called ‘golden power’ rules. Already prior to COVID-19, Italy had a comparably active foreign investment regime and rules covered the review of investments in strategic activities. The reform further extended the scope to the other sensitive sectors outlined in the EU Screening Regulation (i.e. critical infrastructures, critical technologies and dual use products security of supply of critical inputs, access to sensitive information and media freedom) as well as to the financial, credit and insurance sectors. In addition, it also extended the scope to the agri-food and steel sectors for the purposes of safeguarding employment levels and productivity in Italy. New notification requirements, introduced due to Covid-19, now cover:

(i) EU investors acquiring control over companies in the abovementioned sectors; and

(ii) non-EU investors acquiring 10% or more of the capital of Strategic Companies, provided that the overall value of the investment is equal to or greater than EUR 1 million.

**Key thresholds**

The Golden Powers Regulation (“GPR”) is the main set of rules on foreign investments in Italy. Under the GPR, the Italian Government has the power to conditionally approve or veto transactions constituting a threat of serious prejudice to essential national interests in relation to companies active in sensitive sectors or owning/controlling/having specific rights on strategic assets.

The GPR originally only provided for a mandatory filing in a limited number of sectors, i.e. defence, national security, energy, transport and communications. However, over the years, the scope of application was substantially extended to additional sectors, including 5G technologies and the sectors outlined in the EU Screening Regulation namely (i) critical infrastructures (e.g. water, health, media, data processing or storage, electoral or financial infrastructure and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure), (ii) critical technologies (artificial intelligence, robotics, semiconductors cybersecurity, energy storage, quantum and nuclear technologies as well as nanotechnologies), supply of critical inputs (e.g. energy or raw materials) and sensitive information. In addition, the scope was further extended to the finance, credit, insurance sectors as well as to the agri-food and steel sectors.
Transactions covered by the rules

The GPR originally only provided for a mandatory filings in a limited number of sectors, i.e. defence, national security, energy, transport and communications. However, over the years, the scope of application was substantially extended to additional sectors, including 5G technologies and the sectors outlined in the EU Screening Regulation namely (i) critical infrastructures (e.g. water, health, media, data processing or storage, electoral or financial infrastructure and sensitive facilities, as well as land and real estate crucial for the use of such infrastructure), (ii) critical technologies (artificial intelligence, robotics, semiconductors cybersecurity, energy storage, quantum and nuclear technologies as well as nanotechnologies), supply of critical inputs (e.g. energy or raw materials) and sensitive information. In addition, the scope was further extended to the finance, credit, insurance sectors as well as to the agri-food and steel sectors.

Key sensitive sectors

Key sensitive areas include, among others, defence, aerospace, broadband and 5G technologies, critical infrastructures, critical technologies, critical inputs (see definition above) and media companies.

For more information, see our publication below

- Client Alert: The Covid-19 emergency leads to a new Decree strengthening foreign investment control screenings in Italy

Japan

Key facts

The Japanese foreign investment scheme is a mandatory regime. Foreign investors are required either (i) to obtain a pre-closing approval or (ii) file a post-closing notification depending on the identity of the acquirer and the nature of the Japanese business subject to the investment. If pre-closing approval is required, closing is not permitted before the local clearance and the statutory review period is 30 calendar days.

In light of the impact of COVID-19, the Japanese government intends to add healthcare as a sensitive sector.

Key thresholds

**Pre-closing approval** is required for any direct investment by a foreign investor in a Japanese company:

- active in sensitive sectors (or whose Japanese subsidiary is active in sensitive sectors) and not listed on the Japanese stock exchange, regardless of the level of the shareholding or voting rights.
- active in sensitive sectors (or whose Japanese subsidiary is active in sensitive sectors) resulting in the acquirer holding 1% or more of the shares or voting rights. For pure investment purposes (where the investor does not appoint officers to, or get involved in the business of, the Japanese company in any way), the 1% threshold may be raised up to 10% or more depending on the business of the foreign investor and/or the Japanese listed company, in which case a post-closing notification is required. Japan’s Finance Ministry has published a list of 518 companies operating in core national security industries to come under this new foreign direct investment-notification threshold, which has been applicable since 7 June 2020 (available here).
Post-closing notification is required for any direct investment by a foreign investment in a Japanese company that is active solely in non-sensitive sectors resulting in a holding of 10% or more of the shares or voting rights.

The acquisition of a foreign entity that already holds a Japanese company does not trigger a filing.

Transactions covered by the rules

Foreign investment into Japan includes but not limited to:

- Direct acquisitions of shares or equity in a Japanese company by a foreign investor. This includes the shares or equity held by a party which has a special relationship with the foreign investor.
- Consent to the appointment of directors from the consenting foreign investor or a substantial change in the business purpose of a Japanese corporation.
- Establishment of a branch in Japan or a substantial change in the kind of business purpose of the branch in Japan.
- Loan to a legal person having its principal office in Japan where the term of the loan exceeds one year, and the amount of the loan exceeds JPY 100 million equivalent.
- Acquisition of bonds whose maturity date is more than 1 year in the future and where the outstanding balance of bonds issued by such company and held by one foreign investor exceed JPY 100 million equivalent.
- Discretionary investment in the shares of a listed Japanese company of 1% or more.

Also, internal re-organisations may be captured if the direct parent company changes and the new parent company is a foreign investor.

Key sensitive sectors

Key sensitive sectors are:

- Businesses which are likely to impair national security, disturb the maintenance of public order or hinder the protection of public safety (i.e. manufacture of weapons, aircrafts, artificial satellites/rockets, nuclear materials, electronic devices and IT related goods (e.g. circuits, semiconductors, optimal/magnetic discs, mobile phones, computers) and software). The healthcare sector is expected to be added to this list with effect from July 2020. In this context, the Government already announced on 15 June 2020 that the following categories would be added: (i) manufacturing medicines or pharmaceutical products (including intermediate products) for infectious diseases; and (ii) manufacturing highly-managed pharmaceutical devices.; and
- Businesses which are likely to have significant adverse effect on the smooth operation of economy (for example, agriculture, forestry, fisheries, petroleum, aerospace, electric/gas/water utilities, telecommunications, leather manufacturing and transportation);

Russia

Key facts

The Russian foreign investment regime only applies if the transaction results in an acquisition (direct/indirect) of any shares or rights in respect of a Russian entity or its assets. Key complications stem from the broad (60+) list of sensitive sectors and certain pre-transaction clearances taking 6-12 months or longer to obtain. Certain transactions are prohibited entirely, and clearance may not be obtained.

Whilst no Covid-19-related restrictions have been announced to date, further delays in clearances may be expected due to lockdown measures.
### Key thresholds

**Pre-closing approval** is required for the acquisition (including intra-group) of:

- over 25% of shares or blocking rights in respect of any Russian entity if the investor is controlled by a foreign state or international organisation;
- control over a Strategic (including Subsoil) Entities by an Ordinary Investor;
- over 25% of shares or blocking rights in respect of a Strategic Entity (over 5% of shares or blocking rights in respect of a Subsoil Strategic Entity) by a Restricted Investor;
- any shares in a Subsoil Strategic Entity if the investor already holds over 25% in it;
- certain assets of a Strategic (including Subsoil) Entity by an Ordinary Investor.

“Control” is defined broadly and depends on the type of Russian target entity and the type of foreign investor, lowest thresholds are envisaged for Subsoil Strategic Entities.

#### Pre-closing disclosure of beneficiaries

A foreign investor not controlled by foreign state(s) or international organisation(s) can only acquire certain shares and assets of Strategic (including Subsoil) Entities if such investor officially discloses its beneficiaries to the Russian regulator before the transaction.

#### Post-closing notification

Is required for:

- acquisition – direct/indirect, including intra-group - by an investor of 5% or more of shares of a Strategic Entity;
- completion of the transaction or action for which pre-closing approval was received.

#### Prohibited transactions

Restricted Investors are prohibited from:

- establishing control over Strategic (including Subsoil) Entities;
- acquiring over 25% of certain assets of a Strategic (including Subsoil) Entity.

Further restrictions in sensitive industries such as media, insurance, banking, air & space, etc. may apply, but are not covered herein.

### Types of Foreign Investors and Russian Targets

**Strategic Entity**: Russian entity engaged in an activity of “strategic significance” for Russia

**Subsoil Strategic Entity**: Russian entity which carries out geostudies, exploration and/or extraction of subsoil resources on land plots of federal significance. Following on from a series of court decisions, culminating in a ruling of the Constitutional Court in June 2020, an entity which provides oilfield services on land plots of federal significance (even if not directly including geostudies, exploration and/or extraction of resources), is also a Subsoil Strategic Entity.

Restricted Investor: foreign states, international organisations, foreign investors which had not disclosed their beneficiaries to the regulator and any entity controlled by them (including by several such investors in aggregate)

Ordinary Investor: entity controlled by non-Russian citizens or companies (or Russian citizens with a foreign citizenship) and not controlled by Restricted Investors

### Key sensitive sectors

Over 60 different industries are regarded of “strategic significance”, as well as traditionally sensitive industries such as media, insurance, banking, air & space, etc.

**Spain**

**Key facts**
Since mid-March 2020, the Spanish government has enacted several emergency regulations to tackle the social and economic impact of the COVID-19 outbreak. While the foreign investment regime was characterised as “generally liberal” until the Covid-19 pandemic (very few specific sectors where subject to prior foreign investment screening), Spain was the first country which substantially strengthened the regime due to the impact of the pandemic. One of these measures relates to extending the pre-closing approval requirement to many strategic sectors. Further, investor-related limitations were introduced, which apply irrespective of the sector affected by the transaction. The investor-related limitations apply when the foreign investor (i) is directly or indirectly controlled by the government of a non-EEA country, (ii) has made investments or participated in activities in sectors relevant for the security, public order and public health in another Member State or (iii) is subject to administrative or judicial proceedings in any country as regards criminal or other illegal activities. It is worth noting, however, that the new mechanism is very much in line with the EU FDI Screening Regulation

### Key thresholds

A mandatory filing applies under certain circumstances (see acquisition thresholds below) to investments when the target is active in critical infrastructures (e.g. energy, transport, healthcare, financial, system), critical technologies and dual-use products (artificial intelligence, robotics, semiconductors, cyber security, aerospace, defence energy storage, quantum and nuclear technologies, as well as nanotechnologies and biotechnologies), supply of critical inputs, in particular energy, raw materials and food security, sectors with access to confidential, in particular personal data, or those with the capacity to control such information as well as media.

Further, a mandatory filing requirement may result from the nature of the investor, when the foreign investor is controlled by a “third country” government, a foreign investor who has invested in activities in sectors affecting security, public order and public health in another Member State and foreign investors involved in administrative or judicial proceedings in another Member State, its State of origin or a foreign State for criminal or illegal activities.

### Transactions covered by the rules

The Spanish foreign investments rules capture investments by non-EEA investors which either reach ownership of 10% or more of the Spanish company or if the investment enables effective participation in the management or control of the company. If the investment is structured through an EEA-resident but its beneficial owner is a foreign investor (direct or indirect control of 25% of capital or voting rights, or where by other means exercises direct or indirect control of the investor). A minimum value threshold of EUR 1 million applies and transactions involving an amount between EUR 1-5 million are subject to a simplified procedure.

### Key sensitive sectors

Sensitive sectors include: Energy, transport, healthcare, financial, system, artificial intelligence, robotics, semiconductors, cyber security, aerospace, de-fence, dual use, energy storage, quantum and nuclear technologies, nanotechnologies biotechnologies, critical input suppliers (e.g. raw materials), food security, companies using and storing personal data, and media companies.

For more information, see our publication below

**Client Alert: Changes in foreign investment screening rules in Spain**
There is currently no standalone FDI regime in the UK. Public interest considerations are assessed as part of the (voluntary) merger control regime (and no proactive foreign investment filing is required). However, the UK Secretary of State (“SoS”) does have the power to intervene in transactions in certain circumstances if there is a public interest concern. It may therefore be prudent in certain circumstances to engage in a voluntary dialogue with the UK Government (“UKG”) as regards a transaction in a sensitive sector.

On 23 June 2020, to mitigate short-term risks associated with the Covid-19 pandemic, UKG introduced reforms to the existing public interest regime to allow the SoS to intervene on the new ground of the "the need to maintain in the United Kingdom the capability to combat, and to mitigate the effects of, public health emergencies". It made clear that this new ground of intervention may be construed reasonably broadly (e.g. to capture internet service providers or companies involved in food supply).

**Key thresholds**

With the exception of “special public interest mergers” (covering transactions involving a ‘Relevant Government Contractor’ or impacting media plurality), UKG may only intervene to protect public interest considerations in mergers that qualify under the UK’s general merger regime (i.e. they meet the turnover or share of supply tests). Specified public interest categories are currently: national security, financial stability, media plurality and, under the recent Covid-19 reforms, capabilities to combat public health emergencies.

There are lowered merger control thresholds for transactions in certain areas, namely military and dual-use item technologies, and certain activities relating to computing hardware and quantum technology. In addition, under reforms announced by UKG on 21 June 2020, these lower jurisdictional thresholds have been extended to include three additional technology sectors: artificial intelligence, cryptographic authentication technology and advanced materials.

UKG may also intervene in mergers reviewed under the EUMR where the transaction affects a legitimate UK interest (public security, media plurality and prudential rules), or the essential interests of the UK’s security.

UKG has been consulting over longer-term changes to the UK national security regime, including a far-reaching power to call in a much broader set of transactions. It is not clear when such proposals will come into force, although it recently confirmed its intention to introduce reforms via a National Security and Investment Bill. UKG has indicated it is already using the principles used to assess national security concerns in the proposed reforms as a template for its review of existing cases.

**Transactions covered by the rules**

A transaction must qualify as an acquisition of control for the purposes of the UK (or EU) merger rules. Under UK merger rules, this can occur at shareholdings as low as 15% and may exceptionally be obtained other than through share acquisitions (e.g. board representation or contractual rights).

**Key sensitive sectors**

Sensitive sectors include: military and dual-use goods/services, national infrastructure sectors, advanced technologies, critical direct suppliers to UKG and emergency services sectors.

For more information, see our publications below

- Blog: National security or political insurance? UK Government intervention in M&A
- Key Antitrust Issues and Opportunities for Private Equity and Financial Sponsors - Increasing foreign investment intervention
- UK publishes reforms to its public interest regime to address national security concerns
Open for investment but not exploitation: UK foreign investment gets a v2.0 upgrade

**United States**

**Key facts**
The US is one of the most mature foreign investment regimes and has a long track record of enforcement. Most reviews are conducted by the Committee on Foreign Investment in the United States (CFIUS), which reviews foreign investments in US businesses and real estate.

No specific COVID-19 restrictions have been included in the legislation or regulations governing CFIUS. CFIUS retains broad authority over acquisitions of control of COVID-19 related businesses but may have limited authority to mandate pre-closing filings involving these businesses or to assert jurisdiction over noncontrolling investments. CFIUS can initiate its own reviews of transactions over which it has jurisdiction if the parties do not submit voluntary filings.

**Key thresholds**
CFIUS principally reviews foreign acquisitions of control of US businesses, including US operations of non-US companies. CFIUS also reviews non-controlling investments, coupled with governance/information access rights, in US businesses engaged in critical technology, critical infrastructure, or sensitive personal data of US citizens (TID Businesses). Pre-closing CFIUS filings are mandatory for 25% voting interests in TID Businesses if a foreign government holds a 49% voting interest in the investor. CFIUS filings are also required for critical technology investments of any size if (i) the foreign investor receives control or certain governance/information access rights; and (ii) certain industries identified as sensitive are involved. The industry test is expected to be replaced with one based on the need for export licenses to share the target’s technology with the foreign investor or certain affiliates.

**Transactions covered by the rules**
Control is defined imprecisely by CFIUS as the power, direct or indirect, whether or not exercised, to use majority ownership, a dominant minority interest, board representation, contractual rights, or other arrangements to determine, direct, or decide important matters affecting a US business. A limited number of minority shareholder protections are excepted from the definition of control rights. CFIUS interprets the definition broadly and has found control when an investor has sought a less than 20% voting interest coupled with only one board representative.

**Key sensitive sectors**
Sensitive sectors include: Critical technologies (certain export-controlled technologies), critical infrastructure (specific communications, energy, transport, and financial infrastructure, plus certain strategic materials and industrial resources), and sensitive personal data of US citizens (e.g., genetic data or other personally identifiable data including financial, health, security, or other qualitative factors).

For more information, see our publications below

- Navigating CFIUS Series
- Video: CFIUS’ FIRRMA Regulations: 5 things you need to know
- Key Antitrust Issues and Opportunities for Private Equity and Financial Sponsors - Increasing foreign investment intervention